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

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 103, 120, and 121

RIN 3245–AG74

Express Loan Programs; Affiliation Standards—Rescission

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; rescission.

SUMMARY: The Small Business Administration (SBA) is publishing this rule to rescind the regulations published on February 10, 2020, in the interim final rule (IFR) titled, ''Express Loan Programs; Affiliation Standards'' (Express IFR). This action is necessary to implement section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which permanently rescinded the interim final rule effective March 27, 2020. As a result of the rescission, SBA is removing the amended regulations added by the Express IFR and reinstating the regulations that were in effect before the rule became effective on March 11, 2020.

DATES: This rule is effective on March 27, 2020, as authorized by Public Law 116–136, sec. 1102(e).

FOR FURTHER INFORMATION CONTACT: Rosemarie Drake, Chief, 7(a) Program, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416; telephone: (202) 619–1674; email: *Rosemarie.Drake@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBA programs affected by the rescission of the Express IFR are:

1. The 7(a) Loan Program authorized pursuant to section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a));
2. The Business Disaster Loan Programs (collectively, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Physical Disaster Business Loans) authorized pursuant to section 7(b) of the Act (15 U.S.C. 636(b));
3. The Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m));
4. The Intermediary Lending Pilot (ILP) Program authorized pursuant to section 7(l) of the Act (15 U.S.C. 636(l));
5. The Surety Bond Guarantee Program authorized pursuant to part B of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*); and
6. The Development Company Program (the 504 Loan Program) authorized pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*).

(In this final rule, the 7(a), Microloan, ILP, and 504 Loan Programs are collectively referred to as the Business Loan Programs.)

On September 28, 2018, SBA published a proposed rule with request for comments in the **Federal Register** to incorporate the requirements related to the SBA Express and Export Express Loan Programs; add a regulation pertaining to the 7(a) and Development Company (504) loan programs regarding when the owners of a small business Applicant are required to inject excess liquid assets into the project; amend certain regulations setting forth the affiliation principles applicable to SBA financial assistance programs; limit certain fees payable by loan Applicants to amounts deemed reasonable by SBA; clarify the responsibility of a Lender for the contingent liabilities associated with 7(a) loans purchased from the Federal Deposit Insurance Corporation; and, finally, amend certain regulations governing the use of microloan grant funds by Microloan Intermediaries and the maximum maturity of a microloan. (83 FR 49001) The original comment period was scheduled to end November 27, 2018. On November 16, 2018, SBA announced an extension of the public comment period for an additional 15 business days to December 18, 2018. (83 FR 57693)

On February 10, 2020, SBA published the Express IFR with a request for comment to provide the public with an additional opportunity to comment on the modifications to the rule. (85 FR 7622). The interim final rule became effective on March 11, 2020, except that compliance with two of the regulatory provisions, 13 CFR 103.5(b) (Fees an Agent may charge a Borrower) and 13 CFR 120.221(a) (Fees a Lender may charge a Borrower) was delayed until October 1, 2020.

On March 27, 2020, President Trump signed into law, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, 134 Stat 281). Section 1102(e) of that Act permanently rescinded the Express IFR effective March 27, 2020. In light of this rescission, SBA is issuing the amendments identified below to remove all of the regulations that were added by the interim final rule and restore the regulations that were in effect prior to the effective date of the Express IFR. For loans made between March 11, 2020, and March 27, 2020, SBA Lenders should have complied with the regulations in effect during that period.

II. Waiver of Notice and Comment and Delayed Effective Date

Agencies ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the rule takes effect in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, an agency can waive this notice and comment procedure if it finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of its findings and reasons in the notice. 5 U.S.C. 553(b)(B).

This rule is rescinding an interim final rule that was developed using the APA notice and comment procedures. Because Congress has rescinded those regulations, they no longer have any legal effect, and their continued inclusion in the Code of Federal Regulations would not only be in violation of a statutory mandate, it would lead to public confusion as well. It is also unnecessary and contrary to the public interest to subject the regulations that will be reinstated to APA notice and comment procedures, since they too were already subject to public scrutiny when they were initially codified in the Code of Federal Regulations. Therefore, SBA finds that good cause exists to forgo public notice and comment procedures because they

would be unnecessary and contrary to the public interest.

In addition, section 553(d) of the APA generally requires a 30-day delay in the effective date of a final rule after the date of its publication in the **Federal Register**. This 30-day delay in effective date can also be waived as provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d)(3). Based on the language in section 1102(e) of the CARES Act, the rescission of the Express IFR was effective as of March 27, 2020. Thus, the rule cannot be delayed for 30 days; to do so would be an unauthorized extension of the rescission date. This statutorily determined effective date provides the good cause to waive the 30-day delay in effective date.

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

Executive Order 12866

OMB determined that the interim final rule, entitled Express Loan Programs; Affiliation Standards, was a significant rule for purposes of this Executive order. Accordingly, SBA prepared the requisite regulatory impact analysis, which was published with the rule. OMB has determined that this rescission of the interim final rule is also a ''significant'' rulemaking. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

The rescission of the interim final rule removes the regulations that were added by the interim final rule, including those pertaining to the SBA Express and Export Express Loan Programs, in compliance with section 1102(e) of the CARES Act, which permanently rescinded the interim final rule effective March 27, 2020.

The primary objective of the interim final rule was to incorporate into the regulations governing the 7(a) Loan Program the requirements specifically applicable to the SBA Express and Export Express Loan Programs in order to provide additional clarity for SBA Express and Export Express Lenders. The interim final rule provided a bright-line test for SBA Lenders on how to adequately determine whether a small business had access to credit elsewhere based on personal liquid assets. It modified regulatory provisions related to allowable fees that a Lender or an Agent may collect from an Applicant for financial assistance. The interim final rule also revised affiliation principles for the financial assistance programs. SBA expected that the additional detailed clarity on the requirements for program delivery in the subject areas of the interim final rule would have increased understanding for program users, decreased time spent evaluating small business Applicants, and resulted in a reduction of overall cost to participants. SBA did not expect, however, that the interim final rule would affect loan volume significantly. The interim final rule changes for affiliation determinations provided detailed guidance for the SBA Lender charged with determining the size of a small business Applicant, with an expected benefit for the SBA Lender from the time savings in making the eligibility determination. These changes are rescinded with this rule.

This rescission rule transforms the benefits of the interim final rule into forgone benefits and the costs of the interim final rule into forgone costs.

Forgone Benefits to SBA Lenders, Applicants, and Agents

The greatest benefit from the interim final rule to all program participants, including SBA Lenders, Applicants, and Agents, was clear regulatory guidance and bright-line tests to increase efficiency, including bright-line tests for making certain determinations about eligibility which would have eliminated the ambiguity and uncertainty that had hindered some SBA Lenders in recent years. SBA estimated that the reinstatement of the personal resources test at § 120.102 would have saved SBA Lenders a total of approximately 67,000 hours annually, monetized to $2,456,890 per year. This estimated annual benefit is forgone with the rescission of the interim final rule.

TABLE 1—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS FROM PERSONAL RESOURCES TEST IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in determining credit elsewhere	67,000	1–2	67,000–134,000 hours, $2,456,890–$4,913,780.
Estimated Forgone Annual Benefit			67,000–134,000 hours, $2,456,890–$4,913,780.[1]

The interim final rule set clear limitations on fees that an Agent or

[1] SBA arrived at this estimate by inquiring with various SBA Lenders as to the average time required to determine an Applicant's access to credit elsewhere. SBA calculated the average of the timeframes provided to estimate the range of time the personal resources test would have saved SBA Lenders, on average, in their analysis. Since each loan is required to address an Applicant's access to credit elsewhere, the number of expected occurrences per year was estimated by using the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The number of expected occurrences per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

[2] SBA arrived at this estimate by inquiring with various SBA Lenders as to the average time required to determine the reasonableness and permissibility of all fees charged to an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders would have saved, on average, in determining permissible and reasonable fees with the bright-line tests included in the interim final rule, which SBA estimated would be the same for an Agent. The number of expected occurrences per year for SBA Lenders was estimated based on the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The total number of guaranteed loans was used, versus the number of loans identified to have charged fees as discussed in the preamble of the interim final rule, because SBA Lenders must review every loan application to determine whether any fees were charged to an Applicant and, if so, whether the fees are permissible and reasonable. Because Agents are not involved in every SBA-guaranteed loan, the number of expected occurrences per year for Agents was estimated based on averaging the total number of loans identified to have used an Agent (other than the participating Lender) in fiscal years 2013–2017. The number of expected occurrences per year for 7(a) Lenders no longer being required to itemize fees was based on the average number of 7(a) loans guaranteed over the most recent five fiscal years. The number of expected occurrences per year for each outcome was multiplied by the average time

Lender could have charged an Applicant and left no question as to what fees SBA considered to be reasonable. Further, the interim final rule's revisions to the definitions of Agents and Associates of Lenders and CDCs provided clarity for SBA's determination of an Agent and what services the different types of Agents may have performed for compensation by the Applicant or the SBA Lender. This would have saved SBA Lenders and Agents time in making these determinations for each loan. In addition, the rule changed requirements for 7(a) Lenders to itemize fees and submit the itemization to SBA, which also would have saved these Lenders time. Applicants would have benefitted from protection against impermissible or unreasonable costs for assistance with obtaining an SBA-guaranteed loan. Benefits from these changes are forgone with the rescission of the interim final rule.

TABLE 2—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND AGENTS FROM FEE LIMITS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency for SBA Lenders when determining permissibility and reasonableness of fees.	67,000	0.5–1	33,500–67,000 hours, $1,228,445–$2,456,890.
Increased efficiency for Agents when determining permissibility and reasonableness of fees.	1,605	0.5–1	803–1,605 hours, $29,446–$58,855.
Increased efficiency for 7(a) Lenders no longer required to itemize fees.	60,951	0.5–1	30,476–60,951 hours, $1,117,555–$2,235,073.
Estimated Forgone Annual Benefit			64,779–129,556 hours, $2,375,446–$4,750,818.[2]

The interim final rule modified principles of affiliation for the financial assistance programs, increasing efficiency for the Agency and SBA Lenders in providing financial assistance only to businesses determined to be small. The benefits from this modification are forgone with rescission of the interim final rule.

TABLE 3—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND SURETIES FROM MODIFIED PRINCIPLES OF AFFILIATION IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in determining affiliation	77,000	2–4	154,000–308,000 hours, $5,647,180–$11,294,360.
Estimated Forgone Annual Benefit			154,000–308,000 hours, $5,647,180–$11,294,360.[3]

SBAexpected these benefits to have been realized upon enactment of the interim final rule and to have remained the same each year thereafter, subject to changes in number of loans and hourly rates. These benefits are forgone with rescission of the interim final rule.

Like the program participants, SBA would have benefitted from the clear regulatory guidance and bright-line tests included in the interim final rule, especially when performing lender oversight activities. Specifically, the Office of Credit Risk Management (OCRM) would have realized increased efficiencies in conducting loan file reviews of SBA Lenders. With the reinstatement of the personal resources test, clear limitations on fees an Agent or Lender could have charged an Applicant, revised definitions of Agents and Associates of Lenders and CDCs, and revised affiliation principles, SBA had removed the subjectivity of a Lender's assessment of these issues in the interim final rule, which would have improved SBA Lenders' compliance and allowed OCRM to develop more efficient methods of testing SBA Lenders' compliance. In addition, the removal of the requirement that a Lender itemize fees charged to an Applicant when the fee is over $2,500 would have reduced the burden on OCRM of reviewing these additional documents.

saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

[3] SBA arrived at this estimate by inquiring with various Lenders as to the average time required to determine affiliation. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders will save, on average, in determining affiliation based on the guidance provided in the interim final rule. Since an affiliation determination must be made for each application for SBA financial assistance, the number of expected occurrences per year for SBA Lenders and Sureties was estimated by using the average number of 7(a) and 504 loans and the average number of Bid and Final Bonds guaranteed during the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports and information on surety bonds entered into SBA's Capital Access Finance System. The total number of expected occurrences for loans and surety bonds per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

TABLE 4—ESTIMATED ANNUAL BENEFIT TO SBA FROM THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total forgone benefit
Increased efficiency in reviewing credit elsewhere assessment.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Increased efficiency in reviewing fees charged to Applicants.	1,300	0.5–1	650–1,300 hours, $23,888–$47,775.
Increased efficiency in reviewing Lender's affiliation determination.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Estimated Forgone Annual Benefit			1,650–3,300 hours, $60,638–$121,275.[4]

SBA expected these benefits to be realized immediately upon enactment of the rule and to have remained the same each year thereafter, subject to changes in the number of loan files reviewed and hourly rates. These benefits are forgone with rescission of the interim final rule.

Costs to SBA Lenders, Applicants, and Agents

For purposes of the Regulatory Impact Analysis (RIA), the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule were administrative costs. Administrative costs considered included estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. It is noted that program participants are presumed to incur such administrative costs continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f). The Table below shows the estimated administrative costs attributable to the interim final rule, which were expected to occur mainly in the first year of implementation, decrease by half in the second year, and be eliminated by the third year. These costs are forgone with rescission of the interim final rule.

TABLE 5—ESTIMATES OF ADMINISTRATIVE COMPLIANCE COSTS TO SBA LENDERS AND AGENTS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

	Amount of time required (hours)	Value of time	Frequency for first year	Number of SBA lenders/agents affected	Total forgone cost
Read and interpret the regulation	2–3	$36.67	5–7	3,500	35,000–73,500 hours, $1,283,450–$2,695,245.
Develop or Revise Internal Policies and Procedures.	5–7	$36.67	5–6	3,500	87,500–147,000 hours, $3,208,625–$5,390,490.
Training	5–8	$36.67	10–12	3,500	175,000–336,000 hours, $6,417,250–$12,321,120.
Estimated First Year Forgone Administrative Costs					297,500–556,500 hours, $10,909,325–$20,406,855.[5]

Costs to SBA

There were no expected additional costs to the Agency required to achieve

[4] SBA developed this estimated annual benefit based on an estimate from OCRM on the range of time that the guidance and bright-line tests included in the interim final rule would have saved a Financial Analyst, on average, in reviewing each relevant element of an SBA Lender's analysis during OCRM-conducted loan file reviews. The number of expected occurrences per year was based on the approximately 2,000 loan files reviewed by OCRM annually. The SBA Lender is required to address credit elsewhere and affiliation on every loan, but fees are not charged in connection with every loan. OCRM estimates that in approximately 65 percent of the 2,000 loans reviewed annually, OCRM identifies an issue related to fees charged to Applicants by SBA Lenders and/or Agents, including underreporting, inaccurate reporting, or impermissible fees. The number of expected occurrences per year for each outcome was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost estimate was obtained by multiplying the hourly rate of a GS–13, Step 1 ($36.75 per hour) by the number of expected occurrences per year and the average time saved per occurrence.

[5] SBA developed the estimate for the administrative costs in the first year of the final rule based on the approximate number of active SBA Lenders and Agents. Although approximately 4,500 Lenders have executed agreements to participate as a 7(a) Lender, over the past two fiscal years, the average number of active Lenders has totaled only 1,958. (A 7(a) Lender is considered to be ''active'' if it has approved at least one 7(a) loan in that fiscal year.) SBA estimated that only those Lenders actively participating in the program would have been affected by the costs of the interim final rule since the estimated costs are strictly administrative. The number of SBA Lenders and Agents affected included approximately 2,474 active SBA Lenders (including approximately 2,061 active 7(a) Lenders, 213 CDCs, 135 Microloan Intermediaries, 33 ILP Intermediaries, and 32 Sureties), plus approximately 1,018 Agents identified as having conducted business with SBA during fiscal years 2013–2017, rounded up to the next hundred to account for trade associations, and other resource partners. SBA estimated that on average between 5–7 employees at each SBA Lending institution or Agent entity may have spent between 2–3 hours each reading and interpreting the rule in the first year and that these employees are compensated at the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics ($36.67). SBA also estimated that 5–6 employees on average may have been involved in developing or revising the internal policies of the respective program participant and would likely have spent between 5–7 hours updating policies specifically related to the interim final rule. Finally, SBA estimated that between 10–12 employees on average for each program participant would have spent between 5–8 hours on training related to updates and modifications made by the interim final rule. Applicants were not included as an

the outcomes of the interim final rule. The administrative costs considered for the loan program participants, including reading and interpreting the regulation, developing and revising internal policies and procedures, and training are already inherent requirements of SBA employees and therefore, the publication of this interim final rule had no additional bearing on the responsibilities of relevant SBA employees involved in the Agency's loan programs. SBA determines that the Agency bears no costs from rescission of the interim final rule.

Transfers

SBA identified a transfer of costs, due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against Agents providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application. These changes in the interim final rule would have provided a cost savings to Applicants; however, the Agency acknowledged that this savings to the Applicant would have resulted in a cost (''transfer'') to the small number of Agents and Lenders that reported charging fees in excess of the limits imposed by the interim final rule. This transfer is forgone with the rescission of the interim final rule.

TABLE 6—ESTIMATED TRANSFERS OF COSTS IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Outcomes	Number of expected occurrences per year	Average money saved per occurrence	Total forgone transfer
Elimination of fees exceeding set limits	746	$2,380.75	$1,776,042.63
Estimated Forgone Annual Transfer			1,776,042.63 [6]

Below is a table showing an estimation of the total forgone costs and forgone benefits of the interim rule over three years.

TABLE 7—ESTIMATED UNDISCOUNTED BENEFITS AND COSTS SCHEDULE IN THE INTERIM FINAL RULE, FORGONE WITH RESCISSION

Forgone benefits		Forgone costs	
Low estimate	High estimate	Low estimate	High estimate
Year 1			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	297,500 hours, $10,909,325	556,500 hours, $20,406,855.
Year 2			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	148,750 hours, $5,454,662.50	278,250 hours, $10,203,427.50.
Year 3			
267,429 hours, $9,806,754	534,856 hours, $19,613,433	0 hours, $0	0 hours, $0.

Below is a table showing the annualized values of the forgone estimated costs and cost savings, as of 2016, over an infinite horizon, based on the interim final rule's estimates of these annualized values.

TABLE 8—ANNUALIZED VALUES AS OF 2016 OVER AN INFINITE HORIZON

	Primary estimate			
	3% discount rate		7% discount rate	
	Low estimate	High estimate	Low estimate	High estimate
Forgone Annualized Cost Savings	$9,806,751	$19,613,433	$9,806,754	$19,613,433
Forgone Annualized Costs	485,479	908,132	1,077,116	2,014,841
Forgone Annualized Net Cost Savings	9,321,272	18,705,301	8,729,638	17,598,592

entity affected by the administrative costs of the rule, as the Applicant relies on the SBA Lender or third-party Agent to inform them of SBA policy and procedure.

[6] SBA arrived at this estimate based on the total number of loans guaranteed between FY2013 and FY2017 that reported fees charged to an Applicant by an Agent or Lender over the limits imposed in the interim final rule and the total amount that those fees on those loans exceeded the imposed limit for each threshold.

Executive Order 12988

This rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive effect but consistent with section 1102(e) of the CARES Act, which made the rescission of the regulations effective on March 27, 2020, the rule necessarily has retroactive effect.

Executive Order 13132

SBA has determined that 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, for the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This rescission is considered an E.O. 13771 regulatory action. SBA determines that the estimated $12,633,634 in annualized savings from the interim final rule using a 7% discount rate in perpetuity in 2016 dollars is forgone with this rescission. In addition, SBA determines that the estimated present value of savings in perpetuity from the interim final rule of $180,480,486 is forgone with this rescission. Details on the breakdown of the estimated cost savings of this interim final rule can be found in the rule's economic analysis.

Paperwork Reduction Act, 44 U.S.C. 3501–3521

The Express IFR required modification to reporting or recordkeeping requirements contained in several SBA forms: Form 1920, Lender's Application for Guaranty (OMB Control number 3245–0348); Form 2450, Eligibility Information Required for 504 Submission (Non-PCLP) (OMB Control number 3245–0071); Form 2234 (Part C), Eligibility Information Required for 504 Submission (PCLP) (OMB Control number 3245–0346); and Form 159, Fee Disclosure and Compensation Agreement (OMB Control number 3245–0201).

Since publication of the Express IFR, SBA has cancelled Form 2234 and Form 2450. With respect to Form 1920 and Form 159, none of the proposed changes had been finalized and submitted to OMB for approval prior to enactment of the CARES Act; therefore, no action is required as a result of the rescission of the Express IFR. In addition, the Express IFR codified an existing requirement for Small Business Lending Companies (SBLCs) to annually submit to SBA the validation of any credit scoring model they use in connection with SBA Express and Export Express loans. Since the reporting requirement was already included in an approved information collection, SBA Lender Reporting Requirements (OMB Control Number 3245–0365), no amendment was required. As a result, the rescission of the rule does not impact SBLCs' duty to report.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rule, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment a final regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows the head of an agency to certify a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, in lieu of preparing an analysis.

Small entities likely to be affected by the rescission of the interim final rule include small SBA Lenders and small Agents who assist small business Applicants with obtaining SBA-guaranteed financing. Other entities that provide services to an Applicant for obtaining SBA-guaranteed financing include individuals who may assist with packaging a loan application or assisting the Applicant with finding an SBA Lender, entities formed for the purpose of providing such assistance, attorneys, and Certified Public Accountants. The RIA of the interim final rule estimated that approximately 3,207 small entities would be affected. The rescission of the interim final rule also affects these 3,207 small entities.

As described more fully in the RIA, SBA determined that the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule were administrative costs, which are forgone with the rescission. Administrative costs considered include estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. Although these costs were estimated for the purposes of the Regulatory Flexibility Act for the interim final rule, it is important to note that, regardless of any new rulemaking, program participants are presumed to incur administrative costs related to reading and interpreting SBA Loan Program Requirements, revising and updating internal policies, and training staff continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f). SBA determines that the rescission of the interim final rule causes these costs to be forgone.

The RIA for the interim final rule identified an estimated transfer of costs due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against an Agent providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application. The Agency acknowledged that any savings to the Applicant from these limitations in the interim final rule would have resulted in a potential loss of revenue to the small number of Agents and Lenders that reported charging fees in excess of the limits. With the rescission of the interim final rule, these transfers are forgone.

To estimate the average annualized forgone cost per small entity in the interim final rule, SBA annualized the sum of all administrative costs plus the estimated potential loss of revenue (*e.g.,* the total transfer amount of $1,776,042.63) identified in the RIA (see Table 6 in the RIA). The estimated total annualized costs, which are forgone with the rescission, over 10 years at a 7 percent discount rate range from a low estimate of $2,773,295.70 to a high estimate of $4,331,035. Dividing the total estimated annualized costs by the 3,207 estimated small entities affected, the forgone annualized cost per entity with the rescission is estimated to be between approximately $864.76 and $1,350.49. Although SBA was unable to ascertain the NAICS codes of all types of entities considered to be Agents for estimation purposes in the interim final rule, SBA used data from the 2012 U.S. Census Bureau's SUSB for NAICS code 522310 for Mortgage and Nonmortgage Loan Brokers as an example to examine the annualized compliance cost as a percentage of annual receipts for small entities classified by this NAICS code. For the purposes of this estimation in the interim final rule, SBA averaged the high and low estimates of the annualized cost for a mid-point total of $388 per entity. This annualized cost per entity is forgone with the rescission of the interim final rule.

MORTGAGE AND NONMORTGAGE LOAN BROKERS (NAICS 522310)—$7.5 MILLION SIZE STANDARD

Firm size (by receipts)	Average annual receipts	Annualized forgone cost per firm	# of firms	% of small firms	Revenue test * (%)
All Firms	1,005,967	388	7,007	N/A	0.0
Small Firms	549,802	388	6,817	100	0.1
<$100K	48,038	388	1,533	22	0.8
100K–499,999	250,730	388	3,233	47	0.2
500,000–999,999	693,276	388	1,042	15	0.1
1,000,000–2,499,999	1,482,997	388	721	12	0.0
2,500,000–4,999,999	3,244,231	388	216	3	0.0
5,000,000–7,499,999	5,157,764	388	72	1	0.0

* Annualized compliance costs as a percentage of annual receipts.

SBA has determined that forgoing the annualized cost per entity of the interim final rule by its rescission will not have a significant economic impact on a substantial number of small entities. The average annualized cost in the example above is not a significant percentage of each entity's average annual revenue for any size firm considered to be small. It is also noted that these forgone annualized costs are set against forgone annualized benefits ranging from a low estimate of $9,806,754 to a high estimate of $19,613,433 (or approximately $3,056–$6,116 per entity). Also, the number of small entities affected is not substantial. SBA estimated that from FY2013 through FY2017, 213 small entities (83 small Lenders and 130 small Agents) reported charging fees in excess of the limits imposed in the interim final rule. SBA does not consider 83 small Lenders to be a substantial number when compared to the overall number of small Lenders, which is approximately 2,000. With respect to small Agents, SBA does not consider 130 Agents to be a substantial number when compared to the overall number of small Agents. SBA believes the number of small entities acting as Agents in connection with the SBA loan programs is most likely much larger when taking into consideration the attorneys, accountants, business consultants and others that act as Agents. As SBA noted above, the NAICS Code for Mortgage and Nonmortgage Loan Brokers is only one of numerous NAICS codes under which Agents may be classified. Many different types of individuals and entities, including attorneys, accountants, and business consultants, act as Agents and assist Applicants in obtaining SBA-guaranteed loans. Thus, SBA believes that the actual universe of small Agents may be considerably larger than 602. When all of the potentially relevant NAICS codes are considered, SBA believes that the number of small entities affected by the rescission of the interim final rule would be even smaller than the 8% noted above.

SBA determined that the interim final rule did not have a significant impact on a substantial number of small entities. The Administrator of SBA likewise certifies that the rescission of the interim final rule has no significant impact on a substantial number of small entities.

List of Subjects

13 CFR Part 103

Administrative practice and procedure.

13 CFR Part 120

Community development, Environmental protection, Equal employment opportunity, Exports, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR parts 103, 120, and 121 as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 15 U.S.C. 634, 642.

■ 2. Amend § 103.1 by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraph (d) as paragraph (g); and
■ c. Adding a new paragraph (d) and paragraphs (e) and (f).

The revision and additions read as follows:

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an Applicant or Participant by conducting business with SBA.

* * * * *

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a ''Lender Service Provider'' on a loan-by-loan basis.

(e) *Packager* means an Agent who is employed and compensated by an Applicant or lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a ''Packager'' on a loan-by-loan basis.

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

* * * * *

■ 3. Amend § 103.4 by revising paragraph (g) to read as follows:

§ 103.4 What is ''good cause'' for suspension or revocation?

* * * * *

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to the ''two master'' prohibition in this paragraph (g) exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

* * * * *

■ 4. Amend § 103.5 by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

* * * * *

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the Agent or Packager must: Reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the Applicant, and refrain from charging or collecting, directly or indirectly, from the Applicant an amount in excess of the amount SBA deems reasonable.

(c) * * * However, such compensation may not be directly charged to an Applicant or Borrower.

PART 120—BUSINESS LOANS

■ 5. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

■ 6. Amend § 120.10 by revising paragraph (1)(i) of the defined term ''Associate'' to read as follows:

§ 120.10 Definitions.

* * * * *

Associate. (1) * * *

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process; or

* * * * *

§ 120.102 [Removed and Reserved]

■ 7. Remove and reserve § 120.102.

■ 8. Amend § 120.130 by revising paragraph (c) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(c) Floor plan financing or other revolving line of credit, except under § 120.340 or § 120.390;

* * * * *

■ 9. Amend § 120.221 by:

■ a. Revising the section heading and paragraph (a); and

■ b. Removing the last sentence of paragraph (b).

The revisions read as follows:

§ 120.221 Fees and expenses that the Lender may collect from a loan applicant or Borrower.

* * * * *

(a) *Service and packaging fees.* The Lender may charge an applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. The Lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. The applicant is responsible for deciding whether fees are reasonable. SBA may review these fees at any time. Lender must refund any such fee considered unreasonable by SBA.

* * * * *

§ 120.222 [Amended]

■ 10. Amend § 120.222 by adding the word ''in'' before the words ''any premium received''.

■ 11. Revise § 120.344(b) to read as follows:

§ 120.344 Unique requirements of the EWCP.

* * * * *

(b) SBA does not limit the amount of extraordinary servicing fees, as referenced in § 120.221(b), under the EWCP.

* * * * *

■ 12. Revise § 120.350 to read as follows:

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust (''ESOP'') to:

(a) Help finance the growth of its employer's small business; or

(b) Purchase ownership or voting control of the employer.

■ 13. Revise § 120.352 to read as follows:

§ 120.352 Use of proceeds.

Loan proceeds may be used for two purposes.

(a) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general purpose under section 7(a) of the Act.

(b) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

§ 120.432 [Amended]

■ 14. Amend § 120.432(a) by removing the last sentence.

■ 15. Amend § 120.440 by revising paragraph (c) to read as follows:

§ 120.440 How does a 7(a) Lender obtain delegated authority?

* * * * *

(c) If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years. SBA may grant shortened renewals based on risk or any of the other delegated authority criteria. Lenders with less than 3 years of SBA lending experience will be limited to a term of 1 year or less.

■ 16. Remove the undesignated center heading ''SBA Express and Export Express Loan Programs'' that appears before § 120.441.

§ § 120.441 through 120.447 [Removed and Reserved]

■ 17. Remove and reserve §§ 120.441 through 120.447.

§ 120.707 [Amended]

■ 18. Amend § 120.707(b) by removing the word ''seven'' and adding in its place the word ''six.''

■ 19. Amend § 120.712 by:

■ a. Revising paragraph (b)(1); and

■ b. In paragraph (d), removing the number ''30'' and adding in its place the number ''25.''

The revision reads as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 25 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; and

* * * * *

■ 20. Amend § 120.840 by revising paragraph (b) to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

* * * * *

(b) *Application.* A CDC must apply for ALP status to the Lead SBA Office. The Lead SBA Office will send its recommendation and the application to the D/FA for final decision.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 21. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Public Law 116–136, Section 1114.

■ 22. Amend § 121.301 by:

■ a. Revising paragraph (f)(4);

■ b. Removing paragraphs (f)(5) and (6);

■ c. Redesignating paragraphs (f)(7) through (9) as paragraphs (f)(5) through (7), respectively; and

■ d. Revising newly redesignated paragraph (f)(5).

The revisions to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) * * *

(4) *Affiliation based on identity of interest*. Affiliation arises when there is an identity of interest between close relatives, as defined in 13 CFR 120.10, with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Where SBA determines that interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(5) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will only consider the franchise or license agreements of the applicant concern.

* * * * *

■ 23. Amend § 121.302 by revising paragraphs (a) and (b) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

(b) For the Preferred Lenders Program, size is determined as of the date of approval of the loan by the Preferred Lender.

* * * * *

Jovita Carranza,

Administrator.

[FR Doc. 2020–26450 Filed 12–11–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T; Amendment 39–21334; AD 2020–24–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. As published, the regulatory text of the AD included errors in certain references to the airplane flight manual (AFM) that is required to be revised. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This correction is effective December 18, 2020. The effective date of AD 2020–24–04 remains December 18, 2020.

ADDRESSES: You may examine the AD docket at *https://www.regulations.gov;* or in person at the Docket Management Facility 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: Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

SUPPLEMENTARY INFORMATION: As published, Airworthiness Directive 2020–24–04, Amendment 39–21334 (85 FR 77991, December 3, 2020), requires revising the existing AFM to incorporate procedures for conducting an approach with a localizer-based navigation aid, monitoring localizer raw data, calling out any significant deviations, and performing an immediate go around if the airplane has not intercepted the final approach course as shown by the localizer deviation. AD 2020–24–04 applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes.

As published, the regulatory text included errors in certain references to the AFM that is required to be revised. The location of the AFM text to be revised is incorrectly identified as the ''Limitations section''; the correct location is the ''Operating Procedures chapter.'' In addition, the figure incorrectly identified the heading of the AFM text as ''Operating Instructions''; the correct heading is ''Autopilot Flight Director System—Operating Instructions.''

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains December 18, 2020.

Since this action only corrects errors in certain AFM references, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2020–24–04 The Boeing Company: Amendment 39–21334; Docket No. FAA–2020–1031; Project Identifier AD–2020–00846–T.

(a) Effective Date

This AD is effective December 18, 2020.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by reports indicating that the autopilot flight director system (AFDS) failed to transition to the instrument landing system localizer (LOC) beam after the consistent localizer capture function in the flight control modules initiated a transition to capture LOC during approach. The FAA is issuing this AD to address the AFDS failing to transition, which could result in localizer overshoot leading to glideslope descent on the wrong heading. Combined with a lack of flight deck effects for a consistent localizer capture mode failure, this condition could result in a controlled flight into terrain.

(f) Compliance

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

(g) Revise the Airplane Flight Manual (AFM)

Within 14 days after the effective date of this AD, revise the Operating Procedures chapter of the existing AFM and applicable corresponding operational procedures to incorporate the procedures specified in figure 1 to paragraph (g) of this AD. Revising the existing AFM to include the changes specified in paragraph (g) of this AD may be done by inserting a copy of figure 1 to paragraph (g) of this AD into the existing AFM.

Figure 1 to paragraph (g) – *Operating Instructions*

(Required by AD 2020-24-04)

Autopilot Flight Director System – Operating Instructions:

When conducting an approach with a localizer-based navigation aid, monitor localizer raw data and call out any significant deviations. If AFDS performance is not satisfactory, the flight crew must intervene. Perform an immediate go-around if the airplane has not intercepted the final approach course as shown by the localizer deviation.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards 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 (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(i) Related Information

For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on December 9, 2020.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–27507 Filed 12–10–20; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1117; Project Identifier MCAI–2020–01429–E; Amendment 39–21361; AD 2020–26–06]

RIN 2120–AA64

Airworthiness Directives; Technify Motors GmbH (Type Certificate Previously Held by Thielert Aircraft Engines GmbH) Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Technify Motors GmbH TAE 125–02–99 and TAE 125–02–114 model reciprocating engines. This AD was prompted by a report of a defective turbocharger hose discovered on an airplane during a pre-flight inspection. This AD requires the removal and replacement of the affected turbocharger hose. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 29, 2020.

The FAA must receive comments on this AD by January 28, 2021.

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

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

For service information identified in this final rule, contact Continental Aerospace Technologies GmbH, Platanenstrasse 14, 09356 Sankt Egidien, Germany; phone: +49 37204 696 0; email: *support@continentaldiesel.com;* website: *www.continentaldiesel.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 at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1117.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1117; 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 street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0228, dated December 3, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition for the specified products. The MCAI states:

> During a pre-flight check, a defect turbocharger hose was found on an aeroplane. Investigation determined that a manufacturing defect exists on turbocharger hoses of a certain batch from one manufacturer. These turbocharger hoses are not pressure stable and it was determined that they could fail completely.
>
> This condition, if not corrected, could lead to significant loss of engine power which, in certain phases of flight and under certain operational conditions, could result in a hazardous condition.
>
> To address this potential unsafe condition, Continental Aerospace Technologies issued the applicable SB (original issue and Revision 01) to provide instructions for turbocharger hose identification and replacement.
>
> For the reason described above, this [EASA] AD requires removal of affected parts from engines installed on Cessna F172 and Piper PA–28 aeroplanes, and prohibits (re-) installation.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1117.

FAA's Determination

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

Related Service Information

The FAA reviewed Continental Aerospace Technologies GmbH Service Bulletin (SB) No. CG 601–1014 P1, Revision 2, dated November 24, 2020 (SB CG 601–1014 P1), and Continental Aerospace Technologies GmbH SB No. CG 651–1009 P1, Revision 1, dated October 15, 2020 (SB CG 651–1009 P1). SB CG 601–1014 P1 and SB CG 651–1009 P1 describe procedures for removing and replacing the affected turbocharger hose and identifies the affected turbocharger hoses for certain TAE 125–02–99 and TAE 125–02–114 reciprocating engines installed on certain Textron Aviation, Inc. Model 172 and F172 airplanes. SB CG 651–1009 P1 describes procedures for removing and replacing the affected turbocharger hose and identifies the affected turbocharger hoses for certain TAE 125–02–114 reciprocating engines installed on Piper Aircraft, Inc. Model PA–28 airplanes.

AD Requirements

This AD requires the removal and replacement of the affected turbocharger hose.

Differences Between the AD and the Service Information or the MCAI

Continental Aerospace Technologies GmbH SB No. CG 601–1014 P1 and SB No. CG 651–1009 P1 instructs operators to return the affected turbocharger hose to Continental Aerospace Technologies GmbH, while this AD does not require returning the affected turbocharger hose.

EASA AD 2020–0228 references EASA Supplemental Type Certificate (STC) 10014287 (formerly EASA.A.S.01527, LBA EMZ SA1295) and EASA STC 10014364 (formerly EASA.A.S.01632, LBA EMZ SA1377), whereas this AD does not.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA has found the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include the docket number FAA–2020–1117 and Project Identifier MCAI–2020–01429–E at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket

of this AD. Submissions containing CBI should be sent to Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

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

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace turbocharger hose	8 work-hours × $85 per hour = $680	$500	$1,180	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

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:

2020–26–06 Technify Motors GmbH (Type Certificate previously held by Thielert Aircraft Engines GmbH): Amendment 39–21361; Docket No. FAA–2020–1117; Project Identifier MCAI–2020–01429–E.

(a) Effective Date

This airworthiness directive (AD) is effective December 29, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Technify Motors GmbH (Type Certificate previously held by Thielert Aircraft Engines GmbH) TAE 125–02–99 and TAE 125–02–114 model reciprocating engines with engine serial number (S/N) 02–02–02793, 02–02–11120, 02–02–11424, 02–02–11425, 02–02–11426, 02–02–11494, 02–02–11497, 02–02–11498, 02–02–11500, 02–02–11514, 02–02–11553, 02–02–11574, 02–02–11576, 02–02–11579, 02–02–11580, 02–02–11581, 02–02–11582, and 02–02–11606 with turbocharger hose, part number (P/N) TAE EPA 40–7520–H0131 01, manufactured by BOOST products GmbH with batch number 3101–001, installed.

(d) Subject

Joint Aircraft System Component (JASC) 8100, Exhaust Turbine System (RECIP).

(e) Unsafe Condition

This AD was prompted by a report of a defective turbocharger hose that was discovered on an airplane during a pre-flight inspection. The FAA is issuing this AD to prevent failure of the turbocharger hose during flight. The unsafe condition, if not addressed, could result in loss of engine power and reduced control of the airplane.

(f) Compliance

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

(g) Required Action

Within 20 flight hours or 30 days after the effective date of this AD, whichever occurs first, remove the affected turbocharger hose and replace with a part eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install onto any engine a turbocharger hose, P/N TAE EPA 40–7520–H0131 01, manufactured by BOOST products GmbH with batch number 3101–001.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0228, dated December 3, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–1117.

(k) Material Incorporated by Reference

None.

Issued on December 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–27312 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0822; Airspace Docket No. 20–ASO–23]

RIN 2120–AA66

Amendment of Class D Airspace, and Removal of Class E Airspace; Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, and removes Class E airspace designated as an extension to a Class D surface area for Homestead Air Reserve Base (ARB), Homestead, FL. This action also updates the geographic coordinates of the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D airspace, and removes Class E airspace at Homestead Air Reserve Base (ARB), Homestead, FL, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 59463, September 22, 2020) for Docket No. FAA–2020–0822 to amend Class D airspace, and remove at Class E airspace designated as an extension to a Class D surface area for Homestead Air Reserve Base, Homestead, FL, as the extensions are less than two miles, and thus are required to be Class D airspace, as per the FAA Order 7400.2, chapter 17–2–7, part D. In addition, the FAA proposed to update the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments pertaining to the proposal were received.

Class D and Class E airspace designations are published in Paragraphs 5000 and 6004, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class D airspace, and removes Class E airspace designated as an extension to a Class D surface area for Homestead Air Reserve Base, Homestead, FL, as the extensions are less than two miles, and thus are required to be Class D airspace, as per the FAA Order 7400.2, chapter 17–2–7, part D. In addition, this amendment updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database. These changes are necessary for continued safety and management of IFR operations in the area.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Homestead, FL [Amended]

Homestead ARB, FL
(Lat. 25°29′19″ N, long. 80°23′01″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.5-mile radius of Homestead ARB, and within 1.5 miles each side of the 50° bearing to 7-miles northeast of the airport, and within 1.5 miles each side of the 230° bearing of the airport, extending from the 5.5 mile radius to 7-miles southwest of the airport.

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

* * * * *

ASO FL E4 Homestead, FL [Removed]

Issued in College Park, Georgia, on December 8, 2020.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–27352 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0735; Airspace Docket No. 19–ANE–8]

RIN 2120–AA66

Amendment and Revocation of Air Traffic Service (ATS) Routes in the Vicinity of Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–141, and V–542, and revokes airways V–151 and V–496, due to the planned decommissioning of the Lebanon, NH, VOR/DME navigation aid which provides navigation guidance for segments of the routes. The Lebanon VOR/DME is planned for decommissioning as part of the FAA's VOR Minimum Operational Network (VOR MON) program.

DATES: Effective date 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2020–0735 in the **Federal Register** (85 FR 49327; August 13, 2020), amending VOR Federal airways V–141, and V–542, and removing VOR Federal airways V–151 and V–496 in the vicinity of Lebanon, NH. The proposed amendment and revocation actions were due to the planned decommissioning of the Lebanon, NH, VOR/DME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending VOR Federal airways V–141 and V–542, and removing airways V–151 and V–496, due to the planned decommissioning of the Lebanon, NH VOR/DME. An Area Navigation (RNAV) waypoint (WP) is being developed to be charted in the vicinity of the Lebanon VOR/DME location. The changes are described below.

V–141: V–141 currently consists of two parts: first, extending between the Nantucket, MA, VOR/DME and the Boston, MA, VOR/DME; and second, extending between the Manchester, NH, VOR/DME and the Massena, NY, VORTAC. This action removes the part between Manchester, NH, and Massena, NY. As amended, V–141 extends between Nantucket, MA, and Boston, MA.

V–151: V–151 currently extends between the intersection of the Nantucket, MA, VOR/DME 334°, and the Providence, RI, VOR/DME 079°

radials, and the Burlington, VT, VOR/DME. This action removes the entire route. A low altitude RNAV route is being developed to replace V–151.

V–496: V–496 currently extends between the Lebanon, NH, VOR/DME, and the Kennebunk, ME, VOR/DME. This action removes the entire route.

V–542: V–542 currently extends between the Elmira, NY, VOR/DME, and the Lebanon, NH, VOR/DME. This action removes the route segments of V–542 that extend between the Rockdale, NY, VOR/DME, and the Lebanon, NH, VOR/DME. As amended, V–542 extends between Elmira, NY, and Rockdale, NY.

The NAVAID radials in the description of V–141, below, are unchanged and are stated in True degrees.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–141, and V–542, and revoking airways V–151 and V–496, due to the planned decommissioning of the Lebanon, NH, VOR/DME navigation aid, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–141 [Amended]

From Nantucket, MA; INT Nantucket 334° and Boston, MA, 138° radials; to Boston.

* * * * *

V–151 [Removed]

* * * * *

V–496 [Removed]

* * * * *

V–542 [Amended]

From Elmira, NY; Binghamton, NY; to Rockdale, NY.

* * * * *

Issued in Washington, DC, on December 8, 2020.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–27337 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0666; Airspace Docket No. 20–ACE–16]

RIN 2120–AA66

Amendment of the Class E Airspace; Burlington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Coffey County Airport, Burlington, KS. This action is the result of an airspace review caused by the decommissioning of the Boyd non-directional beacon (NDB) which provided navigation information to the instrument procedures at this airport.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is

promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Coffey County Airport, Burlington, KS, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 53306; August 28, 2020) for Docket No. FAA–2020–0666 to amend the Class E airspace extending upward from 700 feet above the surface at Coffey County Airport, Burlington, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius of Coffey County Airport, Burlington, KS; and removes the Boyd NDB and the associated extensions from the airspace legal description.

This action is the result of an airspace review caused by the decommissioning of the Boyd NDB, which provided navigation information for the instrument procedures at this airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

ACE KS E5 Burlington, KS [Amended]

Coffey County Airport, KS
(Lat. 38°18′09″ N, long. 95°43′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Coffey County Airport.

Issued in Fort Worth, Texas, on December 8, 2020.

Steven T. Phillips,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2020–27414 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0825; Airspace Docket No. 20–ANM–27]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Glacier Park International Airport. This action also modifies the Class E airspace, designated as a surface area. Additionally, this action modifies the Class E airspace, extending upward from 700 feet above the surface. Further, this action modifies the Class E airspace, extending upward from 1,200 feet above the surface. This action also removes the Smith Lake NDB from the Class E airspace legal descriptions. Lastly, this action implements several administrative corrections to the airspaces' legal descriptions.

DATES: Effective 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington,

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 62630, October 5, 2020) for Docket No. FAA–2020–0825 to modify Class D and Class E airspace at Glacier Park International Airport, Kalispell, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received. The comments were not germane to the proposed airspace action.

Class D, E2, and E5 airspace designations are published in paragraphs 5000, 6002, and 6005, respectively, of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations part 71 modifies Class D airspace at Glacier Park International Airport, Kalispell, MT. To properly contain IFR aircraft, this action adds an extension to the airspace, northeast of the airport. This airspace area is described as follows: That airspace extending upward from the surface to and including 5,500 feet MSL within a 4.3-mile radius of the airport, and within 1.2 miles each side of the 032° bearing from the airport, extending from the 4.3-mile radius to 5.6 miles northeast of Glacier Park International Airport. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

This action also modifies the Class E airspace, designated as a surface area, to be coincident with the new Class D dimensions. This airspace area is part-time and this action adds the appropriate verbiage to the airspace legal description. This airspace area is described as follows: That airspace extending upward from the surface within a 4.3-mile radius of the airport, and within 1.2 miles each side of the 032° bearing from the airport, extending from the 4.3-mile radius to 5.6 miles northeast of Glacier Park International Airport. This Class E airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Additionally, this action modifies the Class E airspace extending upward from 700 feet above the surface. The action properly sizes the airspace to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area is described as follows: That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the airport, and within 2.3 miles each side of the 138° bearing from the airport, extending from the 7.5-mile radius to 13.4 miles southeast of the airport, and within 2 miles each side of the 215° bearing from the airport, extending from the 7.5-mile radius to 19.5 miles southwest of Glacier Park International Airport.

This action also modifies the Class E airspace extending upward from 1,200 feet above the surface. This area is designed to contain IFR aircraft transitioning to/from the terminal and en route environments. This airspace area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the airport beginning at the 270° bearing from the airport, clockwise to the 090° bearing from the airport, thence along the 090° bearing to 45 miles east of the airport, thence within a 45-mile radius of the airport clockwise to the 270° bearing from the airport, thence along the 270° bearing to the point of beginning, 25 miles west of Glacier Park International Airport.

This action removes the Smith Lake NDB and all references to the NDB from the Class E2 and Class E5 text headers and the airspace legal descriptions. The navigational aid is not needed to define the airspace. Removal of the navigational aid allows the airspace to be defined from a single reference point which simplifies how the airspace is described.

Lastly, this action implements several administrative corrections to the airspaces' legal descriptions. In the Class D legal description, the last sentence contains the term ''Airport/Facilities Directory'' this action updates the term to ''Chart Supplement''. This action removes the city name from the second line of the Class D, Class E2, and Class E5 text headers. The airport's geographic coordinates do not match the FAA database; this action updates the geographic coordinates in all of the airspace areas to ''lat. 48°18′38″ N, long. 114°15′22″ W''.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM MT D Kalispell, MT [Amended]

Glacier Park International Airport, MT
(Lat. 48°18′38″ N, long. 114°15′22″ W)

That airspace extending upward from the surface to and including 5,500 feet MSL within a 4.3-mile radius of the airport, and within 1.2 miles each side of the 032° bearing from the airport, extending from the 4.3-mile radius to 5.6 miles northeast of Glacier Park International Airport. This Class D airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM MT E2 Kalispell, MT [Amended]

Glacier Park International Airport, MT
(Lat. 48°18′38″ N, long. 114°15′22″ W)

That airspace extending upward from the surface within a 4.3-mile radius of the airport, and within 1.2 miles each side of the 032° bearing from the airport, extending from the 4.3-mile radius to 5.6 miles northeast of Glacier Park International Airport. This Class E airspace area is effective during the specific dates and times established, in advance, by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM MT E5 Kalispell, MT [Amended]

Glacier Park International Airport, MT
(Lat. 48°18′38″ N, long. 114°15′22″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the airport, and within 2.3 miles each side of the 138° bearing from the airport, extending from the 7.5-mile radius to 13.4 miles southeast of the airport, and within 2 miles each side of the 215° bearing from the airport, extending from the 7.5-mile radius to 19.5 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the airport beginning at the 270° bearing from the airport, clockwise to the 090° bearing from the airport, thence along the 090° bearing to 45 miles east of the airport, thence within a 45-mile radius of the airport clockwise to the 270° bearing from the airport, thence along the 270° bearing to the point of beginning, 25 miles west of Glacier Park International Airport.

Issued in Seattle, Washington, on December 7, 2020.

B.G. Chew,

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

[FR Doc. 2020–27301 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0660; Airspace Docket No. 18–AWP–13]

RIN 2120–AA66

Amendment and Establishment of Multiple Air Traffic Service Routes; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies two high altitude United States Area Navigation (RNAV) Air Traffic Service (ATS) routes (Q–13 and Q–15), establishes one high altitude RNAV ATS route (Q–174), and establishes five low altitude RNAV ATS routes (T–338, T–357, T–359, T–361, and T–363) in the western United States. These Q and T routes facilitate the movement of aircraft to, from, and through the Las Vegas terminal area. Additionally, the routes promote operational efficiencies for users and provide connectivity to RNAV enroute procedures while enhancing capacity for adjacent airports.

DATES: Effective date 0901 UTC, February 25, 2021. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records

Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports modifying, removing, and establishing the air traffic service route structure in the western United States to maintain the efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2019–0660 (84 FR 50800; September 26, 2019), to amend two high altitude RNAV ATS routes (Q–13 and Q–15), establish one high altitude RNAV ATS route (Q–174), and establish five low altitude RNAV ATS routes (T–338, T–357, T–359, T–361, and T–363) in the western United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 2006 and 6011, of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending high altitude RNAV ATS routes Q–13 and Q–15; establishing high altitude RNAV ATS route Q–174, and establishing low altitude RNAV ATS routes T–338, T–357, T–359, T–361, and T–363. The route changes are outlined below.

Q–13: Q–13 is amended to begin at the El Paso, TX, VORTAC (ELP) and end at the PAWLI, OR, waypoint (WP). Moving Q–13 to the west and beginning the route at the El Paso, TX, VORTAC (ELP) segregates overflight traffic on Q–13 from McCarran International Airport (KLAS) arrival and departure traffic on the new KLAS COKTL Standard Terminal Arrival Route (STAR) and KLAS JOHKR Standard Instrument Departure (SID). By segregating the Q-route from inbound and outbound traffic, KLAS departures can be assigned requested altitudes sooner. This also allows Oakland Air Route Traffic Control Center (ARTCC) to deliver KLAS arrival traffic to Los Angeles ARTCC at higher altitudes than current state, and provides the opportunity for optimized profile descents.

Q–15: Q–15 is amended to add the SOTOO, NV, WP; the HOUZZ, NV, WP; FUULL, NV, WP; and the SKANN, NV, WP between the DOVEE, NV, WP and the LOMIA, NV, WP. The purpose of this routing is to segregate overflight traffic on Q–15 from Las Vegas McCarran (KLAS) arrival and departure traffic.

Q–174: Q–174 is established between the NTELL, CA, WP to the FLCHR, NV, WP. Q–174 provides connectivity from the California Bay Area airports to Las Vegas McCarran and North Las Vegas airports. This route also provides an efficient path to navigate around active special use airspace and facilitate arrival sequencing to Las Vegas McCarran and satellite airports.

T–338: T–338 is established between the DSIRE, NV, WP to the BOEGY, AZ, WP. T–338 provides a lateral path for arrivals and departures to the North Las Vegas Airport (KVGT), Boulder City Municipal Airport (KBVU) and KLAS. Additionally, it serves propeller aircraft arriving at KVGT and KLAS from points east or that are departing from KVGT and KLAS to points east.

T–357: T–357 is established between the KONNG, NV, WP to the DSIRE, NV, WP. T–357 provides a predictable and repeatable path for overflights through the Las Vegas TRACON airspace and serves as an arrival/departure airway for KVGT, Henderson Executive Airport (KHND), KBVU, and KLAS aircraft.

T–359: T–359 is established from the DANBY, CA, WP to the DSIRE, NV, WP. T–359 provides a predictable and repeatable path for overflights through the Las Vegas TRACON airspace and serve as an arrival/departure airway for KVGT, KHND, KBVU, and KLAS aircraft. T–359 reduces the current requirement for air traffic control facilities to issue radar vectors or itinerant routing for KVGT arrivals/departures or overflights.

T–361: T–361 is established from the BOEGY, AZ, WP to the Mormon Mesa, NV, VORTAC (MMM). T–361 provides a predictable and repeatable flight path for aircraft flying through the Las Vegas TRACON airspace and to serve as an arrival/departure airway for KLAS, KVGT, KBVU, and KHND. T–361 reduces the current requirement for air traffic control facilities to issue radar vectors or itinerant routing for KLAS and KHND.

T–363: T–363 is established from the DICSA, NV, FIX to the Mormon Mesa, NV, VORTAC (MMM). T–363 provides a predictable and repeatable path for propeller-driven arrivals and departures to and from KHND, KBVU, and KLAS to and from points north and northeast.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that the actions of amending two high RNAV ATS routes (Q–13 and Q–15), establishing one high RNAV ATS route (Q–174) in the western United States qualify for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, these actions are not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed these actions for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist warranting

preparation of an environmental assessment or environmental impact study for the amendments of RNAV ATS routes Q–13 and Q–15, or the establishment Q–174. Environmental impact review of these Q routes was separately conducted and documented in a Categorical Exclusion Declaration document signed on June 15, 2020. The establishment of five low altitude RNAV ATS routes (T–338, T–357, T–359, T–361, and T–363) in the western U.S. was reviewed and analyzed for potential environmental impacts in the FAA's Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for The Las Vegas Metroplex Project, signed on July 7, 2020. The EA, FONSI, and Notice of Availability can be found at *http://www.metroplexenvironmental.com/las_metroplex/las_docs.html.*

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020 and effective September 15, 2020, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–13 El Paso, TX (ELP) to PAWLI, OR [Amended]

El Paso, TX (ELP)	VORTAC	(Lat. 31°48′57.28″ N, long. 106°16′54.78″ W)
VERNO, AZ	FIX	(Lat. 34°15′38.47″ N, long. 109°37′37.98″ W)
NABOB, AZ	FIX	(Lat. 34°19′40.60″ N, long. 111°18′53.90″ W)
Drake, AZ (DRK)	VORTAC	(Lat. 34°42′09.19″ N, long. 112°28′49.23″ W)
WOTRO, AZ	WP	(Lat. 35°10′07.89″ N, long. 113°19′15.68″ W)
PRFUM, AZ	WP	(Lat. 35°30′24.46″ N, long. 113°56′34.85″ W)
HOUZZ, NV	WP	(Lat. 36°36′43.75″ N, long. 116°36′37.60″ W)
FUULL, NV	WP	(Lat. 37°16′52.93″ N, long. 117°10′13.96″ W)
SKANN, NV	WP	(Lat. 37°22′52.68″ N, long. 117°15′54.53″ W)
LOMIA, NV	WP	(Lat. 39°13′11.57″ N, long. 119°06′22.95″ W)
RUFUS, CA	WP	(Lat. 41°26′00.00″ N, long. 120°00′00.00″ W)
PAWLI, OR	WP	(Lat. 43°10′48.00″ N, long. 120°55′50.00″ W)

* * * * * * *

Q–15 DOVEE, NV to LOMIA, NV [Amended]

CHILY, AZ	WP	(Lat. 34°42′48.61″ N, long. 112°45′42.27″ W)
DOVEE, NV	WP	(Lat. 35°26′51.07″ N, long. 114°48′00.94″ W)
SOTOO, NV	WP	(Lat. 36°17′22.55″ N, long. 116°13′14.12″ W)
HOUZZ, NV	WP	(Lat. 36°36′43.75″ N, long. 116°36′37.60″ W)
FUULL, NV	WP	(Lat. 37°16′52.93″ N, long. 117°10′13.96″ W)
SKANN, NV	WP	(Lat. 37°22′52.68″ N, long. 117°15′54.53″ W)
LOMIA, NV	WP	(Lat. 39°13′11.57″ N, long. 119°06′22.95″ W)

* * * * * * *

Q–174 NTELL, CA to FLCHR, NV [New]

NTELL, CA	WP	(Lat. 36°53′58.99″ N, long. 119°53′22.21″ W)
CABAB, CA	WP	(Lat. 37°16′36.00″ N, long. 118°43′12.00″ W)
TTMSN, CA	WP	(Lat. 37°21′11.49″ N, long. 117°40′54.51″ W)
SKANN, NV	WP	(Lat. 37°22′52.68″ N, long. 117°15′54.53″ W)
FLCHR, NV	WP	(Lat. 37°06′02.27″ N, long. 116°52′31.36″ W)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–338 DSIRE, NV to BOEGY, AZ [New]

DSIRE, NV	WP	(Lat. 36°13′40.62″ N, long. 115°14′26.15″ W)
LNDIN, NV	WP	(Lat. 36°13′03.54″ N, long. 114°50′39.84″ W)
WYLND, NV	WP	(Lat. 36°09′26.64″ N, long. 114°24′58.20″ W)
BOEGY, AZ	WP	(Lat. 36°05′21.17″ N, long. 114°03′33.41″ W)

* * * * * * *

T–357 KONNG, NV to DSIRE, NV [New]

KONNG, NV	WP	(Lat. 35°27′39.39″ N, long. 114°57′02.15″ W)
DICSA, NV	FIX	(Lat. 35°52′05.33″ N, long. 115°02′15.10″ W)
WANDR, NV	WP	(Lat. 36°05′33.54″ N, long. 115°06′40.87″ W)
DSIRE, NV	WP	(Lat. 36°13′40.62″ N, long. 115°14′26.15″ W)

* * * * * * *

T–359 DANBY, CA to DSIRE, NV [New]

DANBY, CA	FIX	(Lat. 35°18′41.17″ N, long. 115°47′09.11″ W)
DICSA, NV	FIX	(Lat. 35°52′05.33″ N, long. 115°02′15.10″ W)
RAATT, NV	WP	(Lat. 36°04′42.74″ N, long. 115°13′04.33″ W)
DSIRE, NV	WP	(Lat. 36°13′40.62″ N, long. 115°14′26.15″ W)

* * * * * * *

T–361 BOEGY, AZ to MORMON MESA, NV [New]

BOEGY, AZ	WP	(Lat. 36°05′21.17″ N, long. 114°03′33.41″ W)
PUTTT, AZ	WP	(Lat. 35°50′09.62″ N, long. 114°40′35.63″ W)
DICSA, NV	FIX	(Lat. 35°52′05.33″ N, long. 115°02′15.10″ W)
WANDR, NV	WP	(Lat. 36°05′33.54″ N, long. 115°06′40.87″ W)
LNDIN, NV	WP	(Lat. 36°13′03.54″ N, long. 114°50′39.84″ W)
SHIEK, NV	WP	(Lat. 36°24′00.96″ N, long. 114°27′01.91″ W)
Mormon Mesa, NV, (MMM)	VORTAC	(Lat. 36°46′09.31″ N, long. 114°16′38.83″ W)

T–363 DICSA, NV, to Mormon Mesa, NV (MMM) [New]

DICSA, NV	FIX	(Lat. 35°52′05.33″ N, long. 115°02′15.10″ W)
PUTTT, AZ	WP	(Lat. 35°50′09.62″ N, long. 114°40′35.63″ W)
SHIEK, NV	WP	(Lat. 36°24′00.96″ N, long. 114°27′01.91″ W)
MORMON MESA, NV (MMM)	VORTAC	(Lat. 36°46′09.31″ N, long. 114°16′38.83″ W)

Issued in Washington, DC, on December 7, 2020.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–27339 Filed 12–11–20; 8:45 am]

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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 702

RIN 1240–AA13

Longshore and Harbor Workers' Compensation Act: Electronic Filing, Settlement, and Civil Money Penalty Procedures

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and its extensions. To improve program administration, OWCP is amending its existing regulations to require parties to file documents electronically, unless otherwise provided by statute or allowed by OWCP, and to streamline the settlement process. Additionally, to promote accountability and ensure fairness, OWCP is promulgating new rules for imposing and reviewing civil money penalties prescribed by the Longshore Act. The new rules set forth the procedures to contest OWCP's penalty determinations.

DATES: This direct final rule is effective March 15, 2021, without further action unless OWCP receives written significant adverse comments to this rule by February 12, 2021. If OWCP receives significant adverse comments, it will publish a timely withdrawal of the final rule in the **Federal Register**.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA13, by any of the following methods. To facilitate the receipt and processing of comments, OWCP encourages interested parties to submit such comments electronically.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Regular Mail or Hand Delivery/Courier:* Submit comments on paper to the Division of Federal Employees' Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW, Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Antonio Rios, Director, Division of Federal Employees' Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, (202)-693–0040, *rios.antonio@dol.gov.* TTY/TDD callers may dial toll free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 33 U.S.C. 901–50, establishes a comprehensive federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. *Metro. Stevedore Co.* v. *Rambo,* 515 U.S. 291, 294 (1995). The Act's provisions have been extended to (1) contractors working on military bases or U.S. government contracts outside the United States (Defense Base Act, 42 U.S.C. 1651–54); (2) employees of nonappropriated fund instrumentalities (Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171–73); (3) employees engaged in operations that extract natural resources from the outer continental shelf (Outer Continental Shelf Lands Act, 43 U.S.C. 1333(b)); and (4) private employees in the District of Columbia injured prior to July 26, 1982 (District of Columbia Workers' Compensation Act of May 17, 1928, Public Law 70–419 (formerly codified at 36 DC Code 501 *et seq.* (1973) (repealed 1979)). Consequently, the Act and its extensions cover a broad range of claims for injuries that occur throughout the United States and around the world.

OWCP's sound administration of these programs involves periodic reexamination of the procedures used for claims processing and related issues. OWCP has identified three areas where improvements can be made. The first is expanding electronic filing and requiring private parties to transmit all documents and information to OWCP electronically, except when the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. Receiving documents and information in electronic form speeds claims administration and simplifies recordkeeping requirements. The second is streamlining settlement procedures. This too should speed the settlement-approval process and lessen the parties' burdens to submit multiple documents to have a settlement considered. Finally, OWCP is updating its existing penalty regulations and filling a gap by proposing a procedural scheme for employers to challenge penalties assessed against them. These

rules will better apprise employers of their obligations and give them a clear path to exercise their rights to challenge any penalty imposed by OWCP.

On April 28, 2020, OWCP hosted a public outreach webinar to solicit stakeholders' views on how OWCP could improve its processes in the three areas covered in this rulemaking. *See* E.O. 13563, sec. 2(c) (January 18, 2011) (requiring public consultation prior to issuing a regulation). OWCP has considered the feedback received during that session in developing these rules.

This rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

II. Direct Final Rulemaking

In addition to this direct final rule (DFR), OWCP is concurrently publishing a companion Notice of Proposed Rulemaking (NPRM) elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a DFR in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the DFR, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the DFR and treats such comment as submissions on the NPRM. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

By simultaneously publishing this DFR with an NPRM, notice-and-comment rulemaking will be expedited if OWCP receives significant adverse comment and withdraws the DFR. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. OWCP will treat comment received on the DFR as comment regarding the companion NPRM and vice versa. Thus, if OWCP receives significant adverse comment on either the DFR or the NPRM, OWCP will publish a **Federal Register** notice withdrawing this DFR and will proceed with the proposed rule.

For purposes of the DFR, a significant adverse comment is one that explains why the rule (1) is inappropriate, including challenges to the rule's underlying premise or approach; or (2) will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the DFR, OWCP will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the DFR would be ineffective without the addition. OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts on the regulated community.

III. Overview of the Rule

A. Electronic Transmission of Documents and Information and Electronic Signatures

The Department's current regulations implementing the LHWCA at 20 CFR part 702 allow OWCP and private parties to exchange documents and information through certain electronic methods or in paper form, at the sender's option. 20 CFR 702.101. The Department added optional electronic transmission to the regulations in 2015. 80 FR 12917–33 (March 12, 2015). Since then, OWCP has continued to expand its use of electronic case files and is working towards a fully electronic case-file environment.

Electronic case files have many advantages, including allowing claims staff remote access to documents and information; efficient case file transmission to the Office of Administrative Law Judges, the Benefits Review Board, and other tribunals; elimination of possible mail-handling delays due to unforeseen weather or other events, safety restrictions, and the like; and cost savings in reduced copying, scanning, and storage of paper documents. Electronic filing methods are ubiquitous, and the public generally is very familiar with them. In addition to the substantial business conducted in a fully electronic environment, government agencies and court systems routinely use electronic transmission systems to receive documents and information. In fact, OWCP estimates that more than 80 percent of all documents it now receives in the Longshore program are transmitted electronically by the private parties.

For these reasons, the Department has revised the current regulations to require all private parties transmitting documents and information to OWCP to do so electronically except when a district director allows a different filing method because the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. The exception is consistent with the E-Government Act of 2002's directive that agencies must ensure the continued availability of services for persons who do not have computers or internet access. Sec. 202(c), Public Law 107–347, 116 Stat. 2899, 2911 (44 U.S.C. 3501 note). OWCP envisions a simple process for requesting relief under the exception and will allow individuals to self-certify their inability to use electronic filing. OWCP is unaware of any law that prohibits it from making electronic filing mandatory for all other parties.

In promulgating this rule, OWCP has considered the principles underlying the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, and the Electronic Signatures in Global and National Commerce Act (E–SIGN), 15 U.S.C. 7001 *et seq.* GPEA requires agencies, when practicable, to store documents electronically and to allow individuals and entities to communicate with agencies electronically. The GPEA also provides that electronic documents and signatures will not be denied legal effect merely because of their electronic form. Similarly, E–SIGN generally provides that electronic documents have the same legal effect as their hard copy counterparts and allows electronic records to be used in place of hard copy documents with appropriate safeguards. 15 U.S.C. 7001. Under E–SIGN, federal agencies retain the authority to specify the means by which they receive documents, 15 U.S.C. 7004(a), and to modify the disclosures required by section 101(c), 15 U.S.C. 7001(c), under appropriate circumstances.

Moreover, by 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); Delivering Government Solutions in the 21st Century at 22, 100–102 (June 21, 2018). Requiring electronic filings now will make more efficient OWCP's compliance with NARA's recordkeeping directives.

The rule also includes new provisions allowing the use of electronically signed documents consistent with E–SIGN. In April 2020, the Longshore program began accepting documents signed using certain electronic methods. *See* Industry Notice No. 179 (April 20, 2020), *https://www.dol.gov/owcp/dlhwc/lsindustrynotices/industrynotice179.pdf.* This rule codifies that practice. Allowing the use of improvements in signature technology will facilitate an easier and faster exchange of documents between parties and OWCP. The use of electronic

signatures is voluntary, and parties may continue to submit documents with ''wet'' ink signatures, so long as they are scanned and submitted electronically. At the same time, OWCP is conscious of the need to safeguard the integrity of electronic signatures and to ensure that each signature truthfully reflects the purported signatory's intent to sign. To that end, the rule establishes criteria to be followed by parties submitting electronically-signed documents.

B. Streamlining the Settlement Process

Section 8(i) of the Act, 33 U.S.C. 908(i), allows parties to settle compensation cases. Parties may agree to settle amounts payable for disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator—a district director or an administrative law judge—must review each settlement application. Unless the settlement amount is inadequate or was procured by duress, the adjudicator must approve it. Section 8(i) also provides that when all parties are represented by counsel, a settlement application is deemed approved 30 days after its submission if the adjudicator does not disapprove it.

The settlement application process should be easy for the parties to follow and lead to prompt resolution of compensation cases. However, in some instances, the settlement application process has become overly complicated. To justify the settlement application, parties submit large amounts of documentation (*e.g.,* all of the employee's medical treatment records) that is well beyond what is necessary for full consideration of the application in most cases. In addition to the extra burdens placed on parties, this practice creates unnecessary administrative burdens for OWCP and the Office of Administrative Law Judges (OALJ).

The revised settlement regulations at §§ 702.241–702.243 streamline the application process by focusing on the relevant information the parties must initially submit to properly adjudicate the settlement application. The adjudicator may then exercise his or her discretion and ask for additional documentation from the parties in those cases where necessary to determine whether the settlement is adequate in amount and procured without duress. The rules also allow the adjudicator to defer to the parties' representations regarding the adequacy of the settlement amount and whether the settlement was procured by duress. The Department believes these changes will make both the application and approval process more efficient, lessening the burden on parties and adjudicators alike. The Department has also taken this opportunity to reorganize, and in some cases simplify, much of the information contained in the current settlement regulations.

C. Procedures for Civil Money Penalties

OWCP is amending the current regulations and promulgating new ones implementing the Act's civil money penalty provisions. The Act allows OWCP to impose a penalty when an employer or insurance carrier fails to timely report a work-related injury or death, 33 U.S.C. 930(e), or fails to timely report its final payment of compensation to a claimant, 33 U.S.C. 914(g). *See* 20 CFR 702.204, 702.236. An employer who discharges or discriminates against an employee because of that employee's attempt to claim compensation under the Act may also be penalized. 33 U.S.C. 948a; 20 CFR 702.271. The rule revises current § 702.204 to provide for graduated penalties for an entity's failure to file, or falsification of, the required report of an employee's work-related injury or death. *See* 33 U.S.C. 930(a); 20 CFR 702.201. The rule provides that the penalty assessed will increase for each additional violation the employer has committed over the prior two years. The current regulation states only the maximum penalty allowable, without providing further guidance.

The regulations also contain a new Subpart I setting out procedures for assessing and challenging penalties. These rules allow an entity against whom a penalty is assessed the opportunity for a hearing before an administrative law judge, and to petition the Secretary of Labor (Secretary) for further review. After receiving notice from the district director that the assessment of a penalty is being considered and a subsequent decision assessing the penalty, the respondent may request a hearing before an administrative law judge. The ensuing decision will address whether the respondent violated the statutory or regulatory provision under which the penalty was assessed, and whether the amount of the penalty assessed is correct. Any party aggrieved by the decision may petition for the Secretary's review, which will be discretionary and based on the record. These additional levels of review are consistent with Recommendation 93–1 of the Administrative Conference of the United States, which recommends that formal adjudication under the Administrative Procedure Act be made available where a civil money penalty is at issue. These procedures will fully protect employers' and insurance carriers' rights to challenge OWCP's action before any penalty becomes final and subject to collection, and ensure transparency and fairness in the enforcement proceedings. *See generally* Executive Order 13892, *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication* (October 9, 2019).

IV. Section-by-Section Analysis

A. Regulations Related to Electronic Transmission of Documents and Information and Electronic Signatures

Section 702.101 Exchange of Documents and Information; Electronic Signatures

This rule revises several parts of § 702.101 to require electronic submission of all documents and information to OWCP, permits the use of electronic signatures, and amends the title of the regulation to include electronic signatures. Paragraph (a) begins by excepting from the mandatory electronic submission and exchange requirements those instances where the statute either allows filings by mail or mandates service by mail: Sections 702.203 (employer's report of injury or death, implementing 33 U.S.C. 930(d)), 702.215 (notice of injury or death, implementing 33 U.S.C. 912(c)), and 702.349 (service of compensation orders, implementing 33 U.S.C. 919(e)). Although parties are not required to submit reports and notices of injury or death to OWCP electronically, OWCP encourages them to do so.

Paragraph (a) combines current paragraphs (a) and (b) and breaks the combined text into three subsections that address three categories of document and information exchanges. Paragraph (a)(1) provides that parties (and their representatives) sending documents and information to OWCP must submit them electronically through an OWCP-authorized system. OWCP's Secure Electronic Access Portal (SEAPortal) is an example of such a system. A district director may make an exception to this rule for parties who do not have computers or access to the internet, or who lack the ability to use the internet. When a district director authorizes a party to use an alternative submission method, the party may use any of the methods set forth in the current rule: Postal mail, commercial delivery service, hand delivery, or another method OWCP authorizes. In all instances, documents are considered filed when received by OWCP.

Paragraph (a)(2) provides that OWCP may send documents and information to parties and their representatives by a

reliable electronic method (*e.g.,* email), postal mail, commercial delivery service, hand delivery, or electronically through an OWCP-authorized system. These methods are the same as those in the current regulation with one exception. For documents and information OWCP sends via a reliable electronic method, the rule eliminates the requirement that the party or representative must agree in writing to receive documents by that method. OWCP is now routinely obtaining electronic contact information, such as email addresses, from parties and representatives, and plans to increase its use of standard electronic business communication practices. Service of compensation orders, however, is still governed by § 702.349 and thus may be sent electronically only when a party or representative affirmatively waives their statutory right to registered or certified mail service.

Paragraph (a)(3) governs exchange of documents and information between opposing parties and representatives. Like the current rule, the revised provision allows the parties flexibility to choose the method of service they wish to use. They may use the same methods as OWCP, although parties must agree in writing to receive documents by a reliable electronic method. Requiring written confirmation from the recipient continues to protect all parties and representatives from any misunderstandings about service.

Paragraph 702.101(g) is a new provision that allows parties to submit electronically-signed documents to OWCP. The rule is intended to permit the widest possible use of electronic technology. Electronic signatures will be accepted on all submissions to OWCP that require a signature, not merely those non-exhaustive examples listed in the text of the rule.

Paragraph (g)(1) explains how key terms are used in the remainder of the paragraph. A ''document'' includes both paper and electronic writings. The documents listed in this definition—applications, claim forms, notices of payment, and reports of injury—are meant to serve as examples of the types of documents parties could electronically sign and submit to OWCP, but are not meant to be an exhaustive list. Electronic signatures on other types of documents not listed here will also be accepted by OWCP.

An ''electronic signature'' is a mark created by electronic means that shows an intent to sign the document. An electronic signature is binding on a business entity only if the signatory has appropriate legal authority to bind the entity.

''Electronic signature devices'' are tools parties may use to create electronic signatures. As with documents, the examples of electronic signature devices provided in this paragraph are not an exhaustive list. Parties may utilize other types of electronic signature devices, as long as the device is uniquely usable by the signatory at the time the signature is made. The purpose of this limitation is to ensure the signature's trustworthiness. The definition of ''electronic signature programs'' is designed to permit the submission of documents electronically signed with third-party software programs such as—but not limited to—AdobeSign, DocuSign, and E-Sign.

The definition of ''signatory'' is limited to individual, human persons; a corporation or business cannot be a signatory, though a signatory can sign on behalf of a corporation or business. This definition is designed to ensure that if the validity of a signature is challenged, it will be possible for all parties involved to verify who created it.

Paragraph (g)(2) lists the allowable methods for creating and affixing electronic signatures and adds the proviso that OWCP can approve other methods.

Paragraph (g)(3) clarifies that all electronic signatures made on the same document need not be created by the same method; a document could, for example, contain a ''/s'' signature from a claimant (as specified in paragraph (g)(2)(iii)) and a separate signature from an employer's agent made by drawing a mark with a stylus on a touch-screen (as specified in paragraph (g)(2)(iv)). OWCP recognizes that some of the methods described in paragraph (g)(2) may overlap. For example, an electronic signature program may involve a signatory first logging in through the use of an electronic signature device such as a PIN number, and then typing their name following a ''/s'' mark. A signature that incorporates multiple acceptable methods is still an acceptable electronic signature. These provisions are designed to be as inclusive as possible while militating against the possibility of abuse or fraud.

Finally, paragraph (g)(4) imposes obligations on parties that submit electronically-signed documents. This subparagraph is designed to mitigate the possibility of a legal challenge to the integrity of a signature or the identity of the signatory. Paragraph (g)(4)(i) is designed to prevent the use of signatures that leave the actual identity of the signatory ambiguous; examples of such signatures might be those that indicate only a PIN, ambiguous username, or email address that is shared by multiple members of a business or other organization. Paragraphs (g)(4)(ii)–(iii) impose record-keeping obligations on parties. By requiring parties to keep information about how and when an electronic signature was created, OWCP ensures that some means of authenticating the signature exists if the document's validity is ever disputed.

The remaining revisions to § 702.101 are technical in nature. Existing paragraphs (c)–(f) are renumbered to (b)–(e), and cross-references to other paragraphs throughout the section have been updated. In addition, because paragraph (a)(2) does not require parties and representatives to consent in writing to receive documents and information from OWCP via reliable electronic methods, paragraph (c) removes the words ''OWCP'' and ''as appropriate'' from current paragraph (d). Even though much of § 702.101 remains unchanged, the Department has chosen to re-publish the section in full for the public's convenience.

Section 702.203 Employer's Report; How Given

Section 30 of the Longshore Act, 33 U.S.C. 930, governs how and when employers must report employee injuries and deaths. In general, employers must send reports within 10 days of the injury or death, or knowledge of an injury or death. The Act explicitly allows an employer to comply with the reporting requirement by ''mailing'' the report ''in a stamped envelope, within the time prescribed.'' 33 U.S.C. 930(d). Current § 702.203(b), which implements section 30(d), acknowledges this mailing provision and provides that employers may send the reports to OWCP by U.S. Postal mail, commercial delivery service, or electronically. To encourage electronic filing yet preserve the statutory mail provision, revised § 702.203(b) eliminates commercial delivery service as a submission option but retains the mailing provisions. If an employer chooses to mail the report, the rule places the burden on the employer to preserve evidence of the date the report is mailed to OWCP. This could easily be accomplished by using certified mail. Finally, to clarify electronic submission procedures, the rule requires submission via an OWCP-authorized system and includes a cross-reference to revised § 702.101(a)(1). This revision eliminates the use of other electronic transmission methods and the need to specify when filing is complete under those methods.

Section 702.215 Notice; How Given

Section 12 of the Longshore Act, 33 U.S.C. 912, governs how and when employees and survivors give notices of injury or death to employers and OWCP. The Act requires that such notices be given to the district director ''by delivering it to him or sending it by mail addressed to his office.'' 33 U.S.C. 912(c). Without amendment of current § 702.215, the revisions to § 702.101 would effectively eliminate this statutory mailing option. Current § 702.215 provides that ''[n]otice may be given to the district director by submitting a copy of the form supplied by OWCP to the district director, or orally in person or by telephone.'' The ''submitting'' language brings to bear the transmission methods specified in § 702.101. *See* 20 CFR 702.101(e); 48 CFR 12921 (March 12, 2015). Since revised § 702.101(a) would require electronic filing of these notices, OWCP has amended § 702.215 to preserve the option of filing by mail in compliance with the Act. The rule makes clear that employees and survivors may also file these notices electronically through an OWCP-authorized system.

B. Regulations Pertaining to Settlements

Section 702.241 Settlements: Definitions; General Information

Revised § 702.241 contains basic information about settlements under section 8(i) of the Longshore Act, 33 U.S.C. 908(i). Paragraph (a) retains the current definition of the term ''Adjudicator,'' adds a definition for ''Compensation case,'' and includes the definition for ''Counsel'' located in current § 702.241(h). Paragraph (b) sets out several basic concepts: That an adjudicator must approve all settlements; the types of compensation, fees, and costs that a settlement may include; the ''inadequate'' and ''procured by duress'' standard applied in reviewing settlements; and, where all parties are represented by counsel, that the settlement is deemed approved 30 days after receipt of a completed application unless an adjudicator requests additional information or disapproves the application within that time period.

Paragraph (c) specifies when a settlement application is considered received by an adjudicator or higher tribunal. The rule eliminates the provision in current § 702.241(c) allowing settlement applications filed with an administrative law judge to be considered received ''five days before the date on which the formal hearing is scheduled to be held.'' In OWCP's experience, judges act quickly on settlement applications when received. Removing this provision helps eliminate any confusion parties may have over when a judge will consider their settlement proposal and promote prompt resolution. Paragraph (d) retains the provision in current § 702.241(f) regarding days that count towards the 30-day settlement period. And paragraph (e) retains the provision in current § 702.241(g) that limits settlements to claims in existence at the time of the settlement and provides that settlements for the injured employee do not affect survivors' claims for death benefits.

Additional note: Current § 702.241(b) has been moved to revised § 702.242(e) and revised. Current § 701.241(d) has been moved to revised § 702.243(f) and revised. Current § 701.241(e) has been moved to revised § 702.243(i) and revised.

Section 702.242 Settlement Application; Contents and Submission

Revised § 702.242 sets out the information parties must include in a settlement application and how parties must submit the application. Paragraph (a) simplifies the requirements in current § 702.242(a) by requiring that the parties use an application form prescribed by OWCP. The form is a self-sufficient document that requires all information necessary for a complete application and signatures necessary to indicate agreement to the settlement. The form also apprises claimants of the effect of the settlement (*e.g.,* waiver of rights to further compensation). Using a form should simplify the application process for the parties, who will no longer have to create their own documents. A form also has the advantage of allowing OWCP to adopt technology that will allow full online completion and submission of the settlement application.

Paragraph (a) also lists the components that must be included in the settlement application. In large part, this list reflects the requirements set forth in current § 702.242(a) and (b). Parties are required to include basic facts about the case, amounts to be paid under the settlement, the signatures of the parties agreeing to the settlement and attesting that the settlement is adequate and not procured by duress, and a statement regarding severability of the parts of the settlement, where appropriate.

Paragraph (b) provides that the adjudicator can request any additional information he or she deems necessary to decide whether the settlement is adequate or was procured by duress. This allows the adjudicator to tailor a request for additional information (*e.g.,* a medical report, projections of future medical treatment expenses) to the facts of the particular case. Paragraph (c) limits the adjudicator's consideration to the information in the application, any specific information the adjudicator requests from the parties, and information in the case record when the settlement application is filed.

Paragraphs (d) and (e) prescribe how parties submit completed settlement applications. These provisions require parties to submit applications to the district director except when the case is pending before the OALJ. In that instance, parties may either ask OALJ to remand the case to the district director and then submit the application to the district director after remand or submit the application to OALJ. Parties who submit settlement applications while a case is pending before a higher tribunal—the Benefits Review Board or a court—must submit them to the district director and ask the tribunal to return the case to the district director, who is an adjudicator with the authority to consider the application. These procedures reflect current practice.

Section 702.243 Settlement Approval and Disapproval

Revised § 702.243 governs how settlement applications are reviewed and the consequences of that review. Paragraph (a) requires adjudicators to review the settlement application within 30 days of receipt. During that time period, the adjudicator must notify the parties if the application is incomplete and ask for any additional information as allowed under revised § 702.242(b). The notice must also inform the parties that the 30-day period in revised § 702.241(b) will not begin to run until the adjudicator receives the completed application and additional information. This formulation is consistent with current § 702.243(a), which states that an incomplete application tolls the 30-day time period for deeming the application approved.

Paragraph (b) combines two requirements in current § 702.243(b) and (c) regarding adjudicating a settlement. The adjudicator must issue a compensation order approving or disapproving the settlement application. If the application is disapproved in any part, the adjudicator must include a statement of the reasons for finding the settlement (or part thereof) inadequate or procured by duress. This provision also requires the adjudicator to file and serve the compensation order under the procedures set forth in § 702.349. Although OWCP already follows these procedures, adding a reference to

§ 702.349 ensures that parties will be able to choose to receive orders on settlements via electronic means rather than by registered or certified mail.

Paragraph (c) instructs adjudicators to consider the information in the settlement application, any additional information the adjudicator requested under revised § 702.242(b), and the parties' attestations in the application in determining whether the proposed settlement is adequate and was procured without duress. The rule also allows the adjudicator to defer to the parties' attestations regarding adequacy and duress. This provision replaces current § 702.243(f)'s more detailed standard for determining whether the settlement amount is adequate, allowing the adjudicator to consider only that information important to the particular case.

Like current § 702.243(e), revised paragraph (d) continues to provide that disapproval of any part of a settlement applies to the entire settlement unless the parties state in the application that they agree to settle various parts independently. OWCP will incorporate this question into the settlement application.

Paragraph (e) sets out the actions parties may take after an adjudicator disapproves a settlement application. When disapproved by a district director, the parties may submit an amended settlement application to the district director or request an administrative law judge hearing on the disapproval. Any party may also ask for an administrative law judge hearing on the merits of the case. Similarly, when disapproved by an administrative law judge, the parties may submit an amended settlement application to the judge, appeal to the Benefits Review Board, or proceed with a hearing on the merits.

Paragraph (f) sets out the circumstances when a settlement is deemed approved. Consistent with section 8(i)(1), 33 U.S.C. 908(i)(1), this regulation applies only when all parties are represented by counsel. If the adjudicator neither approves nor disapproves the settlement application within 30 days after an adjudicator receives a complete application and any additional information the adjudicator requests under revised § 702.242(b), the settlement will be deemed approved.

Paragraph (g) retains the provision in current § 702.243(b) that an employer's and insurance carrier's liability for a compensation case is not discharged until the settlement application is approved. This includes both approvals issued by an adjudicator and those settlements deemed approved under the provisions of this section.

Paragraph (h) addresses the effect of settling attorney fees. The revised rule retains the thrust of the provision in current § 702.241(e): Approval of a settlement application that includes attorney fees constitutes approval of fees for all purposes. Paragraph (h) adds that fees in a settlement application may include fees for services rendered before a different adjudicator or tribunal. This will allow one adjudicator to resolve all fee maters, eliminating any need for the parties to seek fee resolutions from any other adjudicator or tribunal.

Paragraph (i) revises current § 702.243(g) regarding how adjudicators consider settlements in cases being paid under a final compensation order. The current regulation requires adjudicators to disapprove any settlement amount that falls below the present value of compensation payments commuted (as prescribed in the regulation) unless the parties show that the amount is adequate. Revised paragraph (i) expands the adjudicator's discretion by making the comparison between the settlement and commuted amounts permissible rather than mandatory. This will allow the adjudicator more flexibility to ratify the parties' agreement as to the settlement amount. OWCP also has removed from current § 702.243(g) the reference to the U.S. Life Table developed by the Department of Health and Human Services. This table is insufficient because it does not provide life expectancies for people in foreign countries that could be covered by the Longshore Act or its extensions, particularly the Defense Base Act. Revised paragraph (i) instead allows OWCP to specify the life expectancy tables or calculators to be used under this provision.

C. Regulations Related to Civil Money Penalties

Section 702.204 Employer's Report; Penalty for Failure To Furnish or For Falsifying

Revised § 702.204 revises the current regulation in several ways. First, paragraph (a)(1) defines a knowing or willful violation sufficient to impose a penalty. Paragraph (c) provides that the number of penalties assessed in the prior two years against an entity–including its parent company, subsidiaries, or related entities–will be considered in assessing further penalties. Paragraph (c) also lists the penalty amounts that will be imposed, beginning at two percent of the maximum penalty amount for a first violation, with the penalty doubling for each subsequent violation through the sixth violation. The seventh violation will result in the maximum penalty. OWCP has adopted a percentage scheme because the maximum penalty amount will be adjusted every year under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701.

Section 702.233 Additional Compensation for Failure To Pay Without an Award

OWCP has substituted the phrase ''additional compensation'' for the word ''penalty'' in current § 702.233's title (*i.e.,* ''Penalty for failure to pay an award''). Section 702.233 implements section 14(e) of the Act, 33 U.S.C. 914(e), which provides that claimants are entitled to an additional 10 percent of any compensation payable without an award when not paid within 14 days of when it is due. The Board has held that payments under section 14(e) are ''compensation'' and not ''penalties.'' *Robirds* v. *ICTSI Oregon, Inc.,* 52 BRBS 79 (2019) (en banc); *appeal docketed* Ninth Cir. No. 19–1634. In reaching its conclusion, the Board relied on the Federal Circuit's decision in *Ingalls Shipbuilding, Inc.* v. *Dalton,* 119 F.3d 972, 979 (Fed. Cir. 1997), which held that payments under section 14(e) are compensation. The majority of courts have also construed the similar language in section 14(f) of the Act, 33 U.S.C. 914(f) (requiring payment of additional 20 percent for late payments under terms of an award), as payments of ''compensation'' rather than a penalty. *See Newport News Shipbuilding and Dry Dock Co.* v. *Brown,* 376 F.3d 245, 251 (4th Cir. 2004) (''[I]t is plain that an award for late payment under [section] 14(f) is compensation.''); *Tahara* v. *Matson Terminals, Inc.,* 511 F.3d 950, 953–54 (9th Cir. 2007) (same); *but see Burgo* v. *General Dynamics Corp.,* 122 F.3d 140, 145–46 (2d Cir. 1997). Using ''additional compensation'' in the title of § 702.233 promotes accuracy and clarifies the instances in which the new penalty procedures apply.

Section 702.236 Penalty for Failure To Report Termination of Payments

Current § 702.236 has been revised to incorporate the penalty procedural rules in new Subpart I.

Section 702.271 Discrimination Against Employees Who Bring Proceedings; Prohibition

Current § 702.271 has been revised by dividing paragraph (a) into paragraphs (a) and (b), and renumbering the

subdivisions of paragraph (a), for clarity. Current paragraph (a)(2) is deleted and replaced by revised § 702.273, which sets forth the range of penalties to be assessed and incorporates the penalty procedural rules in new Subpart I. Given this change, the words ''and penalty'' have been deleted from the section's title and the punctuation has been altered. Current paragraphs (b), (c), and (d) are redesignated (c), (d), and (e).

Section 702.273 Penalty for Discrimination

Revised § 702.273 replaces current § 702.271(a)(2). It sets forth the range of penalties for discharge or discrimination, and incorporates the penalty procedural rules in new Subpart I. The rule also stays proceedings on any penalty assessed by the district director prior to a hearing until the Administrative Law Judge or higher tribunal resolves the underlying discrimination complaint.

Section 702.901 Scope of This Part

New § 702.901 provides that the procedures set forth in Subpart I apply when the district director imposes civil monetary penalties under §§ 702.204, 702.236, or 702.273, and that any penalties collected are to be deposited into the special fund described in 33 U.S.C. 944.

Section 702.902 Definitions

New § 702.902 defines ''respondent'' as the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a penalty.

Section 702.903 Notice of Penalty; Response; Consequences of no Response

New § 702.903 governs OWCP's notice of any penalty assessed and the respondent's response. Paragraph (a) requires OWCP to serve a written notice on the respondent by a method that verifies the delivery date because date of receipt triggers the respondent's response period. Paragraph (b) prescribes the contents of the notice, which include the consequences of not responding to the notice or supplying an inadequate response. Paragraph (c) gives the respondent 30 days to respond with documentation regarding any facts relevant to the reason for the penalty, as well as any documentation that may lead to mitigation of the penalty amount under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236. Paragraph (d) provides that, if there are further proceedings before an administrative law judge, that judge may consider only the evidence submitted to the district director, unless exceptional circumstances prevented the respondent from submitting it to the district director. OWCP has adopted this restriction so that OWCP can evaluate all evidence the respondent wishes to introduce in assessing the penalty. Finally, paragraph (e) provides that if the respondent does not respond within 30 days, the assessment of the penalty and its amount becomes final and collection may begin under § 702.912.

Section 702.904 Decision on Penalty After Timely Response; Request for Hearing

New § 702.904 addresses the district director's decision and any appeal to an administrative law judge. Paragraph (a) provides that the district director's decision must state the reasons for the assessment of the penalty and its amount, and set forth the consequences of a respondent's failure to timely respond. Paragraph (b) provides that the respondent may request a hearing before an administrative law judge within 15 days of receiving the decision by filing a request with the district director, and sets forth the requirements the request must meet. Paragraph (c) provides that a timely hearing request will stay the collection of a penalty until final resolution of the penalty by the administrative law judge or the Secretary. Paragraph (d) provides that, if the respondent does not request a hearing within 15 days, the assessment and penalty become final, and collection of the penalty may be instituted under § 702.912.

Section 702.905 Referral to the Office of Administrative Law Judges

New § 702.905 addresses referral of an assessment and penalty for a hearing before an administrative law judge. Paragraph (a) provides that, when the district director receives a request for hearing, the district director will immediately notify the Chief Administrative Law Judge, who will assign the case to an administrative law judge. The district director will also forward the administrative record, which consists of the district director's decision, the documentation the district director relied on in making the decision, all written responses and documentation filed by the respondent with the district director, and a statement of the issues referred for hearing. Paragraph (b) provides that the rules set forth in 29 CFR part 18 apply to any hearing before an administrative law judge.

Section 702.906 Decision and Order of Administrative Law Judge

New § 702.906 governs the contents, issuance, service, and finality of the administrative law judge's decision. Paragraph (a) provides that the administrative law judge may consider only the issues referred for hearing by the district director. Paragraph (b) limits the administrative law judge's determinations on those issues to whether the respondent has violated the provision under which the penalty was assessed, and whether the penalty is appropriate under the standards set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2). Limiting the judge's consideration to these issues will help streamline the hearing and decision process. Paragraph (c) requires the administrative law judge's decision to include a statement of findings and conclusions on each issue referred, with the reasons and bases for those findings and conclusions. Paragraph (d) requires the administrative law judge to serve both the respondent and the district director with the decision on the day it is issued through a trackable delivery method. Paragraph (e) provides that any party may move for reconsideration of the decision within 30 days of its issuance, and that any such motion will suspend the running of time to file a petition for review under § 702.908. Paragraph (f) provides that, absent a timely request for reconsideration or petition for review, the administrative law judge's decision will be deemed final, and recovery of the penalty may be instituted under § 702.912.

Section 702.908 Review by the Secretary

New § 702.908 allows any party aggrieved by an administrative law judge's decision to petition the Secretary for review. Paragraph (a) requires that any petition be filed within 30 days. Under paragraph (b), a timely motion for reconsideration filed with the administrative law judge tolls the time for filing a petition with the Secretary; the 30-day period will not begin to run until the judge issues a decision on reconsideration. Paragraph (c) sets out the requirements for the petition for review. And paragraph (d) provides the mailing address for sending the petition but allows the Secretary to designate alternative filing methods, such as an electronic filing system. Documents are not considered filed until actually received by the Secretary.

Section 702.909 Discretionary Review

New § 702.909(a) provides that the Secretary's review of a timely petition is discretionary. Paragraph (a)(1) provides that, if the Secretary declines review, the administrative law judge's decision will be considered the final agency decision. Under paragraph (b)(2), if the Secretary chooses to review the decision, the Secretary will notify the parties of the issues to be reviewed and set a schedule for the parties to submit written arguments. Paragraph (b) requires the district director to forward the administrative record to the Secretary if the Secretary decides to review the administrative law judge's decision.

Section 702.910 Final Decision of the Secretary

New § 702.910 limits the Secretary's review to the hearing record. The Secretary will review findings of fact under a substantial evidence standard and conclusions of law de novo. The Secretary may affirm, reverse, modify, or vacate the decision, and may remand to the Office of Administrative Law Judges for further review. The Secretary's decision must be served on all parties and the Chief Administrative Law Judge.

Section 702.911 Settlement of Penalty

New § 702.911 provides that the respondent and the district director may enter into a settlement at any time during proceedings before the administrative law judge or the Secretary. This provision is meant to allow flexibility and forestall further litigation if the district director and the respondent reach agreement at any point during the proceedings.

Section 702.912 Collection and Recovery of a Penalty

Paragraph (a) of new § 702.912 provides that, when a penalty becomes final under §§ 702.903(e), 702.904(d), or 702.906(f), the penalty is immediately due and payable to the Department on behalf of the special fund described in 33 U.S.C. 944. Paragraph (b) provides that, if payment is not received within 30 days after it becomes due and payable, it may be recovered by a civil action brought by the Secretary.

V. Legal Basis for the Rule

Section 39(a) of the LHWCA, 33 U.S.C. 939(a)(1), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration of the Act. The LHWCA also grants the Secretary authority to determine by regulation how certain statutory notice and filing requirements are met. *See* 33 U.S.C. 907(j)(1) (the Secretary is authorized to ''make rules and regulations and to establish procedures'' regarding debarment of physicians and health care providers under 33 U.S.C. 907(c)); 33 U.S.C. 912(c) (employer must notify employees of the official designated to receive notices of injury ''in a manner prescribed by the Secretary in regulations''); 33 U.S.C. 919(a) (claim for compensation may be filed ''in accordance with regulations prescribed by the Secretary''); 33 U.S.C. 919(b) (notice of claim to be made ''in accordance with regulations prescribed by the Secretary''); 33 U.S.C. 935 (''the Secretary shall by regulation provide for the discharge, by the carrier,'' of the employer's liabilities under the Act). This rule falls well within these statutory grants of authority.

VI. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Rule

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. 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 the Office of Management and Budget (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.

All forms and documents currently approved by OMB are subject to electronic submission except when a party obtains permission from OWCP to use a different submission method or otherwise provided by statute. The Department has submitted an Information Collection Request (ICR) for all of these forms under the procedures for review and clearance contained in 5 CFR 1320.13. The Exchange of Documents and Information; Electronic Signatures Rule (*see* new § 702.101) does not materially change any other ICR with regard to the information collected, but does change the manner in which forms that collect information may be submitted. The Department is requiring private parties to use an electronic method for the transmission of information to OWCP.

The collection of information requirements are contained within ICRs assigned the following OMB control numbers: 1240–0003, 1240–0004, 1240–0005, 1240–0008, 1240–0012, 1240–0014, 1240–0025, 1240–0026, 1240–0029, 1240–0036, 1240–0040, 1240–0041, 1240–0042, 1240–0045 1240–0053, and 1240–0058. The regulatory sections specifying the submission procedures are found in the following sections: 20 CFR 702.111, 702.121, 702.132, 702.162, 702.174, 702.175, 702.201, 702.202, 702.221, 702.234, 702.235, 702.236, 702.242, 702.243, 702.251, 702.285, 702.317, 702.321, 702.349, 702.407, 702.419, 703.116, 703.203, 703.204, 703.205, 703.209, 703.210, 703.212, 703.303 and 703.310. *See also* 42 U.S.C. 1652.

Although the rule does not eliminate current methods of submission for these collections by mail where consistent with statute, the parties will have to submit more documents electronically. OWCP anticipates electronic submission will lead to cost savings in hours and mailing costs (envelopes and postage) for the parties. Given the response rate for each of the existing collections, current combined mailing costs are estimated at $118,657. Under this new rule, the Department anticipates a 97 percent rate of electronic submission, an accompanying reduction in postal mail submission, and a resulting cost savings of $115,097. The Department has submitted a request to OMB for a non-substantive change for each existing ICR cited above to obtain approval for the changed cost estimate resulting from electronic submission.

This rule imposes two new information collections. First, revised § 702.201(a)(1)(i) generally requires parties and their representatives to submit documents and information electronically to OWCP. But the rule allows an OWCP district director to allow an alternative filing method for individuals who do not have a computer, access to the internet, or the ability to use the internet. OWCP plans to use a new form that will allow individuals to self-certify that they qualify for this exception. For this form, OWCP estimates 3,048 respondents with an annual time burden of 254 hours. Because this form will only be used when other documents are being submitted, there is no additional cost burden. Second, revised § 702.242 requires parties to apply for approval of a settlement using an application form prescribed by OWCP. As explained in the section-by-section analysis above, OWCP believes use of a comprehensive form will lessen the burdens on the parties and the adjudicators who must

review the settlements. Although OWCP already has an approved settlement application form (*see* OMB control number 1240–0058, Form LS–8), the new form will collect some additional information in a substantially revised format. For this form, OWCP estimates 5,400 respondents with an annual time burden of 1,782 hours and other costs burden of $289.17. The Department has submitted a request to OMB for approval of both new information collections.

The submitted ICRs for the new collections imposed by this rule will be available for public inspection for at least 30 days under the ''Currently Under Review'' portion of the Information Collection Review section on the *reginfo.gov* website, available at: *http://www.reginfo.gov/public/do/PRAMain.* Currently approved information collections are available for public inspection under the ''Current Inventory'' portion of the same website.

Request for Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department 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. 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. Comments on the information collection requirements may be submitted to the Department in the same manner as for any other portion of this rule.

In addition to having an opportunity to file comments with the agency, the PRA provides that an interested party may file comments on the information collection requirements directly with the Office of Management and Budget, at Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the general addressee for this rulemaking. The OMB will consider all written comments it receives within 30 days of publication of this DFR in the **Federal Register**. To help ensure appropriate consideration, comments should mention at least one of the OMB control numbers noted in this section.

The OMB and the Department are particularly interested in comments that address the following:

- 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, through the use of appropriate automated, electronic, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collections in this rule may be summarized as follows:

1. *Title of Collection:* Employer's First Report of Injury or Occupational Disease, Employer's Supplementary Report of Accident or Occupational Illness.
OMB Control Number: 1240–0003.
Total Estimated Number of Responses: 24,631.
Total Estimated Annual Time Burden: 6,158 hours.
Total Estimated Annual Other Costs Burden: $232.76.

2. *Title of Collection:* Carrier's Report of Issuance of Policy.
OMB Control Number: 1240–0004.
Total Estimated Number of Responses: 1,500.
Estimated Annual Time Burden: 25 hours.
Total Estimated Annual Other Costs Burden: $0.47.

3. *Title of Collection:* Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions.
OMB Control Number: 1240–0005.
Total Estimated Number of Responses: 695.
Estimated Annual Time Burden: 869 hours.
Total Estimated Annual Other Costs Burden: $12.08.

4. *Title of Collection:* Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.
OMB Control Number: 1240–0014.
Total Estimated Number of Responses: 90,759.
Estimated Annual Time Burden: 32,971 hours.
Estimated Annual Other Costs Burden: $786.09.

5. *Title of Collection:* Request for Earnings Information.
OMB Control Number: 1240–0025.
Total Estimated Number of Responses: 100.
Estimated Annual Time Burden: 25 hours.
Estimated Annual Other Costs Burden: $0.95.

6. *Title of Collection:* Application for Continuation of Death Benefit for Student.
OMB Control Number: 1240–0026.
Total Estimated Number of Responses: 20.
Total Estimated Annual Time Burden: 10 hours.
Total Estimated Annual Other Costs Burden: $0.19.

7. *Title of Collection:* Request for Examination and/or Treatment.
OMB Control Number: 1240–0029.
Total Estimated Number of Responses: 90,000.
Estimated Annual Time Burden: 48,750 hours.
Total Estimated Annual Other Costs Burden: $2,532,816.

8. *Title of Collection:* Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement.
OMB Control Number: 1240–0036.
Total Est. Number of Responses: 3,513.
Estimated Annual Time Burden: 586 hours.
Total Estimated Annual Other Costs Burden: $61.13.

9. *Title of Collection:* Certification of Funeral Expenses.
OMB Control Number: 1240–0040.
Total Estimated Number of Responses: 75.
Total Estimated Annual Time Burden: 19 hours.
Total Estimated Annual Other Costs Burden: $0.71.

10. *Title of Collection:* Notice of Final Payment or Suspension of Compensation Benefits.
OMB Control Number: 1240–0041.
Total Estimated Number of Responses: 37,800.
Total Estimated Annual Time Burden: 6,300 hours.
Total Estimated Annual Other Costs Burden: $357.21.

11. *Title of Collection:* Notice of Controversion of Right to Compensation.
OMB Control Number: 1240–0042.
Total Estimated Number of Responses: 18,000.
Total Estimated Annual Time Burden: 4,500 hours.
Total Estimated Annual Other Costs Burden: $295.97.

12. *Title of Collection:* Request for Electronic Service of Orders—Waiver of Certified Mail Requirement.

OMB Control Number: 1240–0053.
Total Estimated Number of Responses: 14,000.
Estimated Annual Time Burden: 770 hours.
Estimated Annual Other Costs Burden: $0.00.

13. *Title of Collection:* Request for Intervention, Longshore and Harbor Workers' Compensation Act.
OMB Control Number: 1240–0058.
Total Estimated Number of Responses: 12,414.
Total Estimated Annual Time Burden: 3,189 hours.
Total Estimated Annual Other Costs Burden: $342.91.

14. *Title of Collection:* Rehabilitation Plan and Award.
OMB Control Number: 1240–0045.
Total Estimated Number of Responses: 3,913.
Estimated Annual Time Burden: 1,957 hours.
Estimated Annual Other Costs Burden: 0.00.

15. *Title of Collection:* Rehabilitation Maintenance Certificate.
OMB Control Number: 1240–0012.
Total Estimated Number of Responses: 3,452.
Estimated Annual Time Burden: 575 hours.
Estimated Annual Other Costs Burden: $0.00.

16. *Title of Collection:* Rehabilitation Action Report.
OMB Control Number: 1240–0008.
Total Estimated Number of Responses: 4,066.
Estimated Annual Time Burden: 678 hours.
Estimated Annual Other Costs Burden: $0.00.

VII. Executive Orders 12866 and 13563 (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 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Department has considered this rule with these principles in mind and has concluded that the regulated community will benefit from this regulation for several reasons.

Requiring most parties and representatives to submit documents electronically to OWCP will speed claims processing and allow OWCP to be more responsive to requests for assistance. Currently, OWCP must scan paper submissions into digital format and add them to the electronic case file before claims staff can take any action on them. When coupled with the time to deliver paper submissions to OWCP, this can delay responding to a request by several days. In contrast, electronic submissions are immediately associated with the case file and available to claims staff. Codifying the use of digital signatures in the regulations will also simplify electronic and even paper submissions (when allowed).

Similarly, streamlining the settlement process by limiting the amount of information the parties must submit with every application will reduce administrative burdens on both the parties and OWCP. All of these changes will result in more expeditious resolution of disputes, thus furthering the ''certain, prompt recovery for employees'' the Act guarantees. *Roberts* v. *Sea-Land Servs., Inc.,* 556 U.S. 93, 97; 132 S.Ct. 1350, 1354 (2012).

The Department does not believe parties will incur additional costs as a result of the revisions to the electronic submission of documents and information regulation and may see a small financial benefit. As noted, more than 80 percent of documents currently sent to OWCP are submitted electronically. For these parties and representatives, no change in their current practices will be needed. Although the parties and representatives who currently submit paper documents will have to alter their practice, these alterations may result in cost savings by reducing paper copying charges and mailing or delivery expenses. Even if parties and representatives incurred minimal additional costs, they would be outweighed by the benefits reaped—primarily more expeditious claims processing and delivery of compensation.

The Department also believes that promulgating procedural rules related to civil money penalties benefits employers (and their insurance carriers) against whom OWCP may assess penalties. Currently, the regulations contain no set procedures for employers to challenge penalties, which can lead to procedural decisions being made on a case-by-case basis. The new rules establish a transparent and consistent pathway for assessment and adjudication of penalties: Clear notice of the penalty and an opportunity to contest it before imposed by OWCP; hearing by an administrative law judge upon request; discretionary review by the Secretary; and a stay of payment for the penalty assessed until review is complete and the decision becomes final. These procedures clearly protect an employer's rights to be fully heard before having to pay a penalty.

Finally, because this is not a ''significant regulatory action'' within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to 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.'' This rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000.

IX. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) (RFA), requires an agency to prepare a regulatory flexibility analysis when it proposes or adopts regulations that will have ''a significant economic impact on a substantial number of small entities'' or to certify that the regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many longshore employers and a handful of insurance carriers may be small entities within the meaning of the RFA, *see generally* 77 FR 19471–72 (March 30, 2012), this rule will not have a significant economic impact on them. Most employers and insurance carriers already submit documents and information to OWCP electronically, and electronic filing is usually associated with slightly lower costs than traditional paper filings. Thus, mandating electronic submission will have little to no impact on these parties. Similarly, streamlining the settlement-application submission process will have no negative economic impact and a potentially small positive impact on employers and carriers. Finally, the regulations related to penalties generally set procedures with no economic impact. To the extent the rules affect the penalty amount assessed

by OWCP, the rules explicitly take into account small entities by incorporating the mitigation provisions in section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), where appropriate. *See* new § 702.903(c)(2).

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department, however, invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small longshore employers or insurers. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

X. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The 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,'' if promulgated as a final rule.

XI. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Longshore and harbor workers, Maximum compensation rates, Minimum compensation rates, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 702 as follows:

PART 702—ADMINISTRATION AND PROCEDURE

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Revise § 702.101 to read as follows:

§ 702.101 Exchange of documents and information; electronic signatures.

(a) Except as otherwise provided by §§ 702.203, 702.215 and 702.349, all documents and information under this subchapter—

(1) Sent to OWCP—

(i) Must be submitted electronically through an OWCP–authorized system unless a district director permits an alternative submission method for individuals who do not have a computer, lack access to the internet, or lack the ability to utilize the internet. Documents and information submitted through an OWCP-authorized electronic system are considered filed when received.

(ii) When authorized to use an alternative method, submission may be made by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), hand delivery, or another method authorized by OWCP. Documents and information submitted using an alternative method are considered filed when received by OWCP.

(2) Sent by OWCP to parties and their representatives must be sent—

(i) Electronically by a reliable electronic method;

(ii) In hard copy by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), or hand delivery; or

(iii) Electronically through an OWCP–authorized system that delivers documents to the parties and their representatives or notifies them when documents have been added to the case file.

(3) Sent by any party or representative to another party or representative must be sent by any method allowed under paragraphs (a)(2)(i) through (iii) of this section, except that when sent by a reliable electronic method, the receiving party or representative must agree in writing to receive documents and information by that method.

(b) For purposes of paragraph (a) of this section, reliable electronic methods for delivering documents include, but are not limited to, email, facsimile, and web portal.

(c) Any party or representative may revoke his or her agreement to receive documents and information electronically by giving written notice to the party or the representative with whom he or she had agreed to receive documents and information electronically.

(d) The provisions in paragraphs (a) through (c) of this section apply when parties are directed by the regulations in this subchapter to advise; apply; approve; authorize; demand; file; forward; furnish; give; give notice; inform; issue; make; notice, notify; provide; publish; receive; recommend; refer; release; report; request; respond; return; send; serve; service; submit; or transmit.

(e) Any reference in this subchapter to an application, copy, filing, form, letter, written notice, or written request includes both hard-copy and electronic documents.

(f) Any requirement in this subchapter that a document or information be submitted in writing, or that it be signed, executed, or certified does not preclude its submission or exchange electronically.

(g) Any requirement in this subchapter that a document be signed may be satisfied by an electronic signature.

(1) Definitions. For purposes of this paragraph—

Document means any form of writing submitted to OWCP, including applications, claim forms, notices of payments, and reports of injury.

Electronicsignature means a mark on a document, created by electronic means, that indicates the signatory's endorsement of or assent to the terms of a document. An electronic signature may serve as the binding signature for a business or other corporate or collective entity if the signatory has the legal authority to bind the entity.

Electronic signature device means a code, password, or other mechanism that is used by a signatory to create or inputelectronicsignatures on a document or to log in to an electronic signature program. The code, password or mechanism must be unique to the signatory at the time the signature is created and the signatory must be uniquely entitled to use it. The device is compromised if the code or mechanism is available for use by any other person. Examples of such devices include a unique username and password, a PIN number or other numeric code, biometrics, cryptographic controls such as asymmetric or symmetric cryptography, and software that takes a scan of a user's ID.

Electronic signature program means a software application that allows a signatory to log in using an electronic signature device and electronically sign a document.

Signatory means any person who, on behalf of themselves or an entity for whom they are authorized to sign, places an electronic signature on a document.

(2) Acceptable methods of creating an electronic signature include—

(i) The use of an electronic signature device;

(ii) The use of an electronic signature program, provided that such program includes the use of an electronic signature device;

(iii) The signatory typing their name onto an electronic document following a ''/s'' mark;

(iv) The signatory using a mouse, touchpad, stylus, or other equivalent device to physically draw their signature on a display screen;

(v) Other methods allowed by OWCP.

(3) A document containing multiple electronic signatures may utilize the same method or methods of signing with respect to each signature, or may utilize different methods, provided the methods are acceptable methods pursuant to paragraph (g)(2) of this section.

(4) Entities submitting electronically-signed documents must—

(i) Ensure that all signatures allow OWCP to clearly identify the signatory. Any signature made on behalf of a business or other collective entity should identify the individual person signing.

(ii) Keep a record of how the electronic signature was obtained, including any electronic signature programs and/or electronic signature devices used, and be able to provide this information at OWCP's request.

(iii) Keep a record of the date the signature was created and be able to provide this information at OWCP's request.

(h) Any reference in this subchapter to transmitting information to an entity's address may include that entity's electronic address or electronic portal.

(i) Subject to paragraph (a) of this section, any requirement in this subchapter that a document or information—

(1) Be sent to a specific district director means that the document or information should be sent to the electronic (or physical when permitted) address provided by OWCP for that district director; and

(2) Be filed by a district director in his or her office means that the document or information may be filed in an electronic (or physical when permitted) location specified by OWCP for that district director.

■ 3. Revise § 702.203(b) to read as follows:

§ 702.203 Employer's report; how given.

* * * * *

(b) Employers may send a report of injury to the district director electronically through an OWCP-authorized system (*see* § 702.101(a)(1)). If the employer sends its report of injury by U.S. postal mail, the report will be considered filed on the date that the employer mails the document. If the report is filed by mail, the employer must retain documentation demonstrating when the report was mailed.

■ 4. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

(a) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $24,441 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after January 15, 2020.

(1) For purposes of failing or refusing to send a report required by § 702.201, an employer, insurance carrier, or self-insured employer—

(i) Acts knowingly if it has actual knowledge of the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required; or if it had reason to know about the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required.

(ii) Acts willfully if it intentionally disregards the reporting requirement or is indifferent to the reporting requirement.

(2) Proof of either a false statement or misrepresentation made knowingly and willfully in a report required by § 702.201 is sufficient to warrant imposition of a penalty under this section.

(b) The district director has the authority and responsibility for assessing the penalty described in paragraph (a) of this section using the procedures set forth at subpart I of this part.

(c) In determining the penalty amount under paragraph (a) of this section, the district director will consider how many penalties, if any, have been assessed against the employer, insurance carrier, or self-insured employer in the two years preceding the most recent reporting violation. In determining the number of prior penalties assessed, the district direct will include penalties assessed against an entity's parent company, subsidiaries, and related entities. The district director will assess a penalty in an amount equaling the following percentages of the maximum penalty, rounded up to the next dollar.

TABLE 1 TO PARAGRAPH (c)

Number of violations	Percentage of maximum penalty assessed
First late/falsified report:	2
Second late/falsified report:	4
Third late/falsified report:	8
Fourth late/falsified report:	16
Fifth late/falsified report:	32
Sixth late/falsified report:	64
Seventh (and above) late/falsified report:	100

■ 5. Revise § 702.215 to read as follows:

§ 702.215 Notice; how given.

Notice must be effected by delivering it to the individual designated to receive such notices at the physical or electronic address designated by the employer. Notice may be given to the district director by submitting a copy of the form supplied by OWCP to the district director electronically through an OWCP-authorized system, by mail, or orally in person or by telephone.

■ 6. Revise the section heading of § 702.233 to read as follows:

§ 702.233 Additional compensation for failure to pay without an award.

* * * * *

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of $297 for any violation for which penalties are assessed after January 15, 2020. The district director has the authority and responsibility for assessing this penalty using the procedures set forth at subpart I of this part.

■ 8. Revise § 702.241 to read as follows:

§ 702.241 Settlements: Definitions; general information.

(a) As used in §§ 702.241 through 702.243, the term—

Adjudicator means district director or administrative law judge (ALJ).

Compensation case means a claim for compensation or other statement indicating potential entitlement to compensation or benefits.

Counsel means any attorney admitted to the bar of any state, territory or the District of Columbia.

(b) Parties may settle a compensation case only with an adjudicator's approval. The settlement may include disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator must approve the

settlement unless it is inadequate or was procured by duress. If all parties to the settlement are represented by counsel, completed applications will be deemed approved unless specifically disapproved by an adjudicator within 30 days of receipt of the application unless the adjudicator requests additional information under § 702.243(a).

(c) Receipt of a settlement application occurs—

(1) For submissions to a district director, on the day OWCP receives a complete application.

(2) For submissions to an ALJ, when the application is considered filed under the OALJ's rules of practice and procedure (29 CFR part 18).

(3) For compensation cases pending before a higher tribunal, the date the tribunal takes action indicating the adjudicator should consider the settlement (*e.g.,* enters an order remanding the case, dismisses the appeal).

(d) The 30-day period for consideration of a settlement begins the day after the adjudicator's receipt of a complete application. If the 30th day is a Saturday, Sunday or legal holiday, the next business day will be considered the 30th day.

(e) An agreement by the parties to settle a compensation case is limited to the rights of the parties and to claims then in existence. Settlement of disability compensation or medical benefits for the injured employee will not affect, in any way, the right of the employee's survivor(s) to claim death benefits.

■ 9. Revise § 702.242 to read as follows:

§ 702.242 Settlement application; contents and submission.

(a) A settlement application must be made on a form prescribed by OWCP. The settlement application must include all information required by the form, including—

(1) A brief summary of the facts of the case, including a description of the incident; a description of the nature of the injury; the degree of impairment or disability; the claimant's average weekly wage; and a summary of compensation paid;

(2) The amounts to be paid under the settlement for compensation, medical benefits, death benefits, attorney's fees and costs, as appropriate;

(3) The signatures of all parties agreeing to the settlement as stated in the application and attesting that the settlement is adequate and was not procured by duress; and

(4) If the settlement application includes the parties' agreement on more than one form of compensation or benefits, a statement whether the parties agree to settle the parts independently if the adjudicator does not approve the settlement in its entirety.

(b) The adjudicator may request additional information from the parties if he or she believes, under the particular circumstances of the case, that such information is necessary to determine whether the settlement is adequate or has been procured by duress.

(c) The adjudicator will not consider any information a party submits other than the settlement application required by paragraph (a) of this section, additional information requested by the adjudicator under paragraph (b) of this section, or information in the case record before the settlement application is filed.

(d) To submit a completed settlement application—

(1) The parties must submit the application to a district director in all cases unless the case is pending before the OALJ. Submission must be made under the procedures set forth at § 702.101(a) except that if a hard copy is submitted under that provision, the application must be sent by certified mail with return receipt requested or by a commercial delivery service with tracking capability that provides reliable proof of delivery to the district director.

(2) In cases pending before the OALJ, the parties may either—

(i) Request that the case be remanded to the district director for consideration of the application and, after remand, file the application with a district director under paragraph (d)(1) of this section; or

(ii) Submit the application to OALJ under the procedures set forth in the OALJ's rules of practice and procedures (29 CFR part 18) for consideration.

(e) If the parties submit a settlement application to a district director while the compensation case is pending at the Benefits Review Board or a court, the parties must notify the Board or the court and request that the case be remanded or otherwise returned to the district director for consideration of the application.

■ 10. Revise § 702.243 to read as follows:

§ 702.243 Settlement approval and disapproval.

(a) Within 30 days of receipt, the adjudicator must evaluate the settlement application and notify the parties in writing if the application is incomplete or if the adjudicator requests additional information. If all parties are represented by counsel, any such notice must also state that the 30-day period in § 702.241(b) will not commence until the adjudicator receives the completed application and the additional information.

(b) The adjudicator must issue a compensation order approving or disapproving the settlement application, and file and serve it on the parties in accordance with § 702.349 unless the settlement has already been deemed approved under paragraph (f) of this section. If the adjudicator disapproves the settlement application in any part, the order must include the adjudicator's reasons for finding the settlement inadequate or procured by duress.

(c) In determining whether the settlement is adequate and procured without duress, the adjudicator must consider all of the information required by § 702.242(a), any additional information requested under § 702.242(b), and the parties' attestations in the settlement application, to which the adjudicator may defer.

(d) If the adjudicator disapproves any part of a settlement application, the entire application is disapproved unless the parties have stated in the application that they agree to settle the parts independently.

(e) After a settlement application is disapproved by—

(1) A district director, the parties may submit an amended application to the district director or request a hearing before an ALJ on either the settlement disapproval or the merits of the case under sections 8 and 19 of the Act, 33 U.S.C. 908 and 919.

(2) An ALJ, the parties may submit an amended application to the ALJ, file an appeal with the Benefits Review Board under section 21 of Act, 33 U.S.C. 921, or proceed with a hearing on the merits of the case.

(f) If all parties to the settlement are represented by counsel and the adjudicator does not formally approve or disapprove the application within 30 days after receipt of a complete settlement application and any additional requested information (*see* § 702.242(b)), the application will be deemed approved. A settlement application that is deemed approved under this paragraph will be considered filed in the office of the district director on the last day of the 30-day period as calculated under § 702.241(d).

(g) The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator or deemed approved under § 702.241(b) and paragraph (f) of this section.

(h) Attorney's fees in a settlement application may include fees for work performed before other adjudicators and tribunals. If the settlement is approved, the attorney's fees will be considered approved within the meaning of § 702.132.

(i) When parties settle cases being paid under a final compensation order where no substantive issues are in dispute, the adjudicator, in determining whether the proposed settlement amount is adequate, may compare the amount to the present value of future compensation payments commuted, computed by:

(1) Determining the probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation according to a current life expectancy table or calculator specified by OWCP; and

(2) Applying the discount rate specified at 28 U.S.C. 1961.

■ 11. In § 702.271:

■ a. Revise the section heading and paragraph (a);

■ b. Redesignate paragraphs (b) through (d) as (c) through (e); and

■ c. Add new paragraph (b).

The revisions and addition read as follows:

§ 702.271 Discrimination against employees who bring proceedings; prohibition.

(a) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his or her employment because that employee:

(1) Has claimed or attempted to claim compensation under the Act; or

(2) Has testified or is about to testify in a proceeding under the Act.

(b) To discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of paragraph (a) of this section.

* * * * *

■ 12. Revise § 702.273 to read as follows:

§ 702.273 Penalty for discrimination.

Any employer who violates § 702.271(a) will be subject to a civil penalty of not less than $2,444 or more than $12,219 when assessed after January 15, 2020 to be paid by the employer alone (and not by a carrier). The district director has the authority and responsibility for assessing this penalty using the procedures set forth at subpart I of this part. Any penalty assessed by the district director prior to a hearing on the discrimination complaint will be stayed pending final resolution of the complaint by the Administrative Law Judge or higher tribunal.

■ 13. In part 702, add subpart I to read as follows:

Subpart I—Procedures for Civil Money Penalties

Sec.
702.901 Scope of this part.
702.902 Definitions.
702.903 Notice of penalty; response; consequences of no response.
702.904 Decision on penalty after timely response; request for hearing.
702.905 Referral to the Office of Administrative Law Judges.
702.906 Decision and order of Administrative Law Judge.
702.907 [Reserved]
702.908 Review by the Secretary.
702.909 Discretionary review.
702.910 Final decision of the Secretary.
702.911 Settlement of penalty.
702.912 Collection and recovery of penalty.

Subpart I—Procedures for Civil Money Penalties

§ 702.901 Scope of this part.

(a) These procedures apply when the district director imposes the civil money penalties prescribed by § 702.204, § 702.236, or § 702.273.

(b) The district director will deposit all penalties collected into the special fund described in section 44 of the Act, 33 U.S.C. 944.

§ 702.902 Definitions.

In addition to the definitions provided in §§ 701.301 and 701.302, the following definition applies to this subpart:

Respondent means the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a civil penalty.

§ 702.903 Notice of penalty; response; consequences of no response.

(a) The district director will serve a written notice through an electronic method authorized by OWCP or by trackable delivery method on each respondent against whom he or she is considering assessing a penalty. Where service is not accepted by a respondent, the notice will be deemed received by the respondent on the attempted date of delivery.

(b) The notice must set forth the—

(1) Facts giving rise to the penalty;

(2) Statutory and regulatory basis for the penalty;

(3) Amount of the proposed penalty, including an explanation for the amount set;

(4) Consequences of not submitting all documentation to the district director as set forth in paragraph (d) of this section; and

(5) Consequences of failing to timely respond to the notice as set forth in paragraph (e) of this section.

(c) The respondent must respond within 30 days of receipt of the notice. The response may include—

(1) Documentation regarding any facts relevant to the reason for the penalty; and

(2) Documentation supporting a request for mitigation of the penalty amount under Section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236.

(d) Documentation not presented to the district director may not be admitted in any further proceedings before an Administrative Law Judge or other tribunal unless the respondent demonstrates exceptional circumstances prevented submission to the district director.

(e) If the respondent does not respond within 30 days of receipt of the notice, the assessment and amount of the penalty set forth in the notice will be deemed final, and collection and recovery of the penalty may be instituted under § 702.911.

§ 702.904 Decision on penalty after timely response; request for hearing.

(a) If the respondent files a timely response to the notice described in § 702.903, the district director will review the facts and any argument presented and issue a decision on the penalty. The decision must—

(1) Include a statement of the reasons for the assessment and the amount of the penalty;

(2) Set forth the respondent's right to request a hearing on the district director's decision and the method for doing so; and

(3) Set forth the consequences of failing to timely respond to the decision as set forth in paragraph (d) of this section.

(b) The respondent has 15 days from receipt of the decision to request a hearing before an Administrative Law Judge by filing a request for hearing with the district director. The request must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the district director's decision with which the respondent disagrees;

(4) Be signed by the respondent making the request or by the respondent's authorized representative;

(5) State both the physical mailing address and electronic mailing address

for the respondent and the authorized representative for receipt of further communications.

(c) A timely hearing request will operate to stay collection of the penalty until final resolution of the penalty is reached by the Administrative Law Judge or the Secretary, as appropriate.

(d) If the respondent does not request a hearing within 15 days of receipt of the notice, the assessment and amount of the penalty set forth in the district director's decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

§ 702.905 Referral to the Office of Administrative Law Judges.

(a) When the district director receives a request for hearing in response to a decision issued under § 702.904, the district director will immediately notify the Chief Administrative Law Judge, who will assign an Administrative Law Judge to the case. The district director will also forward to the Office of Administrative Law Judges the following documentation, which will be considered the administrative record:

(1) The district director's notice and decision issued under §§ 702.903 and 702.904;

(2) The documentation upon which the district director relied in making his or her decision;

(3) All written responses and documentation filed by the respondent with the district director;

(4) A statement of the issues referred by the district director for hearing.

(b) Except as otherwise provided in this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR part 18 will apply to hearings under this subpart.

§ 702.906 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge must consider only those issues referred by the district director for hearing.

(b) On issues properly before him or her, the Administrative Law Judge must limit his or her determinations to:

(1) Whether the respondent has violated the sections of the Act and regulations under which the penalty was assessed;

(2) The correctness of the penalty assessed by the district director as set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2).

(c) The decision of the Administrative Law Judge must include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue referred.

(d) On the date of issuance, the Administrative Law Judge must serve a copy of the decision and order on the district director and the respondent by a trackable delivery method.

(e) Any party may ask the Administrative Law Judge to reconsider his or her decision by filing a motion within 30 days of the date of issuance of the decision. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review under § 702.908.

(f) If no party files a motion for reconsideration or petition for review within 30 days of the issuance of the Administrative Law Judge's decision, the decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

(g) At the conclusion of all hearing proceedings, the Administrative Law Judge will forward the complete hearing record to the district director who referred the matter for hearing, who will retain custody of the record.

§ 702.907 [Reserved]

§ 702.908 Review by the Secretary.

(a) Any party aggrieved by the decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Copies of the petition must be served on all parties and on the Chief Administrative Law Judge.

(b) If any party files a timely motion for reconsideration under § 702.906(e), any petition for review, whether filed prior to or subsequent to the filing of a timely motion for reconsideration, will be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party will begin upon issuance of a decision on reconsideration.

(c) The petition for review must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the Administrative Law Judge's decision with which the party disagrees;

(4) Be signed by the party or the party's authorized representative; and

(5) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge that would assist the Secretary in determining whether review is warranted.

(d) All documents submitted to the Secretary, including a petition for review, must be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210 or alternative method required by the Secretary. Documents are not considered filed with the Secretary until actually received.

§ 702.909 Discretionary review.

(a) Following receipt of a timely petition for review, the Secretary will determine whether the Administrative Law Judge's decision warrants review. This determination is solely within the Secretary's discretion.

(1) If the Secretary does not notify the parties within 30 days of the petition for review's filing that he or she will review the decision, the Administrative Law Judge's decision will be considered the final decision of the agency at the expiration of that 30 days.

(2) If the Secretary decides to review the decision, the Secretary will notify the parties within 30 days of the petition for review's filing of the issue or issues to be reviewed and set a schedule for the parties to submit written argument in whatever form the Secretary deems appropriate.

(b) If the Secretary decides to review the decision, the district director must forward the administrative record compiled before the Administrative Law Judge to the Secretary.

§ 702.910 Final decision of the Secretary.

The Secretary's review will be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law will be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision must be served upon all parties and the Chief Administrative Law Judge.

§ 702.911 Settlement of penalty.

At any time during proceedings under this subpart, the district director and the respondent may enter into a settlement of the penalty.

§ 702.912 Collection and recovery of penalty.

(a) When the determination of the amount of the penalty becomes final (*see* §§ 903(e), 904(d), 906(f), 909(a)(1), 910), the penalty is immediately due and payable to the U.S. Department of Labor on behalf of the special fund described in section 44 of the Act, 33 U.S.C. 944. The respondent will promptly remit the final penalty imposed to the Secretary of Labor.

(b) If such remittance is not received within 30 days after it becomes due and

payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2020–23223 Filed 12–11–20; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. 6215–C–04]

RIN 2502–ZA34

Housing Counseling Program: Revision of the Certification Timeline; Correction

AGENCY: Office of General Counsel, HUD.

ACTION: Final rule; correction.

SUMMARY: HUD published the Housing Counseling Program final rule on December 4, 2020, following a previous interim rule published on August 5, 2020. HUD publishes in the **Federal Register** a HUD docket number for each of its rules. This docket number does not get published in the Code of Federal Regulations, but is a number internal to HUD and provides a sequence number and a letter indicating whether the item is a proposed (P), interim final (I), or final (F) rule, notice (N) or correction (C). HUD is correcting two errors in the final rule published on December 4, 2020—the docket number for the December 4, 2020 final rule and a date referenced in the section of the December 4, 2020 rule that discusses the public comment that HUD received on the interim rule. These corrections do not affect the substance of the rule.

DATES: This correction is effective December 14, 2020.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel, Office of Legislation and Regulation, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10282, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay Service during working hours at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

In FR Doc. 2020–26194 appearing on page 78230 in the **Federal Register** on Friday, December 4, 2020, the following corrections are made:

Corrections

1. On page 78230, in the third column, correct the docket number immediately below the CFR part number to read ''[Docket No. FR–6215–F–03]''.

2. On page 78231, in the center column, under the heading ''II. The Public Comments,'' correct the first sentence to read ''The public comment period for the interim rule closed on September 4, 2020.''

Aaron Santa Anna,

Associate General Counsel, Office of Legislation and Regulations.

[FR Doc. 2020–27145 Filed 12–11–20; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0562; FRL–10014–11–Region 3]

Air Plan Approval; Pennsylvania; Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) Under the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions address certain reasonably available control technology (RACT) requirements, specifically those related to control technique guidelines (CTGs) for volatile organic compounds (VOCs) and the addition of regulations controlling VOC emissions from industrial cleaning solvents. These submissions are part of Pennsylvania's efforts to implement RACT for the 2008 ozone national ambient air quality standard (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on January 13, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0562. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 2020, (85 FR 12877), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of two SIP revisions which were submitted by the Pennsylvania Department of Environmental Protection (PADEP) and were intended to address RACT requirements for sources of VOC emissions required by section 184(b)(l)(B) of the CAA and the implementing regulations for the 2008 ozone NAAQS (80 FR 12264, March 6, 2015; 40 CFR part 51, subpart AA). In addition, the submittals were intended to address certain parts of the finding EPA issued in 2017 that Pennsylvania failed to submit required SIP revisions. ''Findings of Failure to Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards,'' (82 FR 9158; February 3, 2017). The formal SIP revisions were submitted by the Commonwealth of Pennsylvania on August 13, 2018.

II. Summary of SIP Revision and EPA Analysis

Pennsylvania's August 13, 2018 SIP submissions are intended to meet the RACT requirements for VOCs under section 184(b)(1)(B) of the CAA and the implementing regulations for the 2008 ozone NAAQS found at 40 CFR part 51, subpart AA. These submittals are discussed in detail in sections II.A. and B. of this preamble. Additional

information can be found in the NPRM and in EPA's Technical Support Document (TSD) in the docket for this action.

A. Pennsylvania's RACT Certification of CTGs and Request To Incorporate New Source Performance Standards Into the SIP

The first submittal is entitled: ''Certification of Reasonably Available Control Technology for Control Techniques Guidelines Under the 2008 Ozone National Ambient Air Quality Standards and Incorporation of 25 Pa Code Chapter 122 (Relating to National Standards of Performance for New Stationary Sources) into the Commonwealth's State Implementation Plan.'' This submittal: (1) Certifies that PADEP's adoption and implementation of regulations to control VOC emissions is consistent with EPA's CTGs and therefore represents RACT for these covered CTG sources for the 2008 ozone standard; (2) incorporates 25 Pa. Code Chapter 122 (relating to national standards of performance for new stationary sources) into the Pennsylvania SIP and certifies that those provisions represent RACT for certain facilities subject to such standards of performance; and (3) incorporates specific permit conditions for certain facilities for the purpose of establishing source-specific RACT-level controls for those facilities.

1. CTGs

PADEP developed regulations consistent with each CTG addressed by the submittal and has determined that each represents RACT for the 2008 ozone NAAQS. A list of the CTGs for which Pennsylvania has adopted regulations that PADEP considered in making this determination is found in Table 1, beginning on page 12 of the August 13, 2018 submittal. PADEP based this certification on the following: (1) Certification that Pennsylvania's regulations meet the CAA RACT requirements, are based on the most currently available technically and economically feasible controls, and represent RACT for implementation purposes pertaining to the 2008 8-hour ozone NAAQS; (2) certification that PADEP has adopted and implemented provisions or regulations addressing applicable EPA CTG source categories and that these provisions or regulations represent RACT control levels or control levels more stringent than RACT under the 2008 ozone NAAQS; (3) certification that PADEP has implemented all CTG RACT controls indicated in this SIP revision, based on the EPA's guidance and standards, and that they represent current RACT control levels under the 2008 8-hour ozone NAAQS; and (4) certification that PADEP has determined that there is a CTG source category for which it has made a negative declaration because there are no existing sources for RACT purposes in Pennsylvania.

PADEP has determined that there are no sources in Pennsylvania (excluding Philadelphia County and Allegheny County) covered by EPA's CTG ''Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners,'' (EPA–450/3–82–009; September 1982) and therefore submitted a negative declaration for that CTG source type.[1]

2. Incorporation by Reference of New Source Performance Standards (NSPS)

Pennsylvania has incorporated by reference and therefore adopted all of the New Source Performance Standards (NSPS) promulgated by EPA under section 111 of the CAA and found at 40 CFR part 60. 25 Pa. Code 122. PADEP determined that for certain source categories, the Federal requirements of 40 CFR part 60—Standards of Performance for New Stationary Sources, provide RACT level control. PADEP has submitted 25 Pa. Code 122 for inclusion into the SIP. PADEP's August 13, 2018 submittal specifically cites the requirements of 40 CFR part 60, subparts NNN (relating to synthetic organic chemical manufacturing industry (''SOCMI'') distillation operations), RRR (relating to SOCMI reactor processes), and subparts KKK, OOOO, and OOOOa (relating to natural gas processing facilities), and certifies that the requirements of these NSPS constitute VOC RACT for the 2008 ozone NAAQS for the affected source categories.

EPA's CTG entitled ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, EPA–450/4/–91–031, August 1993'' provides that the NSPS requirements of subparts NNN and RRR meet the RACT level controls recommended by the CTG. The required control efficiency of the CTG (98% destruction by weight, or 20 parts per million by volume (ppmv) dry basis, corrected to 3% oxygen) is the same as required by the NSPS.[2] Essentially, any process vent that is controlled with a combustion device to meet the requirements of the NSPS would meet the RACT recommendations of the CTG. PADEP identified five facilities subject to subparts NNN and RRR. Four of these are subject to control requirements, while one is subject only to record keeping requirements based on a de minimis emissions exemption, consistent with the CTG.

25 Pa. Code 122 also incorporates the Federal NSPS requirements of 40 CFR part 60 subparts KKK, OOOO, OOOOa, and the cross-referenced equipment leak detection and repair (LDAR) requirements of subparts VV and VVa. The NSPS requirements from subpart KKK are equivalent to the 1983 CTG for the oil and natural gas industry (1983 CTG).[3] Subparts OOOO and OOOOa incorporate the requirements of subpart KKK. PADEP provided a comparison between the applicable provisions of the NSPS and EPA's 1983 CTG.[4] Based on this comparison, PADEP has determined that the NSPS rules in 40 CFR part 60, subparts KKK, OOOO, and OOOOa, with cross references to subparts VV and VVa, are at least as stringent as the requirements in the 1983 CTG for this source category. Therefore, the Federal NSPS provisions applicable to all of Pennsylvania's current natural gas processing facility sources are sufficient to meet the requirements of the 1983 Oil and Natural Gas CTG for purposes of the 2008 ozone NAAQS. EPA notes that PADEP's August 13, 2018 submittal did not address EPA's ''Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA–453/B–16–001, October 2016,'' (2016 Oil and Gas CTG). Nothing in this action is intended to speak to SIP obligations related to the 2016 Oil and Gas CTG.

3. Incorporation of Source Specific Permit Limits

PADEP found only two sources covered by the ''Shipbuilding/Repair ACT (EPA 453/R–94–032, April 1994)'' and the EPA's ''CTG for Shipbuilding and Ship Repair Operations (Surface Coating) (61 FR 44050, August 27, 1996)'' and one source subject to ''Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical

[1] In Pennsylvania, the SIP program is implemented primarily by PADEP, but also by local air agencies in Philadelphia County (the City of Philadelphia Air Management Services (AMS)) and Allegheny County (Allegheny County Health Department (ACHD)). EPA has previously approved SIP submittals addressing CTG requirements for AMS and ACHD. See 84 FR 56946; October 24, 2019 and 84 FR 18736; May 2, 2019, respectively.

[2] See 40 CFR 60.662 and 60.702.

[3] See Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA–453/B–16–001, October 2016, Section 8.3.2.1. pp. 8–12, available at: *https://www.epa.gov/sites/production/files/2016-10/documents/2016-ctg-oil-and-gas.pdf.*

[4] See Appendix F of PADEP's August 13, 2018 submittal.

Manufacturing Industry, EPA–450/3–84–015, December 1984'' (SOCMI CTG). Rather than promulgate a rule to address the RACT requirements of those two CTGs for only three affected sources, PADEP has incorporated the control requirements of the CTGs into Federally enforceable permits and submitted the applicable permit terms for incorporation into the SIP.

Redacted versions of Permit Nos. 25–00930 (Donjon Shipbuilding) and 26–00545 (Heartland Fabrication) were submitted for incorporation into the Commonwealth's SIP. Generally, the control strategy is to limit the VOC content of the coatings and materials used. The relevant portions of the permits are consistent with the Shipbuilding and Ship Repair Operations (Surface coating) CTG and satisfy the RACT requirements for these sources. A redacted version of Permit No. 39–00024 (Geo. Specialty Chem. Trimet Div.) was also submitted for incorporation into the SIP. PADEP certified that this is the only source that falls within the SOCMI CTG. Pursuant to that CTG, ''It is recommended that air oxidation facilities for which an existing combustion device is employed to control process VOC emissions should not be required to meet the 98 percent emissions limit until the combustion device is replaced for other reasons. In other words, no facility would be required to upgrade or replace an existing control device.'' [5] PADEP determined that the facility's formaldehyde process and catalytic incinerator were installed in 1980, before the December 1984 applicability date of the CTG. PADEP further determined that neither the process nor the control device have been modified since the 1980 installation date. PADEP therefore certified that the existing control strategy and emission limitations in the permit constitute RACT for this particular source.

B. Regulatory Revisions Related to VOCs and NO_X RACT

The changes proposed by PADEP in this second submittal, entitled ''Control of Volatile Organic Compound Emissions from Industrial Cleaning Solvents; General Provisions; Aerospace Manufacturing and Rework; Additional RACT Requirements for Major Sources of NO_X and VOCs,'' (2006 ICS CTG) include: (1) The addition of 25 Pa. Code 129.63a (relating to the control of VOCs from industrial cleaning solvents (ICS)); (2) amendments to 25 Pa. Code sections 121.1 and 129.51 (definitions and ''general'' provisions, respectively) in order to support the addition and implementation of section 129.63a; (3) a correction to the VOC emission limit table in 25 Pa. Code section 129.73 (relating to aerospace manufacturing and re-work); and (4) amendments to 25 Pa. Code sections 129.96, 129.97, 129.99, and 129.100 to clarify certain requirements and to update the list of exemptions under RACT II because of previously adopted presumptive VOC RACT regulations.

PADEP determined that the recommendations in EPA's 2006 ICS CTG are technically and economically feasible for sources in this source category, and developed section 129.63a to adopt the relevant limits of the 2006 ICS CTG to implement VOC RACT for sources subject to this CTG in Pennsylvania. Pursuant to section 129.63a(a), the regulation applies to owners/operators of facilities in which industrial cleaning solvents are ''used or applied in a cleaning activity at a cleaning unit operation, a work production-related work area, or a part, product, tool, machinery, equipment, vessel, floor or wall.'' Facilities are subject to section 129.63a if the combined actual emissions of VOCs from all subject cleaning operations exceed 2.7 tons in any 12-month rolling period, before consideration of controls.

As previously discussed, EPA recently approved sections 129.96, 129.97, and 129.100, and conditionally approved sections 129.98 and 129.99 as part of the May 9, 2019 final action related to Pennsylvania's RACT II regulations.[6] The RACT II Rule applies statewide to existing major NO_X and/or VOC sources in Pennsylvania, except those subject to other Pennsylvania regulations, as specified in 25 Pa. Code 129.96(a)–(b). The emission limits and substantive requirements of sections 129.96, 129.97, 129.99, and 129.100 were not amended. Other specific requirements of PADEP's August 13, 2018 submittals and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received five sets of relevant comments on the March 5, 2020 NPRM (85 FR 12877). All comments received are in the docket for this action. A summary of the comments and EPA's responses are provided herein.

The first set of comments raised concerns about EPA's proposed approval based generally on the adequacy of PADEP's analysis of CTG RACT, and specifically on the analysis for natural gas processing plants.[7]

Comment 1: The commenters first allege that PADEP's analysis is flawed because it hinges upon a determination that Pennsylvania's VOC controls are ''. . . at least as stringent as'' the CTGs. The commenters assert that equivalency with the CTGs is not the test that must be passed in a RACT analysis, but rather a starting point. The commenters contend that although CTGs are presumptive norms, EPA is not required to defer to states' reliance on them, nor do CTGs create a rebuttable presumption for the public to overcome. The commenters also take issue with PADEP's assertion that they are unaware of changes in control technology significant enough to generate different results in a RACT analysis. The commenters assert that it is not enough to be unaware, and further, that it is not the public's responsibility to raise such awareness. Additionally, the commenters assert that the absence of information regarding PADEP's review process makes it impossible to determine whether the submittal meets RACT requirements, and whether EPA properly reviewed the submittal in accordance with CAA sections 110(k)(3) and 110(l). Further, the commenters assert that RACT analyses are supposed to be ''technology forcing,'' and that it is implausible that a thorough and proper analysis of all forty-three CTGs, especially the very old ones, would find that they continue to represent RACT for the affected sources. Finally, the commenters assert that EPA has failed its statutory duty under CAA section 183(b) to review and revise the CTGs and must do so, particularly if limited state resources are to be considered a legitimate reason for failing to perform a more thorough analysis.

Response 1: States have primary responsibility for ensuring air quality within their jurisdictions by submitting SIPs that specify the manner by which the NAAQS will be achieved and maintained. Under the CAA, EPA is tasked with developing CTGs containing recommended presumptive RACT-level controls for certain categories of VOC sources, see CAA sections 108 and 183, while states with Moderate or above nonattainment areas or located in the Ozone Transport Region (OTR) are

[5] See ''Control of Volatile Organic Compound Emissions from Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry, EPA, 450/3–84–015, December 1984,'' Page 4–1, available at: *https://www3.epa.gov/airquality/ctgact/198412vocepa4503-84-015airoxidationprocesses.pdf.*

[6] See 84 FR 20274.

[7] Comments 1 and 2 of this preamble, were submitted jointly on behalf of multiple groups. Therefore, responses 1 and 2 of this preamble refer to ''commenters'' in plural.

tasked with ensuring that sources subject to those CTGs adopt RACT-level controls for VOCs. As EPA stated in 1979 ''. . . each CTG contains recommendations to the States of what EPA calls the ''presumptive norm'' for RACT, based on EPA's current evaluation of the capabilities and problems general to the industry.'' State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas—Supplement (On Control Techniques Guidelines), 44 FR 53761, 53762 (September 17, 1979) (hereafter CTG Supplement). The CTG Supplement then states ''[f]or emission limitations that are consistent with the information in the CTGs, therefore, the State may be able to rely solely on the information in the CTG to support its determination that the adopted requirements represent RACT.'' For emission limitations that are not consistent with the CTGs, ''EPA believes that the State must submit justification of its own, to support its determination.'' Id. at 53762.

It is still EPA's view that CTGs represent the presumptive norm for RACT. In the October 20, 2016 memo entitled ''Implementing [RACT] Requirements for Sources Covered by the 2016 Control Techniques Guidelines for the Oil and Natural Gas Industries,'' EPA reiterated that ''[t]he recommended controls in the 2016 Oil and Gas CTG are the 'presumptive norm' based on general industry parameters and published assumptions.'' Memo, p.2.[8] [9] EPA has consistently made this claim that CTGs represent the presumptive norms for RACT. See Control of VOC Emissions from Coating Operations at Aerospace manufacturing and Rework Operations, (October 1996), p. 1–1; Control of [VOC] Emissions from Wood Furniture Manufacturing Operations (April 1996), pp. 1–1 to 1–2.[10]

EPA's implementation rule for the 2008 ozone NAAQS allows an approach ''. . .where states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, as well as all relevant information (including recent technical information and information received during the public comment period).'' [11] The 2008 Ozone Implementation Rule also allowed states to conclude that CTG and ACT sources already addressed by RACT determinations for the 1-hour and/or 1997 ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement, ''. . . because the fundamental control techniques, as described in the CTGs and ACTs, are still applicable.'' [12]

In the absence of contrary information, Pennsylvania can rely on the equivalency of its existing CTG implementation regulations with the recommended RACT controls in the CTGs. If Pennsylvania has determined that their existing RACT-level controls for sources covered by certain CTGs are equivalent to controls recommended in the CTGs, and in the absence of countervailing information, Pennsylvania's determination is entitled to a certain amount of deference. If the state adopts a level of VOC control less than the recommended CTG level of VOC control, then the state must provide information supporting its determination that the CTG RACT level controls are not technically or economically feasible, and EPA must determine if that deviation is justified. Pennsylvania has not indicated that it is deviating from CTG levels of control for any of the sources currently subject to CTGs within its jurisdiction, and the commenters have not submitted any specific information suggesting otherwise for any CTG except the 1983 Oil and Gas CTG.

The commenters also claim that Pennsylvania must do more than be ''unaware'' of new control technologies by affirmatively searching for information about such technologies. However, Pennsylvania did conduct an assessment of the NSPS and NESHAPs applicable to CTG sources that could have shown new technological developments. As noted by the commenters, Section 6 of PADEP's submittal discusses the process that it followed to evaluate whether the regulations Pennsylvania adopted to implement the CTGs still contain RACT-level controls consistent with the 2008 ozone NAAQS. The submittal states: ''PADEP staff began the certification process by reviewing the CAA RACT requirements and CTG recommendations, followed by the review of additional guidance or regulations currently implemented for the affected VOC sources, including but not limited to, EPA's Available Control Technology (ACT) documents, Federal NSPS in 40 CFR part 60, and National Emission Standards for Hazardous Air Pollutants in 40 CFR part 63 for the applicable source categories.'' While PADEP did not explicitly state that it researched the availability of new VOC control technologies for sources subject to CTGs, a review of the NSPS and NESHAPS applicable to CTG-covered sources would likely turn up any new control technologies available for VOCs or control of Hazardous Air Pollutants (HAPs), some of which are also VOCs (e.g benzene, toulene, formaldehyde). See CAA section 112(b), 40 CFR 51.100(s).

Furthermore, while it is not necessarily the public's job to make Pennsylvania aware of new control technologies, EPA notes that an important reason for providing the opportunity for public comment at both the state and Federal level is to give the public and stakeholders the opportunity to identify technologies or control methods that the state or Federal government has not considered. Other than the 1983 Oil and Gas CTG, the commenters have not provided specific information challenging the recommended RACT level of controls in the other CTGs which Pennsylvania is certifying as still meeting the RACT requirements of the 2008 ozone NAAQS. Also, PADEP, as the primary CAA enforcement and permitting entity within most of Pennsylvania, is well-positioned to be aware of whether new control technologies exist which could be used by the many varied sources it regulates. In the absence of information provided by the commenters showing that there are new technologies available to control VOCs at the sources covered by the CTGs, and in light of Pennsylvania's statement that it reviewed the NSPS and NESHAPs applicable to CTG sources, EPA will not second-guess the validity of Pennsylvania's search effort.

Regarding the assertion that RACT must be ''technology forcing,'' EPA notes that RACT limits are not meant to be the lowest achievable emissions rate for each particular source. Rather, since the 1970's, EPA has consistently defined ''RACT'' as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,''

[8] The memo can be found at *https://www.epa.gov/sites/production/files/2016-10/documents/implementing_reasonably_available_control_technology_requirements_for_sources_covered_by_the_2016_control_techniques_guidelines_for_the_oil_and_natural_gas_industry.pdf* (last accessed July 7, 2020).

[9] See 85 FR 12877, March 5, 2020.

[10] These and other CTGs can be found at *https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques.*

[11] See 80 FR 12279, March 6, 2015.

[12] *Id.*

and 44 FR 53761 at 53762 (September 17, 1979). As noted in this long-standing definition, technical and economic feasibility must also be considered when assessing whether a new technology should be adopted as the presumptive norm of RACT level control for CTG sources. After reciting the above definition of RACT, the Strelow memo goes on to state: ''Thus, RACT encompasses stringent, or even 'technology forcing,' requirement that goes beyond simple 'off-the-shelf' technology.'' Strelow Memo, p. 2.[13] In the paragraph following this statement, the Strelow memo also states that other factors should be considered in determining RACT: ''The determination of RACT and the corresponding emission rate, ensuring the proper application and operation of RACT, may vary from source to source due to source configuration, retrofit feasibility, operation procedures, raw materials, and other technical or economic characteristics of an individual source or group of sources.'' Id. Thus, RACT is not necessarily a ''one-size-fits-all'' technology. The commenter quotes the following from EPA's discussion of RACT in the 1977 CAA amendments ''In many cases appropriate controls would be more or less stringent.'' See Comment of Air Law for All, p. 6, citing EPA's CTG Supplement, 44 FR 53761, 53762 (September 17, 1979).

EPA's role is to review the SIP or SIP revision. EPA cannot disapprove of state regulations that form a SIP or SIP revision because EPA decides that the regulations are not stringent enough, as long as the SIP meets the CAA requirements. The commenters assert that it is ''implausible'' that a thorough review of all 43 CTGs would find that all still meet RACT requirements for the affected sources, and that PADEP and EPA have neglected to look for information to the contrary. However, with the exception of the 1983 Oil and Gas CTG discussed under ''Response 2,'' the commenters have not provided any available information allegedly overlooked or ignored by PADEP, nor identified any applicable CAA requirements lacking in PADEP's submittal and EPA's proposed approval.

EPA also does not agree that Pennsylvania's submittal lacked enough information to determine whether Pennsylvania's current regulations still meet RACT requirements. As noted by the commenters, Section 6 of PADEP's submittal discusses the process that it used to evaluate whether the regulations Pennsylvania adopted to implement the CTGs still contain RACT-level controls consistent with the 2008 ozone NAAQS. The submittal states: ''PADEP staff began the certification process by reviewing the CAA RACT requirements and CTG recommendations, followed by the review of additional guidance or regulations currently implemented for the affected VOC sources, including but not limited to, EPA's Available Control Technology (ACT) documents, Federal NSPS in 40 CFR part 60, and National Emission Standards for Hazardous Air Pollutants in 40 CFR part 63 for the applicable source categories. Each regulation adopted by Pennsylvania has been evaluated against applicable CTGs, and were found to continue to meet RACT for the applicable source categories.'' Table 1 in the submittal then lists each CTG and the citation for the Pennsylvania regulation adopted to implement each CTG, with a brief description of how the CTG limits emissions of VOCs. This allows for a straight-forward comparison of Pennsylvania's adopted regulation with the presumptive RACT set forth in the applicable CTG or CTGs. Again, the commenters also did not identify new technologies or updated limits that should have been considered for any CTG other than the 1983 Oil and Gas CTG. Pennsylvania's failure to ''show [its'] work'' did not in this instance prevent the commenters from doing its own work (*i.e.* search for newer control technologies) in response.

Finally, with regard to the commenters' claim that EPA has failed to comply with its statutory obligation under CAA section 183(b) to review and revise the CTGs, EPA notes that this comment is beyond the scope of this action. EPA's role in this action is to review the SIP submitted by Pennsylvania and, if it meets the applicable requirements of the CAA, approve the SIP. See CAA section 110(k)(3) (''In the case of any submittal on which the Administrator is required to act. . ., the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter.''). If the commenters believe that EPA has an outstanding obligation to review and revise existing CTGs, the commenters may petition the Agency to do so.

EPA evaluated PADEP's submittal, as described in the NPRM, and reiterated in this document. In accordance with CAA section 110(l), EPA believes approval of the August 13, 2018 submittal will not interfere with any applicable requirement concerning attainment and/or reasonable further progress, or any other applicable CAA requirements. The net effect of the continued operation of controls already implemented in accordance with the CTGs, the addition of new controls via the newly adopted permit requirements, and the newly adopted CTG for Industrial Cleaning Solvents, will be to maintain the current level of reduction of VOCs for many sources while reducing VOC emissions from newly covered sources. Therefore, EPA asserts that approval of this certification for section 182(b)(2) will not interfere with attainment or reasonable further progress for the 2008 ozone NAAQS, or any other identified CAA requirement. For these reasons, EPA disagrees with the commenters and is finalizing approval of PADEP's submittal, in accordance with CAA section 110(k)(3).

Comment 2: The commenters assert that EPA's 2008 ozone implementation rule required that states refer to existing CTGs and alternative control techniques (ACTs) for purposes of meeting their RACT requirements, as well as all relevant information available at the time they are developing the SIP. The commenters allege that PADEP failed to evaluate a number of available control technologies or strategies related to leak detection and repair (LDAR) requirements at natural gas processing facilities, instead relying on a conclusory determination that applicable new source performance standards (NSPS) are at least as stringent as the requirements of the 1983 CTG.[14] The commenters point out that PADEP's submittal identifies fourteen natural gas processing facilities subject to VOC RACT under the 1983 CTG. Ten of these are older gas processing plants that are also subject to the NSPS of 40 CFR part 60, subpart KKK (and thus the LDAR requirements of subpart VV, which is incorporated by reference into subpart KKK), by the applicability criteria of subpart KKK. The other four are newer gas processing plants that are subject to NSPS OOOO because they were constructed or

[13] On August 27, 2020, the Third Circuit Court of Appeals issued a decision in *Sierra Club* v. *U.S. EPA, et al.,* No. 19–2562, which struck down EPA's approval of certain provisions of Pennsylvania's RACT II SIP related to existing Electric Generating Units equipped with Selective Catalytic Reduction for the reduction of Oxides of Nitrogen. In that ruling, the Court pointed to the ''technology forcing'' language of the Strelow memo incorporated with EPA's longstanding definition of RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' Opinion at p.5. Thus, the court affirmed EPA's longstanding approach to analyzing RACT, that is to determine what is technologically and economically feasible.

[14] ''Control of Volatile Organic Compound Equipment Leaks from natural Gas/Gasoline Processing Plants;'' EPA–450/3–83–007; December 1983.

reconstructed after August 23, 2011, which is one of the applicability criteria for subpart OOOO. Subpart OOOO incorporates by reference the more stringent LDAR requirements of subpart VVa. The commenters assert that EPA should disapprove PADEP's submittal because they did not evaluate whether applying the LDAR requirements of VVa to the older facilities was cost effective.

In addition, because EPA initially evaluated the cost effectiveness of subparts VV and VVa as part of the best system of emissions reduction (BSER) analysis for the NSPS, then re-evaluated cost-effectiveness as part of the promulgation of subpart OOOO, and did so again for the 2016 Oil and Gas CTG, the commenters contend that the LDAR requirements of VVa are ''available,'' and should have been evaluated for control of VOCs at the ten older facilities. The commenters further assert that although the cost analysis performed during the promulgation of subpart OOOO only addressed new/reconstructed sources, there are no retrofit costs associated with the older plants switching from following VV to following VVa, and therefore VVa should have been considered and required for the older facilities.

The commenters also identify the Texas Commission on Environmental Quality's (TCEQ) ''28LAER'' program as being an additional available control technology which could and should have been evaluated by PADEP. Additionally, the commenters note that the 2016 Oil and Gas CTG identifies optical gas imaging (OGI) as an alternate work practice which is another available control option, but PADEP failed to consider OGI in its analysis.

To support their argument that the LDAR program required by VVa is both available and economically reasonable, the commenters performed a cost effectiveness analysis and determined that VVa's cost of removal is $3766/ton of VOC removed. The commenters assert that EPA determined in the 2016 Oil and Gas CTG that $4400–$5000/ton of VOC removed was reasonable, and that DEP's own analysis in their 2006 RACT submittal for the 1997 ozone NAAQS determined that $3000–$5000/ton was reasonable. Therefore, the commenters assert that the LDAR requirements of VVa are technically and economically reasonable and should have been evaluated and applied. In sum, the commenters assert that PADEP's submittal fails to adequately justify its RACT determination and should therefore be disapproved.

Finally, the commenters identify an error in EPA's approval of PADEP's 2006 VOC RACT submittal as it pertains to natural gas processing plants. PADEP's 2006 RACT submittal included a negative declaration that there were no sources covered by the 1983 CTG, but the commenters allege that PADEP's 2018 submittal identifies six plants that were constructed before 2006 and therefore subject. Additionally, EPA didn't approve the submittal until 2017, by which time all 14 plants had been constructed. The commenters assert that EPA must now correct that error. To the extent EPA believes this is beyond the scope, the commenters state that this comment should be considered a petition under section 553(e) of the Administrative Procedures Act (APA).

Response 2: As clearly stated in the NPRM for this SIP, Pennsylvania's SIP submission is only certifying for the 1983 Oil and Gas CTG, and is not intended to be a certification for the 2016 Oil and Gas CTG.[15] 85 FR 12877, 12880, March 5, 2020. This has two ramifications. First, when developing this SIP submission, Pennsylvania only evaluated whether existing natural gas processing plants were meeting the recommended RACT standards of the 1983 CTG. Nothing in Pennsylvania's SIP submission claims to address whether these plants meet the control levels recommended by the 2016 Oil and Gas CTG. Pennsylvania has published a proposed regulation to address the 2016 Oil and Gas CTG, and the proposal states that when the regulation is final, it will be submitted to EPA as a revision to the State's SIP. 50 Pa B. 2633 (May 23, 2020). The second ramification is that EPA does not have before it in this SIP the question of whether these natural gas processing plants have adopted the RACT level controls recommended in the 2016 Oil and Gas CTG. Therefore, nothing in EPA's action on this SIP should be interpreted as a decision concerning the adequacy of Pennsylvania's future SIP submittal(s) for the 2016 Oil and Gas CTG.

Moreover, the 2016 Oil and Gas CTG explicitly states that it replaces the 1983 Oil & Gas CTG. Section 8 of the CTG, entitled ''Equipment Leaks from Natural Gas Processing Plants,'' says: ''This CTG and the recommended RACT included in this CTG replaces the following: Guideline Series. Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. December 1983. EPA–450/3–83–007.'' 2016 Oil & Gas CTG, p.8–1. At the time Pennsylvania submitted this SIP in August 2018, the 1983 Oil and Gas CTG had been superseded by the 2016 CTG, but Pennsylvania had not yet adopted new regulations for the 2016 CTG. Given those circumstances, Pennsylvania decided to certify for the 1983 CTG rather than include no certification at all for natural gas processing plants.

The main concern of the commenters seems to be that in certifying for the 1983 CTG, Pennsylvania should have evaluated other and newer sources of information, including the 2016 CTG, in order to determine whether the control measures in the 1983 CTG still constitute RACT levels of control. However, EPA already has done much of this work in updating the 2016 CTG, and Pennsylvania is not certifying in its SIP submission that the control measures they have in place for the 1983 CTG meet the 2016 CTG. Moreover, when Pennsylvania submitted this SIP, an updated SIP addressing the 2016 CTG was not yet due because the 2016 CTG gave affected states two years from the date of publication of the 2016 CTG (October 27, 2016, 81 FR 74798) to submit a SIP addressing the CTG. Therefore, EPA thinks that these concerns and comments are better directed to Pennsylvania's future SIP submission(s) for the 2016 Oil and Gas CTG and any certification contained therein for the purpose of meeting section 182(b)(2) of the CAA. Asking Pennsylvania to re-evaluate RACT level controls for the oil and gas industry in this SIP submittal, for the purpose of certifying for a superseded 1983 CTG, seems like an unnecessary exercise for the state, and EPA declines to require it as part of our consideration of this SIP.

In reaching this conclusion, EPA is not drawing any further conclusions about other claims made by the commenters, such as what the 2008 ozone implementation rule requires, whether newer leak detection and repair (LDAR) technologies are available for gas processing plants, the cost-effectiveness of applying NSPS subpart VVa to older gas processing plants, or the cost analysis submitted by the commenters. EPA is merely saying that in the context of the specific facts of Pennsylvania's certification for the 1983 Oil and Gas CTG, it does not make sense to analyze these issues until Pennsylvania submits its SIP revision addressing the 2016 Oil and Gas CTG. At that time, the issues identified by the commenters should be addressed in Pennsylvania's SIP submission, and if not addressed, raised again by the

[15] ''EPA notes that PADEP's August 13, 2018 submittal did not address EPA's 'Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA–453/B–16–001, October 2016,' (2016 Oil and Gas CTG). EPA is, therefore, not proposing action on the submittal in relation to the 2016 Oil and Gas CTG.'' 85 FR 12877, 12880, March 5, 2020.

commenters in any action EPA takes to approve that SIP.

The commenters' concern that many of the CTGs have not been reviewed and updated for many years is noted, but this concern for the 1983 Oil and Gas CTG has been addressed by EPA with the 2016 CTG, and PADEP is in the process of updating its regulations to address the 2016 CTG. PADEP submitted this revision with the intention of meeting the requirements of the old CTG. EPA notes that PADEP has published a notice of proposed rulemaking in order to adopt the requirements of the 2016 CTG.[16] When the provisions of that action are effective and submitted to EPA as a revision to the SIP, they will be evaluated for consistency with the 2016 CTG and RACT. In the meantime, EPA is finalizing approval of the August 13, 2018 submittal.

With respect to the commenters' assertion that EPA must correct the erroneous approval of a 2006 submittal from PADEP, that is beyond the scope of this action, which is only evaluating whether the particular provisions of Pennsylvania's August 13, 2018 SIP meet the requirements of the CAA. Nevertheless, EPA acknowledges that, based on the information in Table A1 of Appendix A in Pennsylvania's August 13, 2008 submittal, EPA's 2017 approval of Pennsylvania's negative declaration for the 1983 Oil and Gas CTG under the 1997 ozone NAAQS may have been in error.[17] According to Table A1, there were six sources which were constructed prior to Pennsylvania's September 25, 2006 submittal, but for which PADEP declared that there were no sources subject to the 1983 Oil and Gas CTG. However, EPA disagrees that the remedy for this error is to now disapprove the 2006 submittal with respect to 1983 CTG RACT requirements for natural gas processing plants. The sources at issue did not escape regulation, and were subject to the same RACT level controls via the NSPS which Pennsylvania has certified are consistent with the 1983 CTG. Even if EPA were now to disapprove PADEP's 2006 submittal, the remedy would be for Pennsylvania to acknowledge that those sources existed in 2006, and that they are subject to RACT level controls consistent with the 1983 CTG, which they have already done in their August 13, 2018 submittal.

Comment 3: The commenter expresses uncertainty and sought clarification on the interplay between the CTGs and the NSPS, specifically as it pertains to applicability. The commenter asks whether PADEP's reliance on NSPS requirements to implement RACT for certain CTG categories has the effect of applying NSPS requirements to any source subject to such a CTG, regardless of the effective date of the NSPS, or whether the source had undergone modifications.

Response 3: NSPS are Federal regulations that are applicable to sources nationwide, regardless of an area's status with respect to an ozone NAAQS or whether the state has adopted the NSPS as part of its SIP. In some cases, such as with subpart KKK discussed previously, EPA and some states (including Pennsylvania) have determined that the control requirements of a particular NSPS are both equivalent to the control requirements of a particular CTG and constitute RACT-level controls. A source that is subject to the CTG can therefore meet RACT control requirements by meeting the NSPS control requirements, and the state can meet its obligation under CAA section 182(b)(2) for that particular CTG so long as the NSPS is incorporated into the SIP (as Pennsylvania is doing here). In the case where the NSPS control requirements also constitute RACT for the CTG sources, if all sources subject to the particular CTG in the state are also subject to the NSPS (that is, meet all the applicability criteria for the NSPS and are in compliance), then the state would not have to adopt separate, stand-alone regulations to implement the CTG requirements because these sources would already be meeting RACT via the NSPS. As discussed in Section II of this preamble, and in response to Comment 2, PADEP identified all sources which were subject to the 1983 Oil and Gas CTG, identified the various NSPS provisions to which each source is already subject, and determined that the NSPS control requirements are at least as stringent as the controls required by the 1983 CTG, which are presumed to be RACT-level controls. Similarly, PADEP identified all sources to which EPA's CTG entitled ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, EPA–450/4/–91–031, August 1993'' apply, and identified how the NSPS requirements applicable to those same sources are at least as stringent as the CTG, which are presumed to be RACT-level controls. PADEP's incorporation by reference of the NSPS, and the incorporation of 25 Pa Code 122 into the Pennsylvania SIP, does not confer NSPS applicability upon sources that are otherwise not subject to that NSPS because the source does not meet the applicability criteria of the NSPS. Rather, PADEP has determined that all of the sources subject to the 1983 Oil and Gas CTG, and the SOCMI CTG are also currently subject to NSPS provisions, and that these NSPS control requirements are at least equivalent to RACT level controls. The incorporation of 25 Pa 122 into the SIP is the vehicle through which PADEP and EPA are ensuring that the Pennsylvania SIP contains federally enforceable RACT control measures for the subject sources. Incorporation of the NSPS into the SIP does not mean that when a source covered by a CTG is exempt from a NSPS due to, for example, being constructed before the NSPS applicability date, that source is automatically subject to the NSPS. In that instance, Pennsylvania would need to find another mechanism for incorporating Federally enforceable RACT level control measures into the SIP, such as adopting a stand-alone regulation (as Pennsylvania did with 25 Pa Code 29.163a, discussed in Section II.B of this preamble), or submitting a permit with source specific RACT determinations (as Pennsylvania did with the permits discussed in Section II.A.3 of this preamble). Therefore, the commenter's assertion that ''. . . the EPA and PADEP are now requiring any source that falls under the CTG category, regardless of modifications and repairs to the source, to now be subject to the NSPS,'' is incorrect.

Comment 4: The commenter asserts that EPA cannot approve provisions related to subparts OOOO and OOOOa as RACT for the 1983 Oil and Gas CTG, because the Agency has proposed significant revisions to both subparts. The commenter asserts that EPA will have to re-evaluate whether these NSPS, if modified, continue to represent RACT, and therefore must wait until completion of any revisions before asserting that they meet RACT requirements.

Response 4: EPA disagrees with the commenter. EPA's analysis in the 1983 CTG determined that the existing levels of NSPS control were those that were economically and technologically feasible and thereby met the definition of RACT for this category of sources. Pennsylvania's incorporation by reference of the NSPS automatically updates to include new or revised NSPS. However, the adoption of any new or expanded control requirements

[16] *http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-21/684.html.*

[17] 82 FR 31464, July 7, 2017.

in these NSPS would not automatically become presumptive RACT for these two CTGs and may require additional analysis to determine whether the costs of the revised NSPS controls meet the economic feasibility portion of EPA's longstanding definition of RACT. Therefore, EPA is finalizing approval of PADEP's submittal.

Comment 5: The commenter asserts that EPA cannot approve subparts NNN and RRR as RACT for sources subject to the CTG for reactor and distillation processes in the synthetic organic chemical manufacturing industry (SOCMI).[18] According to the commenter, hundreds of chemical compounds are not subject to subparts NNN or RRR. Because PADEP attempted to identify sources subject to the CTG by searching for sources subject to the NSPS, commenter asserts that the entire universe of sources subject to the CTG was not captured.

Response 5: EPA disagrees with the commenter's assertions. First, PADEP searched for sources known to be operating in the SOCMI sector using, at a minimum, their ''Air Information Management System,'' or ''AIMS.'' Pennsylvania's SIP submittal notes, in response to a similar comment made during the state public notice period, that any sources that were not identified by this search would likely be operating in violation of the NSPS, as well as Pennsylvania's permitting regulations. EPA thinks that PADEP, using both the information at its disposal and its knowledge of the sources of VOC emissions gained from years of inspections, enforcement, and SIP development, has likely identified all the sources potentially subject to this CTG. Those sources not identified are still subject to the CTG, and as noted in Pennsylvania's submission, are likely in violation of multiple Pennsylvania requirements and Federal NSPS. The commenter has not provided any evidence to the contrary, and in the absence of such evidence, EPA believes that PADEP made a reasonable and rational effort to identify sources potentially subject to the SOCMI CTG.

Second, it would be very difficult, if not impossible, for an air agency to search for sources subject to the CTG or NSPS based solely on its use of a particular VOC. The list of chemicals covered by the 1993 CTG for Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (the ''SOCMI CTG'') is extensive.[19] Also, some of the NSPS applicable to the SOCMI industry regulate the listed chemicals if they are a product, by-product, co-product, or intermediary. SOCMI CTG, pp. 7–3 to 7–11. EPA is not aware of any database which would identify sources potentially subject to the SOCMI CTG based on the list of chemicals covered, particularly when the chemicals covered include some chemicals used as intermediaries or produced as co-products. As EPA noted in the CTG, ''. . . there are different regulations that can apply to the same SOCMI facility, process unit, or process vent. For example, a given SOCMI facility could be subject to all three NSPS (air oxidation,[20] distillation,[21] reactor processes [22]), to the Hazardous Organic NESHAP (HON) [23] (for process vents), and to regulations developed in accordance with this CTG. The required control efficiency for a combustion control device is the same in all these various regulations. Thus, any process vent that is controlled with a combustion device to meet the requirements of the HON, NSPS, or regulations in accordance with the air oxidation CTG would meet recommended RACT in this CTG, and it is *unnecessary to test for applicability for VOC regulation developed in accordance with this CTG* (emphasis added).'' [24] A review of Table A–1 in the CTG (cited by the commenter) indicates that there are very few, if any, compounds covered by the CTG that are not also covered by one or more of the NSPS/NESHAP regulations which the CTG identifies as providing RACT level controls. Therefore, EPA is approving PADEP's submittal.

Comment 6: Additionally, two commenters asserted that EPA should extend the public comment period due to the extenuating circumstances resulting from the COVID–19 pandemic. One of the commenters additionally requested a 15-day extension, based on the complexity and size of Pennsylvania's submittal.

Response 6: EPA acknowledges the many and varied challenges presented by the pandemic. However, the NPRM for this action was published prior to any interruptions in normal business activities. The supporting materials associated with the NPRM were available online, without interruption, for the entire 30-day public comment period. Additionally, the Regional staff, listed in the **FOR FURTHER INFORMATION CONTACT** section of the NPRM, were working and available throughout the entire comment period. Furthermore, neither commenter identified a specific limitation arising from the pandemic that prevented them or anyone else from being able to adequately review the proposed approval and submit comments. With respect to commenter's assertion that the size and complexity of the submittal warrant a 15-day extension, EPA disagrees. While EPA acknowledges that the action is complex and addresses two submittals concurrently, large portions of the submittals are included as background information and/or supporting documentation. For example, there are approximately sixty-five pages of documentation related to Pennsylvania's public notices. Consequently, EPA finds that the size and complexity of the actual analysis in Pennsylvania's submittals is not extraordinary, and therefore does not require an extraordinary or extended comment period. Therefore, EPA disagrees with the commenters, and is denying the request for an extended public comment period.

IV. Final Action

EPA is approving Pennsylvania's August 13, 2018 submittals as a revision to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Pennsylvania rules regarding definitions and permitting requirements discussed in section II of this preamble. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be

[18] ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation operations Processes in the Synthetic Organic Chemical Manufacturing Industry;'' EPA–450/4/91–031; August 1993 (1993 CTG).

[19] See Table 7–1 of the SOCMI CTG for a list of the chemicals covered by the SOCMI CTG, the 1984 Air Oxidation CTG, and various NSPS. SOCMI CTG, p.7–3.

[20] 40 CFR part 60, subpart III.

[21] 40 CFR part 60, subpart NNN.

[22] 40 CFR part 60, subpart RRR.

[23] 40 CFR part 63, subpart G.

[24] See 1993 CTG at pp 1–2, 1–3.

incorporated by reference in the next update to the SIP compilation.[25]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action relating to VOC RACT measures in Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 22, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020:

■ a. The table in paragraph (c)(1) is amended by:

■ 1. Under ''Chapter 121—General Provisions,'' adding a third entry for ''Section 121.1'' after a second existing entry for ''Section 121.1'';

■ 2. Under Title 25, adding the heading entitled ''Chapter 122—National Standards of Performance for New Stationary Sources'' and entries ''Section 122.1'', ''Section 122.2'', and ''Section 122.3'' after the entry ''Section 121.11'';

■ 3. Under ''Chapter 129—Standards for Sources'':

■ i. Revising the entry ''Section 129.51'';

■ ii. Adding the entry ''Section 129.63a'' in numerical order; and

■ iii. Revising the entries ''Section 129.73'', ''Section 129.96'', ''Section 129.97'', ''Section 129.99'', and ''Section 129.100'';

■ b. The table in paragraph (d)(1) is amended by adding entries for ''Donjon Shipbuilding'', ''Heartland Fabrication, LLC'', and ''Geo Specialty Chem Trimet Div'' at the end of the table; and

■ c. The table in paragraph (e)(1) is amended by adding the entry ''Reasonably Available Control Technology (RACT) for the 2008 ozone national ambient air quality standard (NAAQS)'' at the end of the table.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

[25] 62 FR 27968 (May 22, 1997).

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources Chapter 121—General Provisions				
*	*	*	*	*
Section 121.1	Definitions	8/11/18	12/14/20, [insert **Federal Register** citation].	Definition of "Cleaning solvent" is amended.
*	*	*	*	*
Chapter 122—National Standards of Performance for New Stationary Sources				
Section 122.1	Purpose	08/01/79	12/14/20, [insert **Federal Register** citation].	
Section 122.2	Scope	08/01/79	12/14/20, [insert **Federal Register** citation].	
Section 122.3	Adoption of Standards	12/26/97	12/14/20, [insert **Federal Register** citation].	
*	*	*	*	*
Chapter 129—Standards for Sources				
*	*	*	*	*
Section 129.51	General	8/11/18	12/14/20, [insert **Federal Register** citation].	Amended to add references to Section 129.63a.
*	*	*	*	*
Section 129.63a	Control of VOC emissions from industrial cleaning solvents.	8/11/18	12/14/20, [insert **Federal Register** citation].	Added new Section 129.63a.
*	*	*	*	*
Section 129.73	Aerospace manufacturing and rework	8/11/18	12/14/20, [insert **Federal Register** citation].	Correction to numbering in Table II.
*	*	*	*	*
Section 129.96	Applicability	8/11/18	12/14/20, [insert **Federal Register** citation].	Subsections (a) and (b) are revised.
Section 129.97	Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule.	8/11/18	12/14/20, [insert **Federal Register** citation].	Section 129.97(k)(1)(ii) is revised.
*	*	*	*	*
Section 129.99	Alternative RACT proposal and petition for alternative compliance schedule.	8/11/18	12/14/20, [insert **Federal Register** citation].	Section 129.99(i)(1)(ii) is revised.
Section 129.100	Compliance demonstration and recordkeeping requirements.	8/11/18	12/14/20, [insert **Federal Register** citation].	Section 129.100(a) is revised.
*	*	*	*	*

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Donjon Shipbuilding	25–00930	Erie	9/26/17	12/14/20, [insert **Federal Register** citation].	
Heartland Fabrication, LLC	26–00545	Fayette	9/28/17	12/14/20, [insert **Federal Register** citation].	
Geo Specialty Chem Trimet Div.	39–00024	Lehigh	3/21/17	12/14/20, [insert **Federal Register** citation].	

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Reasonably Available Control Technology (RACT) for the 2008 ozone national ambient air quality standard (NAAQS).	Statewide	8/13/18	12/14/20, [insert **Federal Register** citation].	This action pertains to control technique guideline (CTG) source categories.

* * * * *

[FR Doc. 2020–23857 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2019–0173; FRL–10017–88–OLEM]

RIN 2050–AH11

Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is correcting a typographical error in a final rule published in the **Federal Register** on November 12, 2020. The EPA finalized regulations under the Resource Conservation and Recovery Act (RCRA) with procedures to allow certain facilities to request approval to operate an existing coal combustion residuals (CCR) surface impoundment with an alternate liner, among other things.

DATES: This final rule correction is effective on December 14, 2020.

FOR FURTHER INFORMATION CONTACT: Michelle Long, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 347–8953; email address: *Long.Michelle@epa.gov.* For more information on this rulemaking, please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION: The EPA finalized procedures to allow certain facilities to request approval to use an alternate liner for CCR surface impoundments (85 FR 72506, November 12, 2020), but after publication the Agency identified a typographical error in one of the amendatory instructions. Specifically, instruction 6 directed that paragraphs (f)(14) through (23) be added to § 257.105. However, an additional paragraph (f)(24) was also set out under § 257.105 that the Agency failed to include in instruction 6. See 85 FR 72543. That is, EPA intended instruction 6 to read ''Amend § 257.105 by adding paragraphs (f)(14) through (24) to read as follows:'' This document corrects instruction 6 by directing that paragraphs (f)(14) through (24) be added to § 257.105 as intended.

Correction

In FR Doc. 2020–23327, appearing on page 72506 in the **Federal Register** of Thursday, November 12, 2020, on page 72543, in the first column, correct instruction 6 to read as follows:

■ 6. Amend § 257.105 by adding paragraphs (f)(14) through (24) to read as follows:

§ 257.105 Recordkeeping requirements.

* * * * *

(f) * * *

(14) The application and any supplemental materials submitted in support of the application as required by § 257.71(d)(1)(i)(E).

(15) The alternative liner demonstration as required by § 257.71(d)(1)(ii)(D).

(16) The alternative liner demonstration extension request as required by § 257.71(d)(2)(ii)(D).

(17) The documentation prepared for the preliminary demonstration as required by § 257.71(d)(2)(ii)(E).

(18) The notification of an incomplete application as required by § 257.71(d)(2)(iii)(B).

(19) The decision on the application as required by § 257.71(d)(2)(iii)(F).

(20) The final decision on the alternative liner demonstration as required by § 257.71(d)(2)(vii).

(21) The alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*4*).

(22) The final decision on the alternative source demonstration as required under § 257.71(d)(2)(ix)(A)(*5*).

(23) The final decision on the trend analysis as required under § 257.71(d)(2)(ix)(B)(*3*).

(24) The decision that the alternative source demonstration has been withdrawn as required under § 257.71(d)(2)(ix)(C).

* * * * *

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2020–27031 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 2

[SAMHSA–4162–20]

RIN 0930–AA30

Confidentiality of Substance Use Disorder Patient Records

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the Substance Abuse and Mental Health Services Administration's (SAMHSA) regulation governing the Confidentiality of Substance Use Disorder Patient Records, to clarify one of the conditions under which a court may authorize disclosure of confidential communications made by a patient to a part 2 program as defined in this regulation. This change to the regulation is intended to clarify that a court has the authority to permit disclosure of confidential communications when the

disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one that directly threatens loss of life or serious bodily injury, where the extremely serious crime was allegedly committed by either a patient or an individual other than the patient.

DATES: *Effective Date:* This final rule is effective January 13, 2021.

FOR FURTHER INFORMATION CONTACT: Deepa Avula: (240) 276–2542. *PrivacyRegulations@samhsa.hhs.gov.*

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I. Legal Authority

HHS is finalizing this rule under the authority of 42 U.S.C. 290dd–2.

II. Background and Summary

On January 18, 2017, HHS published a final rule (82 FR 6052) (2017 final rule) that made certain changes to the regulations governing the confidentiality of substance use disorder patient records at 42 CFR part 2 (part 2). The part 2 regulations apply to part 2 programs, defined by HHS as federally assisted programs (federally assisted as defined in § 2.12(b) and program as defined in § 2.11), as well as other lawful holders who have obtained part 2 information in accordance with the part 2 authorizing statute and implementing regulations. See § 2.12(e)(1) for examples.[1]

HHS did not intend in the 2017 final rule to substantively revise the provision of part 2 governing confidential communications that appears in § 2.63. However, the phrase ''allegedly committed by the patient'' was erroneously added to § 2.63(a)(2) in the 2017 final rule. The fact that the preamble of the 2017 final rule did not address that change, or explain its intended reasoning, indicates that no substantive change was intended.

In addition, since the publishing of the 2017 final rule, then-Acting Secretary of HHS Eric D. Hargan declared the opioid crisis a public health emergency, pursuant to section 319 of the Public Health Service Act, 42 U.S.C. 247d, and Secretary Alex M. Azar II renewed the declaration, most recently as of the date of this publication, on July 6, 2020. According to the Centers for Disease Control and Prevention, more than 750,000 people died from a drug overdose between 1999 and 2018.[2] A November 2017 report from the President's Council of Economic Advisors entitled ''The Underestimated Costs of the Opioid Crisis'' estimates that in 2015, the economic cost of the opioid crisis was $504 billion, or 2.8 percent of Gross Domestic Product that year.[3] The President's Commission on Combatting Drug Addiction and the Opioid Crisis in its 2017 final report identifies the gravity of the opioid crisis and notes the importance of a comprehensive effort by Federal partners, including the Department of Justice and the Drug Enforcement Administration, to address this crisis.[4]

As demand for treatment increases and new entities become part 2 programs, HHS believes that the need to prevent drug trafficking and patient exploitation at or by part 2 programs makes it imperative to correct the error in § 2.63(a)(2). If left in its current form, the rule would hamper law enforcement efforts, in situations where an individual other than the patient committed an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, and in which access to substance use disorder (SUD) treatment records is necessary in connection with the investigation or prosecution of that extremely serious crime.

In addition to fixing the error from the 2017 final rule, HHS believes reverting to the previous language for this section is necessary to help reduce and deter drug trafficking at or from part 2 programs, and thereby to prevent the occurrence of extremely serious crimes from interfering with the delivery, by part 2 programs, of high quality, medically necessary treatment to patients with substance use disorders.

Accordingly, HHS will amend the text of § 2.63(a)(2) to remove the phrase ''allegedly committed by the patient.''

III. Final Rule: Discussion of Public Comments

On August 26, 2019, HHS published a Notice of Proposed Rulemaking (NPRM) (84 FR 44566) to amend § 2.63(a)(2) by deleting the phrase ''allegedly committed by the patient'' that was erroneously added in the 2017 final rule.

HHS received 427 public comments, ranging from general support or opposition to comments specific to the proposed correction. Some comments were outside the scope of our proposal, or HHS's legal authority regarding the confidentiality of substance use disorder patient records. Consequentially, HHS does not discuss these comments in the final rule.

Comment: Several commenters expressed support for the proposed rule, with some noting that the proposed change would enhance the ability to address opioid-related crime; would make the regulation less cumbersome to read; and would strike a balance between confidentiality and justice.

Response: We thank commenters for their support.

Comment: Many commenters argued that the addition of ''allegedly committed by the patient'' was not a technical error when it first appeared in the final rule in 2017. Several commenters asserted that removal of the phrase ''allegedly committed by the patient'' would constitute a substantive change to the rule, rather than a technical correction. Commenters stated that the final 2017 rule was published after following the standard rulemaking process under the Administrative Procedure Act, and that the text of the final 2017 rule would have been extensively reviewed by both SAMHSA and HHS prior to publication, leading them to believe the addition was not an error. One commenter noted that they could not determine with any clarity whether the addition of ''allegedly committed by the patient'' was consistent with well-accepted understanding of the pre-2017 language, and that commenter therefore requested that HHS provide future certainty and clarity as to the intended scope of the rule. Finally, another commenter asserted that the current language ''allegedly committed by the patient'' reflects a delicate balance of competing interests in privacy and public safety, such that the proposed change would go beyond merely correcting a technical error.

Response: The error in the 2017 final rule that occurred by adding ''allegedly committed by the patient'' traces back to the 2016 proposed rule. The 2016 proposed rule enumerated every section of part 2 for which a revision was then being proposed and described each revision and the reasoning behind it. Notably, the 2016 proposed rule did not include any proposal to revise section 2.63. In the 2017 final rule, there was no summary of public comment on adding

[1] See 82 FR 6052, 6061 (January 18, 2017).

[2] Centers for Disease Control and Prevention (n.d.). Understanding the Epidemic. Retrieved from *https://www.cdc.gov/drugoverdose/epidemic/index.html.*

[3] The Council of Economic Advisers (2017). Retrieved from *https://www.whitehouse.gov/sites/whitehouse.gov/files/images/The%20Underestimated%20Cost%20of%20the%20Opioid%20Crisis.pdf.*

[4] Office of National Drug Control Policy (n.d.). Retrieved from *https://www.whitehouse.gov/ondcp/presidents-commission/.*

the phrase ''allegedly committed by the patient'' to section 2.63, because no change had been proposed to section 2.63, so the public was never invited to comment on that provision or otherwise notified that the provision would be amended. The only place where the phrase ''allegedly committed by the patient'' appeared was in the restatement of the part 2 regulation, which appeared at the end of the 2017 final rule. Thus, the phrase ''allegedly committed by the patient'' was added in error to the regulatory text of section 2.63. Furthermore, as discussed above, this error could hamper or impede federal law enforcement efforts in situations where an individual other than the patient committed an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, and access to SUD treatment records is necessary in connection with the investigation or prosecution of that extremely serious crime.

We believe that correcting this error is necessary both to address the opioid epidemic and to protect patients.

Comment: One commenter said that HHS should use the opportunity of the current comment period to ameliorate any procedural error in 2017, so that the phrase ''allegedly committed by the patient'' remains in the part 2 regulations at section 2.63(a)(2).

Response: As stated above, the addition of the phrase ''allegedly committed by the patient'' was not a logical outgrowth of the 2016 NPRM proposals, or of comments received thereon, and it was added in error to the regulatory text of section 2.63. The change that we are finalizing would restore section 2.63 to its pre-2017 state, consistent with thirty years of rulemaking history since the adoption of section 2.63 in the 1987 final rule. Furthermore, as stated previously, it has come to our attention that the erroneous addition of the phrase ''allegedly committed by the patient'' may hinder Federal law enforcement efforts, which is a separate substantive reason for SAMSHA to delete the inadvertently added phrase and restore the provision to the previous regulatory text.

Comment: A few commenters expressed concern that the proposal would substantially change or broaden the definition of ''extremely serious crime,'' either by including drug-trafficking, or offenses not committed by the patient, or both within that definition. Commenters asserted that the 1987 rule specifically excluded drug-related offenses from the definition of an ''extremely serious crime.'' One commenter asserted that the 1987 rule authorized a court to find that a drug-related offense might constitute an ''extremely serious crime,'' but only in the context of offenses committed by the patient who is being investigated or prosecuted. Another commenter noted that the definition of a serious crime may not capture a prescriber who acts as a rogue doctor because that action may not ''directly threaten(s) loss of life or serious bodily injury.'' Many commenters expressed concern about expanding the definition of serious crimes to include drug trafficking. Further, several commenters believed that removal of the phrase ''allegedly committed by the patient'' would reach too broadly to implicate individuals other than the patient or the prescriber in drug trafficking.

Response: The 1987 final rule did not restrict the disclosure of SUD treatment records under section 2.63 only to the investigation of extremely serious crimes ''allegedly committed by the patient.'' We believe that the commenters are referring to the discussion in the 1987 final rule of section 2.65, which narrowly did address court orders for the disclosure of SUD treatment records to investigate a patient for an extremely serious crime. We do not believe the change that is being finalized will affect the meaning of an ''extremely serious crime.'' Pursuant to the current regulation at section 2.63(a)(2), the term ''extremely serious crime'' includes those crimes that ''directly threaten. . .loss of life or serious bodily injury.'' Thus, where drugs are being trafficked through an SUD treatment clinic in a way that directly threatens loss of life or serious bodily injury, that activity would qualify as an ''extremely serious crime.''

Comment: A few commenters argued that the proposed change would broaden the scope of law enforcement ability to investigate part 2 programs while criminalizing treatment, with some stating that this proposal permits Federal law enforcement to conduct fishing expeditions and broadly search part 2 patient records for criminal activity. Several commenters feared that the proposed provision could be misused or abused by law enforcement officials. Specifically, commenters expressed concern that law enforcement officials may subject patients to harassment, bullying, or misguided and dangerous tactics, including operating outside the boundaries of a part 2 facility to gather information (such as parking outside of treatment programs to identify patients who might have outstanding warrants). A few commenters suggested that patients on medication might be subjected to Driving While Intoxicated tests. A few commenters emphasized that this high-risk population is fearful and distrustful of law enforcement due to past mistreatment of those with SUD or previous fabrication of cases. The commenters asserted that many people with mental health challenges are part of minority groups or marginalized communities whose interactions with law enforcement are problematic (even lethal) or that that agencies may not be properly trained to handle substance use treatment and addiction issues.

Response: The change to section 2.63 (removing the words ''allegedly committed by the patient'') that is being finalized would restore the regulatory text to what it was for 30 years prior to the 2017 final rule. The change in the 2017 final rule was made in error. The authorizing statute (42 U.S.C. 290dd–2) and the regulations promulgated thereunder (42 CFR part 2) contain various safeguards against misuse of SUD treatment records. And the regulations specifically provide that ''[t]he *patient records* subject to the regulations in this part may be *disclosed* or used only as permitted by the regulations in this part and may not otherwise be *disclosed* or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, state, or local authority. Any disclosure made under the regulations in this part must be limited to that information which is necessary to carry out the purpose of the disclosure.'' 42 CFR 2.13(a). Further, disclosure under this section is subject to the careful review of a court that would presumably consider the impact on patients and other factors before making a decision on whether to issue an order authorizing the disclosure.

Comment: Several commenters stated that the proposed change would violate the language or the purpose of the enabling statute. A few commenters believed that the proposal is outside of the authority of the agency.

Response: Under 42 U.S.C. 290dd–2(b)(2)(C), the content of an SUD treatment record may be disclosed without patient consent if authorized by the order of a court of competent jurisdiction for good cause; thus, we believe that this change does not violate the language of the enabling statute, nor do we believe that the change would broaden the scope of law enforcement beyond what is authorized in the statute. The change would merely restore the regulatory text to what it was for 30 years prior to the 2017 final rule.

Comment: Many commenters stated that the proposed rule offered insufficient evidence to support the

claim that the phrase ''allegedly committed by the patient'' hindered Federal law enforcement efforts targeted at rogue doctors and pill mills. A few commenters specifically requested examples to demonstrate this language has been used by law enforcement prior to 2017 for the investigation or prosecution of crimes committed by the patient, the program, or the patient's providers. Other commenters requested that HHS first utilize existing information obtained through the DEA registration process to target rogue doctors and pill mills as opposed to expanding law enforcement access to part 2 patient records for similar information. Several commenters believed the existing law enforcement levers were sufficient for addressing law enforcement concerns, with some suggesting that the DEA take a more active role in identifying and addressing pill mills and rogue doctors.

Response: The change to section 2.63 (removing the words ''allegedly committed by the patient'') that is being finalized would restore the regulatory text to what it was prior to the 2017 final rule. The change in the 2017 final rule was made in error. If left in its current form, the rule would hamper or impede Federal law enforcement efforts in situations where an individual other than the patient committed an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, and access to SUD treatment records is necessary in connection with the investigation or prosecution of that extremely serious crime. Detailed examples of pre-2017 instances of law enforcement using section 2.63 would be difficult to provide, in part because disclosure of patient records in these situations is typically done under seal. Regardless, we do not believe that a change to section 2.63 that was made in error two years ago should change the law enforcement practices of thirty years of prior precedent. The use of DEA's legal authority or records is outside of the scope of this final rule.

Comment: A few commenters expressed concern that the proposed change would impact prescriber willingness to appropriately prescribe opioids. Several commenters expressed concern that the proposal will deter clinicians from taking on perceived risks associated with providing SUD care. Likewise, several commenters expressed concern that opioid prescription volume might be used to inappropriately implicate prescribers in diversion activities, noting that prescription volumes were not reliable indicators of diversion for non-medical use. Similarly, several commenters believed it inappropriate to seek information on prescriber behavior (*e.g.,* rogue doctors, pill mills) by searching patient records.

Response: We understand that opioid prescribing volume is not the only indicator of diversion for non-medical use of opioids, and we do not believe that the change to section 2.63 that we are finalizing would indicate otherwise.

Comment: One commenter suggested several alternatives to the current proposal, including requiring independent, office-based buprenorphine practitioners to be regulated and licensed by Single State Authorities, requiring compliance with best practices including addiction treatment counseling, and requiring the elimination of cash payments. Another commenter suggested the addition of explicit language to address ''serious crime allegedly committed by either (a) the patient; (b) the part 2 program holding the records containing the confidential communications, or (c) employees or agents of that part 2 program.'' Yet another commenter cited examples from state law that requires manufacturers of Schedule II or III controlled substances, including opioids, to participate in a drug stewardship program to collect, secure, transport and safely dispose of unwanted drugs to deter trafficking. A few commenters believed that there are evidence-based public health solutions available to address the opioid epidemic and law enforcement is not one of these solutions. One commenter recommended that instead of investigating providers for drug-related crimes, providers could proactively participate in voluntary certification processes formed through Joint Commission, American Society of Addiction Medicine, California Society of Addiction Medicine or HHS.

Response: There are many potential actions to curb illegal prescribing activity that contributes to the proliferation of pill mills. We believe the correction to section 2.63 is one of the many necessary steps that may help reduce and deter drug trafficking at or from part 2 programs because it would allow law enforcement to request a court order to obtain confidential communications that could support claims of drug trafficking and patient exploitation within a part 2 program. We will continue to explore additional interventions and alternatives for curbing the opioid crisis within our legal authority.

Comment: Many commenters expressed broad concern about the proposal eroding or undermining patient privacy rights or the confidentiality of records. Likewise, many commenters asserted that their privacy would be violated by the proposal, and therefore requested that SAMHSA reject the proposal. Several commenters noted in context that the loss of privacy associated with the proposal would lead to other ill effects either for the commenters themselves, or for patients more broadly, in the form of loss of trust in care providers, diminished willingness to enter or remain in treatment, or increased potential for social stigma and discrimination. A few commenters also stated that the proposal could have negative effects not just on privacy, but also on SUD care or the opioid epidemic in the aggregate. One commenter suggested that the proposal is out of keeping with physicians' confidentiality duty to patients under common law.

Response: While the 2017 error may appear to change the basic privacy protections, there are existing statutory and regulatory provisions related to criminal investigations that protect patient privacy and have not changed. The authorizing statute for part 2 (at 42 U.S.C. 290dd–2(c)) prohibits the use of patient records to initiate or substantiate any criminal charges against a patient, or to conduct any investigation of a patient, except as authorized by a court order granted under subsection (b)(2)(c) of the statute. Subsection (b)(2)(c) of the statute specifies that using patient records to investigate or prosecute a patient requires an order from a court of competent jurisdiction, granted after an application showing good cause, including the need to avert a substantial risk of death or serious bodily harm. The change in the 2017 final rule was made in error, and it does not represent a departure from the basic privacy protections that SUD patients have held under part 2 since 1987.

Comment: Many commenters expressed concern with the 30-day public comment period, stating that the 30 days was not enough time for citizens to analyze, discuss, and respond to the proposal or for HHS to sufficiently collect public feedback. Several commenters believed more time for public comment was warranted given the number of people and organizations that will be affected. Several commenters suggested or stated that the 30-day comment period violated the Administrative Procedure Act. A few commenters said the comment period deprived patients of their procedural rights or the right to participate in commenting. A few commenters also noted that a related NPRM was published on the same day

with a 60-day comment period and indicated that it may be difficult for patients to respond to both rules in the allotted timeframe. Another commenter suggested the 30-day comment period indicates that HHS is not truly interested in what the public has to say. Many commenters requested that HHS extend the comment period, with some expressly requesting 60 days, stating that the proposal represented a significant, fundamental or sweeping change to the current regulation.

Response: As noted above, the change to section 2.63 (removing the words ''allegedly committed by the patient'') that is being finalized would restore the regulatory text to its pre-2017 language. We believe that a 30-day comment period for correction of an inadvertent error is consistent with section 553 of the Administrative Procedure Act, and we believe that the 30-days comment period was a sufficient amount of time for commenters to submit their written data, views, or arguments on a straightforward proposal.

Comment: A few commenters raised concerns that public comments submitted for the rule were not posted until almost the end of the comment period. A few commenters also remarked that the website for submitting comments did not work properly during the comment period.

Response: Regulations.gov is provided as a public service to increase participation in the government's regulatory activities by offering a central point for submitting comments on regulations. The agency reviews all comments for their appropriateness before posting, which sometimes may lead to a delay in posting. Although we regret that technical issues at times may have prevented individuals from submitting a comment on *Regulations.gov*, the Proposed Rule provided a physical mailing address where comments could be mailed. We believe that any technical issues with the website that individuals may have experienced were promptly resolved.

Comment: Many commenters asserted that the proposal would deter patients from entering and/or staying in SUD treatment and that this deterrence would more broadly negatively impact society, potentially making the opioid epidemic worse, causing overdoses and opioid-related mortality to increase, increasing crime rates and/or recidivism, or increasing communicable diseases. Several commenters also suggested that the deterrence of SUD treatment would exacerbate disparities in access to care for low-income communities. Other commenters expressed concern that the proposal would deter people from seeking or staying in SUD treatment. Several commenters suggested that if the proposal is finalized, then the only rational SUD treatment options would become ''off the grid'' self-help settings; one commenter stated that SUD patients had communicated the intent to stockpile MAT medications in case the proposal goes through, so as to be able withdraw from treatment in that case.

Response: As noted above, while the 2017 error may appear to change basic privacy protections, there are existing statutory and regulatory provisions related to criminal investigations that protect patient privacy and have not changed. The authorizing statute for part 2 (at 42 U.S.C. 290dd–2(c)) prohibits the use of patient records to initiate or substantiate any criminal charges against a patient, or to conduct any investigation of a patient, except as authorized by a court order granted under subsection (b)(2)(c) of the statute. Subsection (b)(2)(c) specifies that using patient records to investigate or prosecute a patient requires an order from a court of competent jurisdiction, granted after an application showing good cause, including the need to avert a substantial risk of death or serious bodily harm. Thus, we do not believe that an error made two years ago should alter the privacy and clinical practices of thirty years of prior precedent, nor should this reversion deter patients from treatment because of these concerns. Furthermore, part 2 regulations contain various safeguards to assure patients that their confidentiality and privacy will be protected and that such confidentiality and privacy will not be abrogated absent just and sufficient cause.

Comment: A few commenters expressed concern that the proposal may enable housing, legal, educational, employment, and insurance discrimination or may help to discriminate against those seeking social services. Other commenters stated that the proposal could impact child custody agreements and could put patients at risk in civil proceedings including divorce and child custody proceedings.

Response: As noted above, the change to section 2.63 that is being finalized would restore the regulatory text to what it was prior to the 2017 final rule. The change in the 2017 final rule was made in error, and correcting the error does not represent a departure from the basic privacy protections that SUD patients have held under Part 2 since 1987. Moreover, the authorizing statute (42 U.S.C. 290dd–2) and the regulations promulgated thereunder (42 CFR part 2) contain various safeguards against misuse of SUD treatment records. And the regulations specifically provide that ''[t]he patient records subject to the regulations in this part may be disclosed or used only as permitted by the regulations in this part and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, state, or local authority. Any disclosure made under the regulations in this part must be limited to that information which is necessary to carry out the purpose of the disclosure.'' 42 CFR 2.13(a). Thus, we do not believe that a change that was inadvertently made two years ago would alter the privacy and clinical practices of thirty years of precedent, nor should it deter patients from treatment because of these concerns.

Comment: A few commenters suggested specific training on substance use disorders for both law enforcement and medical professionals as a way to combat stigma. One commenter recommended that SAMHSA provide education for providers, health systems, and law enforcement to clarify the regulations.

Response: HHS appreciates this suggestion and will consider training opportunities for law enforcement and medical professionals on SUD records and the applicability of the part 2 regulations.

Comment: Many commenters objected to the proposed change because they believe it will allow personal or sensitive health information to be used for criminal justice purposes. More specifically, commenters said the proposal would enable information to be used to investigate, implicate or prosecute patients or their families, friends, or associates, as well as prospective patients, people in recovery, and/or treatment programs/providers. A few commenters said that treatment itself would become a tool of law enforcement. A few commenters said there was no reason to use substance use disorder information against patients, or to share it for the purposes of prosecuting people who want to turn their lives around. A few commenters believed the proposal could lead to self-incrimination by patients, especially among those who are legally ordered to obtain treatment or pregnant women in states that criminalize substance use during pregnancy. One commenter inquired as to what would prevent prosecution of a person who inadvertently confesses to a crime or knowledge of a crime. Another inquired as to which parts of a medical record would be excluded, and how information from an alcohol- or

chemically impaired individual would be used.

Response: HHS understands the concerns expressed by commenters. The authorizing statute for Part 2 (at 42 U.S.C. 290dd–2(c)) prohibits the use of patient records to initiate or substantiate any criminal charges against a patient, or to conduct any investigation of a patient, except as authorized by a court order granted under subsection (b)(2)(c) of the statute. Subsection (b)(2)(c) of the statute specifies that using patient records to investigate or prosecute a patient requires an order from a court of competent jurisdiction, granted after an application showing good cause, including the need to avert a substantial risk of death or serious bodily harm. However, part 2 does not serve as an absolute shield for a patient's criminal activity. For example, part 2 regulations expressly permit disclosures related to crimes committed on program premises. As stated elsewhere in this final rule, HHS is reverting back to the pre-2017 language for this section, in order to remove wording that may hinder the ability of law enforcement to target rogue doctors and pill mills, for example, that are contributing to the opioid epidemic.

Comment: Many commenters expressed blanket opposition to the proposal. Several commenters indicated that they would be opposed to any changes to 42 CFR part 2 overall. A few commenters noted that while they are open to updates to 42 CFR part 2, they are opposed to the updates in this proposal.

Response: As described previously, HHS believes reverting to the previous language for this section will correct an inadvertent error in the 2017 final rule, by restoring the section to what it was for thirty years following the 1987 final rule. Moreover, correcting the erroneous addition of the phrase ''allegedly committed by the patient'' may remove a stumbling block to future law enforcement efforts targeting extremely serious crimes, which is a separate substantive reason for the correction.

Comment: A few commenters requested additional clarification about the proposal. One commenter inquired whether patients would be notified if their records were disclosed. One commenter requested additional information regarding the use of records, specifically whether patients can opt out, in what context their records can be used, how often the records can be accessed, and how long the records are available for law enforcement use.

Response: Although a patient cannot opt out of disclosure under § 2.63, the authorizing statute (42 U.S.C. 290dd–2) and the regulations promulgated thereunder (42 CFR part 2) contain various safeguards regarding the use and disclosure of SUD treatment records for law enforcement purposes. The regulations specifically provide that ''[t]he patient records subject to the regulations in this part may be disclosed or used only as permitted by the regulations in this part and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, state, or local authority. Any disclosure made under the regulations in this part must be limited to that information which is necessary to carry out the purpose of the disclosure.'' 42 CFR 2.13(a).

Comment: A few commenters expressed concern about the proposal's impact on psychotherapy notes and requested further guidance to determine how requirements for psychotherapy notes will or will not interact with this proposal. Specifically, these commenters noted that it is unclear if law enforcement authorities will have access to patients' psychotherapy notes that are written by behavioral health providers who treat SUD patients in part 2 programs, in addition to the patients' mental health and SUD records, as HIPAA requirements recognize that psychotherapy notes are usually separated from the patient's health record.

Response: Law enforcement may only access psychotherapy notes if all applicable requirements under part 2 and, if applicable, the HIPAA Privacy Rule are met. This final rule will not weaken the privacy protection for psychotherapy notes held by part 2 programs, if portions of those notes are subject to part 2. Part 2 requires that a court order be accompanied by a subpoena to compel disclosure, while the HIPAA Privacy Rule permits a covered entity to disclose records when required by law or with a court order or a subpoena unaccompanied by a court order, when certain conditions are met (See 45 CFR 164.512(a) and (e)). To the extent that a portion of a patient's part 2 record is also considered protected health information under the HIPAA Privacy Rule, a disclosure would need to meet the requirements of both rules.

IV. Regulatory Impact Analysis

HHS has examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017). HHS does not believe the change constitutes an unfunded mandate, additional regulatory activity or imposes a cost or economic burden on part 2 programs.

Executive Orders 12866, 13563, 13132, and 13771.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review, as established in Executive Order 12866. The change that is being finalized in this final rule will not have an annual effect on the economy of $100 million or more in at least one year. HHS notes that this change does not constitute a significant regulatory action under Executive Order 12866. The minor change to section 2.63(a)(2) that is being finalized will have no discernible economic impact, will not alter program budgets or obligations of grant or loan recipients, and raises no novel legal or policy questions. Indeed, as explained, this final rule reverts to the pre-2017 language for this section, which had remained unchanged for more than 30 years.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final rule does not impose any costs on state or local governments or preempt state law; therefore, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771 directs Agencies to identify at least two existing regulations to repeal for every new regulation unless prohibited by law. The total incremental cost of all regulations issued in a given fiscal year must have costs within the amount of incremental costs allowed by the Director of the Office of Management and Budget, unless otherwise required by law or approved in writing by the Director of the Office of Management and Budget.

This rule is not expected to lead to the promulgation of a rule constituting a ''regulatory action'' under Executive Order 13771 because the final rule is fixing a procedural error from a prior rulemaking and does not impose burden on regulated entities. The addition of the phrase ''allegedly committed by the patient'' was not a logical outgrowth of the 2016 NPRM proposals, or of comments received thereon, and it was added in error to the regulatory text of section 2.63.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a regulation to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration; (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of ''small entity''). HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least five percent of small entities experience an impact of more than three percent of revenue. HHS determines that this rule does not have a significant economic impact on a substantial number of small entities. The rule would merely correct an erroneous change made in 2017 to, and restore the pre-2017 language to, the longstanding provision in 42 CFR 2.63, in order to avoid a possible interpretation that could hamper or impede Federal enforcement efforts in the fight to address the opioid crisis, including investigations that involve disclosures of Part 2 program records authorized by court orders. As such, this final rule will have a de minimis, if any, impact on small entities.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' In 2019 that threshold level is approximately $154 million. HHS does not expect the rule to exceed the threshold.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. The change in this rulemaking would result in no new reporting burdens.

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 42 CFR Part 2

Alcohol abuse, Alcoholism, Drug abuse, Grant programs—health, Health records, Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HHS amends 42 CFR part 2 as follows:

PART 2—CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

■ 1. The authority citation for Part 2 continues to read follows:

Authority: 42 U.S.C. 290dd–2.

Subpart E—Court Orders Authorizing Disclosure and Use

§ 2.63 [Amended]

■ 2. Amend § 2.63(a)(2) by removing the phrase ''allegedly committed by the patient''.

* * * * *

Dated: August 27, 2020.

Elinore F. McCance-Katz,

Assistant Secretary for Mental Health and Substance Use, Substance Abuse and Mental Health Services Administration.

Approved: September 30, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–25810 Filed 12–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 10

RIN 0906–AB26

340B Drug Pricing Program; Administrative Dispute Resolution Regulation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: The Health Resources and Services Administration (HRSA) implements section 340B of the Public Health Service Act (PHSA), which is referred to as the ''340B Drug Pricing Program'' or the ''340B Program.'' This final rule will apply to all drug manufacturers and covered entities that participate in the 340B Program. The final rule sets forth the requirements and procedures for the 340B Program's administrative dispute resolution (ADR) process.

DATES: This final rule is effective January 13, 2021.

FOR FURTHER INFORMATION CONTACT: RADM Krista Pedley, Director, OPA, HRSA, 5600 Fishers Lane, Mail Stop 13N182, Rockville, MD 20857, or by telephone at 301–594–4353.

SUPPLEMENTARY INFORMATION:

I. Background

Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the PHSA entitled ''Limitation on Prices of Drugs Purchased by Covered Entities,'' which was codified at 42 U.S.C. 256b. The 340B Program permits covered entities ''to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.'' H.R. Rep. No. 102–384(II), at 12 (1992). The Secretary of Health and Human Services (Secretary) delegated the authority to establish and administer the 340B Program to the Administrator of HRSA. Eligible covered entity types are defined in section 340B(a)(4) of the PHSA, as amended. Section 340B(a)(1) of the PHSA instructs HHS to enter into pharmaceutical pricing agreements (PPAs) with manufacturers of covered outpatient drugs. Under section 1927(a)(5)(A) of the Social Security Act, a manufacturer must enter into an agreement with the Secretary that complies with section 340B of the PHSA ''[i]n order for payment to be available under section 1903(a) or under part B of title XVIII for covered outpatient drugs of a manufacturer.'' When a drug

manufacturer signs a PPA, it agrees that the prices charged for covered outpatient drugs to covered entities will not exceed defined 340B ceiling prices. Those prices are based on quarterly pricing reports that manufacturers must provide to the Secretary through the Centers for Medicare & Medicaid Services (CMS).

Section 7102 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by section 2302 of the Health Care and Education Reconciliation Act (Pub. L. 111–152), jointly referred to as the ''Affordable Care Act,'' added section 340B(d)(3) to the PHSA, which requires the Secretary to promulgate regulations establishing and implementing a binding ADR process for certain disputes arising under the 340B Program. The purpose of the ADR process is to resolve (1) claims by covered entities that they have been overcharged for covered outpatient drugs by manufacturers and (2) claims by manufacturers, after a manufacturer has conducted an audit as authorized by section 340B(a)(5)(C) of the PHSA, that a covered entity has violated the prohibition on diversion or duplicate discounts. The ADR process is an administrative process designed to assist covered entities and manufacturers in resolving disputes regarding overcharging, duplicate discounts, or diversion. To resolve these disputes, a panel charged with resolving the dispute may find it necessary to resolve related issues such as whether someone is a ''patient'' or whether a pharmacy is part of a ''covered entity.'' Historically, HHS has encouraged manufacturers and covered entities to work with each other to attempt to resolve disputes in good faith. The ADR process is not intended to replace these good faith efforts, but should be considered as a last resort in the event good faith efforts to resolve disputes have failed. In addition, covered entities and manufacturers should carefully evaluate whether the ADR process is appropriate for minor claims given the investment of the time and resources required of the parties involved and the government.

In 2010, HHS issued an advanced notice of proposed rulemaking (ANPRM) that requested comments on the development of an ADR process (75 FR 57233, Sept. 20, 2010). HHS received 14 comments. In 2016, HHS issued a Notice of Proposed Rulemaking (NPRM) and received 31 comments. The NPRM was removed from the HHS Regulatory Agenda in accordance with a January 20, 2017, memorandum from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review,'' [1] which had the effect of pausing action on the proposed rule. The Secretary, however, did not formally withdraw the NPRM, but rather left it open as a viable option. HHS considered the comments received on the NPRM in the development of this final rule. This final rule will replace the 340B Program's guidelines on the informal dispute resolution process developed to resolve disputes between covered entities and manufacturers, which were published on December 12, 1996 (61 FR 65406). Finally, we note that in order to fairly, efficiently, and expeditiously resolve claims pursuant to the ADR process described in this final rule, the Secretary hereby delegates to each 340B ADR Panel, constituted from members of the 340B Administrative Dispute Resolution Board, the authority to make final agency decisions as set forth under 42 U.S.C. 256b(d)(3)(C) and codified in 42 CFR part 10, as amended by this final rule.

II. Summary of Proposed Provisions and Analysis and Responses to Public Comments

Part 10 of title 42 of the Code of Federal Regulations has been amended to incorporate the ADR process, which is described below in conjunction with comments received to each such section.

General Comments

Comments received during the comment period addressed general issues. We have summarized those comments and have provided a response below.

Comment: Commenters recommend that, before HRSA develops the ADR process, HRSA should establish foundational guidance on key issues, as the conditions for creating such a process are not in place. Specifically, commenters suggest that HRSA reform its guidelines regarding manufacturer audits of covered entities as they are outdated and do not allow for a functioning ADR process; develop manufacturer refund procedures for cases where 340B ceiling prices change due to restated Medicaid rebate metrics; finalize the process for calculating 340B ceiling prices and imposing civil monetary penalties; and finalize the 340B mega-guidance.

Response: HHS finalized the 340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties (CMP) Regulation on January 5, 2017 (82 FR 1211). That regulation addressed the calculation of the 340B ceiling price, and imposition of CMPs on manufacturers who knowingly and intentionally overcharge a covered entity. Neither updated manufacturer audit guidelines nor the finalization of the 340B mega-guidance is needed to finalize the ADR process. The 340B statute empowers the 340B ADR Panel reviewing a claim, as set forth in this final rule, to determine when there have been statutory violations concerning overcharges, diversion, and duplicate discounts.

Comment: Several commenters urge HRSA to adopt those conventions for ascertaining deadlines that are commonly used by other administrative bodies and courts. Commenters suggested that HRSA should use calendar days for deadlines rather than business days as misunderstandings about correct deadlines and due dates can be avoided if HRSA were to adopt these commonly used conventions.

Response: HHS agrees with these comments. The ADR process will be governed, to the extent applicable, by the Federal Rules of Civil Procedure and Federal Rules of Evidence, unless the parties agree otherwise and the 340B ADR Panel concurs. Rule 6 of the Federal Rules of Civil Procedure sets out the rules for computing any time period specified in the Rules and that Rule will govern time computation under this regulation.

Comment: Commenters urge HRSA to clarify what would constitute a de minimis claim given the investment of time and resources required of the parties involved. Commenters argue that while the parties may be able to assess what would constitute a reasonable materiality threshold that would warrant pursuing the ADR process, having a standardized threshold could ensure a more uniform and judicious use of the ADR process. Commenters recommend that covered entities could use a threshold of 5 percent of total 340B savings for establishing a de minimis claim.

Response: HHS agrees that some disputes may be too small to warrant the expenditure necessary to conduct a hearing on the matter. Recognizing that petitioners can file jointly as warranted and that claims can be aggregated or consolidated, we do not believe that setting a jurisdictional threshold, whexwhex ere money damages are sought, should adversely affect any covered entity or manufacturer. We believe that an appropriate threshold for a claim or claims for money damages should be $25,000; where equitable relief is sought, however, there will be no threshold for past damages provided

[1] *See https://www.whitehouse.gov/presidential-actions/memorandum-heads-executive-departments-agencies/.*

that the relief sought will be the equivalent of $25,000 in the twelve months following the 340B ADR Panel's decision. HHS is finalizing the jurisdictional threshold for filing a claim in paragraph (b) of § 10.21.

Subpart C—Administrative Dispute Resolution

§ 10.20 Administrative Dispute Resolution Panel

In the proposed rule, HHS sought to establish a decision-making body to review and resolve claims in an unbiased and fair manner, ensure fairness and objectiveness by avoiding conflicts of interest, and set forth the duties of the panel. In this final rule, HHS is finalizing that proposal with some modifications. In this final rule, the Secretary shall establish a 340B Administrative Dispute Resolution Board (Board) consisting of at least six members appointed by the Secretary with equal numbers from the Health Resources and Service Administration (HRSA), the Centers for Medicare & Medicaid Services (CMS), and the HHS Office of the General Counsel (OGC). Administrative Dispute Resolution Panels (340B ADR Panel) of three Board members shall be selected by the HRSA Administrator to review claims and, pursuant to authority expressly delegated through this rule by the Secretary, make precedential and binding final agency decisions regarding claims filed by covered entities and manufacturers. HRSA and CMS Board members shall have relevant expertise and experience in drug pricing or drug distribution. OGC Board members shall have expertise and experience in handling complex litigation.

(a) Members of the 340B ADR Panel.

HHS proposed that HRSA select a 340B ADR Panel to include three members, chosen from a roster of eligible individuals, and one ex-officio, non-voting member chosen from the staff of the HRSA Office of Pharmacy Affairs (OPA) to facilitate the review and resolution of claims within a reasonable timeframe. HHS is modifying that proposal. In this final rule, the HRSA Administrator is empowered to select and convene three-member 340B ADR Panels, constituted from the above-referenced Board, with one member from HRSA, CMS, and OGC with relevant expertise to review claims and make final agency decisions. HHS proposed that individuals serving on a 340B ADR Panel may be removed for cause. HHS is finalizing that proposal. In this final rule, if there is a conflict of interest, as described in paragraph (b), with respect to a claim, the 340B ADR Panel member will be removed from the 340B ADR Panel and replaced by another individual from the Board.

Finally, HHS solicited specific comments on the proposed size and composition of the 340B ADR Panel, in particular whether the 340B ADR Panel should be comprised of a set number of voting members to maintain consistency and transparency across each claim that is reviewed, whether HHS should retain the flexibility to appoint a requisite number of voting members based on the complexity of the claim and other factors, and whether the 340B ADR Panel should include at least one OPA staff member as a voting member or whether the inclusion of an OPA staff member as an ex-officio, non-voting member would be sufficient to ensure adherence to 340B policies and procedures.

HHS received comments related to the composition of the 340B ADR Panel and after consideration of the comments received, HHS has determined that each 340B ADR Panel must include one attorney from OGC with complex litigation expertise, along with one member from HRSA and one member CMS, each with drug pricing, drug distribution, and other relevant 340B expertise. A non-voting, *ex-officio* member from OPA will assist each three-member 340B ADR Panel.

Comment: Some commenters suggest that given that the 340B ADR Panel will likely review claims submitted by manufacturers that involve audits conducted of covered entities, the 340B ADR Panel members should also have demonstrated expertise or familiarity with the Government Audit Standards and expertise or familiarity with the 340B Program, in order to properly assess the quality of the audit conducted.

Response: HHS believes the requirements set forth in the final rule allow for 340B ADR Panels with a wide breadth of experience that will ensure an equitable review and fair outcome. In addition, each 340B ADR Panel will include a non-voting member of OPA who would bring additional 340B Program expertise to the ADR proceedings.

Comment: Several commenters support the 340B ADR Panel's composition as proposed, specifically with respect to limiting the 340B ADR Panel to three members to maintain consistency and transparency across each claim reviewed while asserting that a rotation of members will lead to conflicting decisions and inconsistency in dispute decisions. Some commenters recommend that the final rule establish a fixed pool of seven potential 340B ADR Panel members who would serve on the pool for a defined term. In addition, the commenters explain that 340B ADR Panel members would not develop expertise in the details of 340B policies if they only occasionally served on the 340B ADR Panel.

Response: HHS disagrees that appointing a permanent board rather than alternating individuals is the best course. The United States Courts of Appeals operate in panels of three and intra-circuit splits are rare. We are concerned that a single permanent panel may be unable to fairly, efficiently, and expeditiously hear and resolve cases.

Comment: Commenters support the inclusion of at least one OPA staff member as an *ex-officio,* non-voting member to ensure adherence to 340B policies and procedures. However, other commenters argue that OPA staff cannot be impartial due to their day-to-day involvement with the 340B Program. These commenters argue that even a non-voting member would exercise too much influence over the voting members, particularly if the voting members serve only part-time on the 340B ADR Panel.

Response: HHS appreciates the comments outlining both support and concern with OPA's participation in the process. HHS believes that participation of an OPA staff member as a non-voting, *ex officio* member is beneficial to the 340B ADR Panel to allow for quick and efficient responses to questions regarding the 340B statute, regulations, and policy and that an OPA staff member would not exercise undue influence over the three voting members. The OPA staff member or members, as the case may be, will be appointed by the Secretary to serve as a non-voting, *ex officio* member or members. *See Federal Election Comm'n* v. *NRA Political Victory Fund,* 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed for want of jurisdiction,* 513 U.S. 88 (1994).

Comment: Commenters opposing OPA staff being involved or participating on the 340B ADR Panel suggest that HRSA designate HHS Administrative Law Judges (ALJs) to decide 340B disputes. They argue that ALJs would be in the best position to resolve 340B disputes as ALJs have training to decide administrative law issues correctly, and using an ALJ would ensure an objective evaluation of each dispute by separating the dispute resolution function from HRSA's day-to-day activities and duties.

Response: The involvement of an OPA staff member as a non-voting, *ex officio* has been addressed above. HHS disagrees that ALJ's are best positioned to resolve 340B disputes. The

Department's established cadre of ALJs to resolve disputes between the Department and private entities involving federal funds whether through grants, contracts, or under benefit programs such as Medicare. Here, the 340B ADR Panels are more akin to an arbitration panel focusing on complex commercial arrangements between private actors, where Federal funds may not be directly involved. In this final rule, HHS is establishing 340B ADR Panels, which are uniquely situated to handle the complexities of the 340B Program and related disputes.

Comment: Commenters recommend that the final rule include a provision that allows either party to object to a particular 340B ADR Panel member.

Response: HHS appreciates the comment but believes this is unnecessary as 340B ADR Panel members will be screened for conflicts of interest before reviewing a claim.

(b) Conflicts of interest.

To ensure fairness and objectiveness, HHS proposed that each 340B ADR Panel member be screened prior to reviewing a claim and not be allowed to conduct a review if any conflicts of interest exist. For example, the individual would not review a claim if he or she has a conflict of interest with respect to the parties involved in the claim or the subject matter of the claim. HHS proposed that individuals be screened for conflicts of interest in accordance with U.S. Office of Government Ethics policies and procedures applicable to Federal employees. Conflicts of interest may include the following: (1) Financial interest; (2) family or close relation to a party involved; and (3) current or former business or employment relation to a party. HHS received comments in support of the provision to review for conflicts of interest and is finalizing this section as proposed. Below is a summary of the comments received and HHS' responses.

Comment: Several commenters agree that the 340B ADR Panel members should have demonstrated expertise or familiarity with the 340B Program. These commenters also agree that the 340B ADR Panel members be screened for potential conflicts of interest. Commenters suggest that the final rule include flexibility to expand the 340B ADR Panel beyond the three members to ensure expeditious review of complex 340B claims.

Response: HHS appreciates the comments regarding the expansion of 340B ADR Panel members; however, it does not believe adding more members would expedite the review process.

(c) Duties of the 340B ADR Panel.

HHS proposed that once the 340B ADR Panel receives a claim, the 340B ADR Panel would consider all documentation provided by the parties and may request additional information or clarification from any party involved with the claim.

After further consideration, HHS has determined that a 340B ADR Panel reviewing a claim may consult with OPA subject matter experts regarding 340B program requirements, may entertain motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure, may permit limited discovery, as necessary, may entertain motions for summary judgment (*see* Fed. R. Civ.P. 56), and may hold evidentiary hearings as necessary. The 340B ADR Panel's final agency decision must represent the decision of a majority of the 340B ADR Panel members, but need not be unanimous. The 340B ADR Panel's final agency decision shall be precedential and binding on the parties to the claim. HHS did not receive any comments related to the duties of the 340B ADR Panel. This final rule provides the 340B ADR Panel significant discretion in determining relevant material to consider and the manner to conduct its evaluation.

As with typical administrative hearings, the petitioner in an ADR proceeding would bear the burden of persuasion by a preponderance of the evidence. *See* Administrative Procedure Act, 5 U.S.C. 556(d) (''the proponent of a rule or order shall have the burden of proof.''); *Director, OWCP* v. *Greenwich Collieries,* 512 U.S. 267 (1994).

§ 10.21 Claims

(a) Initiating an action. In the NPRM, HHS proposed deadlines and procedures for filing a claim in § 10.21(f). To address some redundancies, HHS is consolidating and finalizing the requirements for initiating an ADR action in a new paragraph (a) of § 10.21. Correspondingly, the comments received on the proposals in the NPRM regarding deadlines and procedures for filing a claim are addressed here in paragraph (a).

In the NPRM, HHS proposed that covered entities and manufacturers file a claim demonstrating that they satisfy certain threshold requirements and that the party filing a claim must send written notice to the opposing party regarding the claim within 3 business days of submitting the claim and the party must submit confirmation of the opposing party's receipt or acknowledgement of receipt. HHS also proposed that the written notice to the opposing party must include a summary of the documents submitted as part of the claim. HHS proposed that information will be reviewed that is submitted as part of the claim to verify that the requirements for filing a claim have been met. The initiating party would then be contacted once the claim has been received and may request additional information before accepting a claim for review by the 340B ADR Panel. If HRSA requests additional information, the party filing the claim would have 20 business days of receipt of the request to respond. Claims would not move forward for review by the 340B ADR Panel if a party files a claim for any purpose other than those specified in the statute (*i.e.,* overcharging, duplicate discount, or diversion), or if the alleged violation occurred more than 3 years before the date of filing the claim.

HHS proposed that a determination will be made as to whether all requirements are met and provide written notice to all parties within 20 business days after receiving the claim and any subsequently requested information. If it is determined the claim includes all necessary documentation and meets the requirements for filing a claim, the claim would be forwarded to the 340B ADR Panel for review. Additional information would be provided on the 340B ADR process to all parties at that time, including contact information for requested follow-up communications and an approximate timeframe for the 340B ADR Panel's review.

HHS proposed that if the claim does not move forward for review by the 340B ADR Panel, written notice would be sent to the parties involved that includes the basis for the determination and would advise the party that they may revise and refile the claim if the party had new information to support the alleged statutory violation.

HHS is finalizing these filing requirements with some changes. Any covered entity or manufacturer may initiate an action for monetary damages or equitable relief against a manufacturer or covered entity, as the case may be, by filing a written petition for relief with HRSA that satisfies all of the requirements set forth in this section. The parties may voluntarily submit additional information to substantiate a claim. In this final rule, HHS also clarifies that the party filing a claim must mail a copy of its petition, along with any attachments, to the General Counsel or other senior official (*e.g.,* Executive Director) opposing party or legal counsel for the opposing party, if applicable, at its principal place of business by certified mail, return receipt requested, within three days of filing the

claim with HRSA. HHS intends for the 340B ADR Panel to have wide latitude to define the proper course of conduct, scope of the process, and any additional instructions necessary or desirable for the ADR proceedings. HHS underscores that the 340B ADR Panel may in its sole judgment request additional information from the parties to ensure that it will be able to conduct a fair, efficient, and expeditious review of a claim. Our summary of the comments and responses follow.

Comment: Some commenters request that just as covered entities have advance notice of potential claims due to a prior audit, manufacturers should also know about a potential covered entity's claim so that the parties can make good faith efforts to resolve the claim. These commenters explain that such an early notification requirement for covered entities would reinforce HHS' efforts to limit the ADR process to disputes that cannot be resolved informally and would be consistent with the requirement suggested earlier in this letter that any claim (whether asserted by a manufacturer or covered entity) must be accompanied by documentation of prior good faith efforts to resolve the dispute. Advance notification of potential claims and the opportunity to resolve them are crucial. Accordingly, manufacturers should have the same advance notice of potential claims as covered entities that learn of such claims due to a prior audit.

Response: While HHS appreciates the comments regarding advance notification to manufacturers of claims, it does not agree with the assertion that a manufacturer audit constitutes notification of a manufacturer filing an ADR claim. If a manufacturer engages in ADR after an audit of a covered entity, the manufacturer must provide written notice. Further, HHS believes there is already a process in place for good faith negotiations between manufacturers and covered entities that occurs before filing an ADR claim.

Comment: When reviewing the sufficiency of a claim, HHS proposed that HRSA will decide whether a claim will move forward for review. Commenters request that HRSA include an additional safeguard clarifying that the individual or individuals who review the sufficiency of a claim should not be involved further in the process. The 340B ADR Panel should receive the claim (including any supporting documentation and response) as one complete package. That way, the 340B ADR Panel would be able to review the claim as a matter of first impression. The 340B ADR Panel could remain impartial, and would not be prejudiced by any claims that are initially deemed inadequate or that are further refined through additional documentation.

Response: HHS disagrees that the 340B ADR Panel could not remain impartial or would be prejudiced by claims that are initially deemed inadequate or that are further refined through additional documentation. In any event, HHS anticipates that the 340B ADR Panel will receive a complete package with all of the supporting documentation that is submitted by the parties for ADR review and resolution.

(b) 340B ADR Panel's jurisdiction. In response to comments received as discussed above (General Comments), HHS is finalizing this new paragraph (b), which provides that the 340B ADR Panel shall have jurisdiction to entertain any petition where the damages sought exceed $25,000 or where the equitable relief sought will likely have a value of more than $25,000 during the twelve-month period after the 340B ADR Panel's final agency decision, provided the petition asserts claims of the type set forth below.

(c) Claims permitted.

Section 7102 of the Affordable Care Act added section 340B(d)(3) of the PHSA, which instructs the Secretary to establish and implement a binding ADR process to resolve certain 340B Program statutory violations. Section 340B(d)(3)(A) of the PHSA specifies that the ADR process is to be used to resolve: (1) Claims by covered entities that they have been overcharged by manufacturers for drugs purchased under this section, and (2) claims by manufacturers, after a manufacturer has conducted an audit of a covered entity, as authorized by section 340B(a)(5)(C) of the PHSA, that a covered entity has violated the prohibitions against duplicate discounts and diversion (sections 340B(a)(5)(A) and (B) of the PHSA). This includes covered entity eligibility, patient eligibility, or manufacturer restrictions on 340B sales that the 340B ADR Panel deems relevant for resolving an overcharge, diversion, or duplicate discount claim. Each 340B ADR Panel will necessarily have jurisdiction to resolve all issues underlying any claim or defense, including, by way of example, those having to do with covered entity eligibility, patient eligibility, or manufacturer restrictions on 340B sales that the 340B ADR Panel deems relevant for resolving an overcharge, diversion, or duplicate discount claim in a fair, efficient, and expeditious manner.

Comment: Some commenters suggest that the proposed rule's requirement that permits claims by a manufacturer only after it has conducted an audit of a covered entity pursuant to section 340B(a)(5)(c) of the PHSA is overly burdensome. These commenters claim that in addition to audits being costly and time-consuming, there are instances where an audit of a covered entity is not possible, but a legitimate basis for a dispute exists. For example, a covered entity may reasonably or unreasonably withhold audit information or behave in a manner that would make an audit ineffective.

Response: HHS disagrees that the process for conducting an audit of a covered entity is improperly burdensome. More important, HHS does not have the authority to waive this statutory requirement. Section 340B(d)(3)(B)(iv) of the PHSA states that the ADR process requires ''that a manufacturer conduct an audit of a covered entity pursuant to subsection (a)(5)(C) as a prerequisite to initiating administrative dispute resolution proceedings against a covered entity.''

Comment: Some commenters recommend that HHS clarify that it is outside of the jurisdiction of the ADR process for a covered entity to pursue claims which challenge a manufacturer's Average Manufacturer Price (AMP) or best price (BP) calculations as a covered entity's claims are limited to the allegation that they were overcharged relative to the statutory 340B ceiling price as calculated using the manufacturer's current ''as submitted'' AMP and BP data.

Response: Section 340B(d)(3)(A) of the PHSA states, in part, that the ADR process is to resolve claims of alleged 340B overcharges. HHS believes that to do so, the 340B ADR Panel may find it necessary to assess whether the manufacturer's claimed ''ceiling price'' is in fact accurate. Even though a challenge to the claimed ceiling price is within the 340B ADR Panel's jurisdiction and any potential overcharges that may have resulted from an incorrect ceiling price, a challenge to a manufacturer's AMP or BP calculations is beyond the scope of this jurisdiction.

Comment: A few commenters recommend that HRSA consider allowing the parties the opportunity to voluntarily select mediation, as opposed to arbitration, as a mechanism for resolving disputes. Only after the attempt at mediation proves unsuccessful or if the parties do not agree to meditation, then the process should move to binding arbitration before the 340B ADR Panel.

Response: HHS appreciates the comments regarding the ability of the parties to select mediation as opposed to

arbitration. HHS notes that there is already an informal process in place for good faith negotiations between covered entities and manufacturers to attempt to resolve 340B disputes before pursuing ADR.

(d) Limitations of actions.

In the NPRM, HHS proposed that the covered entity and the manufacturer meet certain requirements for filing an ADR claim set forth in proposed paragraph (d). The proposed requirements would ensure that a claim of the type specified in section 340B(d)(3)(A) of the PHSA is the subject of the dispute.

The Department proposed that covered entities and manufacturers file a written claim, based on the facts available, or that should have been available, within 3 years of the date of the sale at issue in the alleged violation and that any claim not filed within 3 years would be time barred. The proposed requirement that a claim be filed within 3 years is consistent with the record retention expectations for the 340B Program and would ensure that covered entities and manufacturers have access to relevant records needed to review and respond to claims. The party filing the ADR claim would need to submit documents with each claim to verify that the alleged violation is not time barred. This proposed requirement would prevent a party from asserting a claim that is stale.

HHS also proposed that any file, document, or record associated with a claim be maintained by the covered entity or manufacturer until the 340B ADR Panel's final agency decision is issued unless the 340B ADR Panel provides otherwise. HHS received comments both agreeing with and questioning the timeframe proposed. HHS is finalizing this provision of the rule as proposed, with some modifications, to ensure consistency with requirements set forth in 340B PPAs setting record retention for 3 years for both manufacturers and covered entities. Below is a summary of the comments received and HHS' responses.

Comment: While many commenters agree with the effort to establish a timeframe by which the parties should file a claim, many disagree with the proposed 3-year requirement and suggest a period of at least 5 years. Certain commenters urge HHS to extend the document retention period to take into account the length of manufacturer audits and the time it may take to work with manufacturers on potential solutions (*e.g.,* which could include beginning the 3-year period on the date that the required covered entity audit is concluded, or other similar solutions). Other commenters urge HHS to adopt a different start date based on when a manufacturer restates the 340B ceiling price or when a covered entity discovers that the manufacturer should have restated the 340B ceiling price.

Response: HHS is changing the title of paragraph (d) to ''Limitation of Actions'' in this final rule. HHS appreciates comments regarding the requisite record retention period. HHS plans to finalize the 3-year period to be consistent with the PPA record retention requirements that apply to both covered entities and manufacturers. However, the three-year time limit would be subject to normal rules governing statutes of limitations that are not jurisdictional, including the doctrine of equitable tolling. *See United States* v. *Wong,* 575 U.S. 402, No. 13–1074 (2015); *United States* v. *June,* 575 U.S. 402, No. 13–1075 (2015).

Covered Entity Claims

In the NPRM, HHS proposed that to be eligible for the ADR process, each claim filed by a covered entity must include documents sufficient to demonstrate a covered entity's claim that it has been overcharged by a manufacturer, along with any such documentation as may be requested to evaluate the veracity of the claim. Such documentation may include: (1) A 340B purchasing account invoice which shows the purchase price by national drug code (NDC), less any taxes and fees; (2) the 340B ceiling price for the drug during the quarter(s) corresponding to the time period(s) of the claim; and (3) documentation of the attempts made to purchase the drug via a 340B account at the ceiling price, which resulted in the instance of overcharging. HHS believes that these documents are readily available to a covered entity through the usual course of business and should not be overly burdensome to produce. HHS, however, recognizes that in some cases, a covered entity or manufacturer may not have access to all needed documentation. HHS may also request that a party in need of information provide it with a written summary of attempts to work in good faith to resolve issues with the other party. In cases where documents are essential to a case, but not in the possession of one party and are not provided voluntarily by the other party, the 340B ADR Panel may request the documents and ensure that they become a part of the administrative record and that in most cases, summary judgment would not be entertained where there are outstanding documents in the possession of the party seeking summary judgment but not in the possession of the other party. HHS received comments recommending additional instructions on how to file claims and the type of information requested, which are addressed below. HHS clarifies in this final rule that notwithstanding Rules 8 and 10 of the Federal Rules of Civil Procedure, a covered entity filing a claim described in paragraph (c)(1) of this section must provide documents sufficient to demonstrate in its claim that it has been overcharged by a manufacturer, along with any such other documentation as may be requested by the 340B ADR Panel.

Comment: Some commenters recommend that HHS should separate covered entity documentation requirements for the different types of illustrative overcharge claims: (1) Claims that the initial purchase price of a drug purchased by the covered entity exceeded the ceiling price at that time; and (2) claims that the purchase price of a drug should have been adjusted downward later and a refund should have been issued at a specified later point in time, but was not issued within the time period required under HRSA's yet-to-be-developed refund procedure.

Response: HHS disagrees and believes the documentation requirements set forth in this final rule will provide, in most cases, the necessary information to ascertain the type of overcharge a covered entity is alleging in its claim. Where that is not the case, the petitioner would be entitled to limited discovery, in the case of a covered entity, or an opportunity to make an information request to the 340B ADR Panel, in the case of a manufacturer.

Comment: Commenters object to the requirement that covered entities would need to submit 340B ceiling price information when initiating a claim. According to those commenters, the proposed rule did not consider that covered entities do not have access to 340B ceiling prices, and this information is central to proving that a manufacturer overcharged for a drug. These commenters suggest that HRSA fast-track the development of the ceiling price system that would ensure a level playing field in the ADR process.

Response: HHS has acted to ensure that covered entities have access to the 340B ceiling price, through its launch of the pricing component of the 340B Office of Pharmacy Affairs Information System in January 2019. Every active covered entity has access to the pricing component of 340B OPAIS and can view the prices of all active National Drug Codes (NDC) in the 340B Program. A covered entity's authorizing official and primary contact have secure access through an account and two-factor

authentication. A manufacturer's authorizing official and primary contact also have access to this secure, online system to view the prices of their company's NDCs.

Manufacturer Claims

In the NPRM, HHS proposed that, to be eligible for the 340B ADR process, each manufacturer claim must include documents sufficient to demonstrate that a covered entity has violated the prohibition on diversion or duplicate discount. After receiving such a claim, HRSA may request the following documentation for an initial screening of the claim: (1) A final audit report to indicate that the manufacturer audited the covered entity for compliance with the prohibition on diversion (section 340B(a)(5)(B) of the PHSA) or duplicate discounts (section 340B(a)(5)(A) of the PHSA), and (2) the covered entity's written response to the manufacturer's audit finding(s). HRSA may also request that the manufacturer submit a written summary of attempts to work in good faith to resolve the claim with the covered entity. In this final rule, HHS clarifies that it is the 340B ADR Panel that is reviewing a claim that is responsible for making a request for documents or other information from a party, and not HRSA. We further note that notwithstanding Rules 8 and 10 of the Federal Rules of Civil Procedure, a manufacturer filing a claim under paragraph (c)(2) of this section must provide documents sufficient to demonstrate its claim that a covered entity has violated the prohibition on diversion or duplicate discount, along with any such documentation as may be requested by the 340B ADR Panel.

Comment: Commenters express concern that the causes of actions for manufacturers to file a claim are limited to two instances (diversion and duplicate discounts) and recommend that they be broadened to include other legitimate claims, particularly for other unforeseen examples that may emerge. The commenters recommend an inclusion of ''catch-all'' language that would allow the 340B ADR Panel to accept other legitimate claims, such as a dispute of the covered entity's eligibility that led the manufacturer to grant the 340B ceiling price, or a dispute concerning the dollar amount attributable to a violation.

Response: HHS agrees that in adjudicating claims of duplicate discounts and diversion, it may be necessary for a 340B ADR Panel to address issues such as covered entity eligibility in making its decisions. HHS is clarifying in this final rule that a 340B ADR Panel's review of diversion and duplicate discounts may include a review of issues such as whether an individual does not qualify as a patient for 340B Program purposes and claims that a covered entity is not eligible for the 340B Program. These issues, although they may appear ancillary, would be entertained because they may determine the outcome of any claim by the manufacturer that the covered entity has engaged in diversion.

Comment: Commenters recommend that HHS exclude specific types of allegations involving duplicate discounts, including the following: (1) The allegation involves duplicate discounts on claims submitted to Medicaid managed care organizations (MCOs); (2) the covered entity incorrectly elected Medicaid carve-out status on the OPA database or failed to include state-mandated modifiers on its claims, but the state Medicaid agency did not claim rebates on the 340B drugs purchased by the covered entity; and (3) a covered entity has correctly listed its carve-in status on the OPA database and has included state-mandated modifiers on its claims, or otherwise followed state requirements to identify 340B drugs, but the state Medicaid agency claimed rebates on the 340B drugs purchased by the covered entity nonetheless.

Response: HHS appreciates these comments, and 340B ADR Panels will consider the first and third types of claims listed above as section 340B(d)(3)(B) of the PHSA states that the decision-making body or official shall be responsible for considering manufacturer duplicate discount claims (violations of section 340B(a)(5)(A) of the PHSA). 340B ADR Panels will not consider claims where the covered entity incorrectly elected Medicaid carve-out status on the OPA database or failed to include state-mandated modifiers on its claims, but the state Medicaid agency did not claim rebates on the 340B drugs purchased by the covered entity, as manufacturers would have not demonstrated that the drugs at issue were subject to duplicate discounts under the Medicaid Drug Rebate and the 340B Programs.

(e) Combining claims.

In the NPRM, HHS proposed that, if requested, covered entities or manufacturers may be permitted to combine their individual claims. Section 340B(d)(3)(B)(vi) of the PHSA permits ''multiple covered entities to jointly assert claims of overcharges by the same manufacturer for the same drug or drugs in one administrative proceeding . . . .'' HHS proposed that for joint claims, the claim must list each covered entity and include documentation or information from each covered entity demonstrating that the covered entity meets all of the requirements for filing a claim with HHS and that a letter requesting consolidation of claims must also accompany the claim and must document that each covered entity consents to the consolidation of the claims.

Pursuant to section 340B(d)(3)(B)(vi) of the PHSA, joint claims are also permitted on behalf of covered entities by associations or organizations representing their interests. Therefore, HHS proposed that the covered entities must be members of the association or the organization representing them and that each covered entity must meet the requirements listed in paragraph (d) for filing a claim. The proposed joint claim must assert overcharging by the same manufacturer for the same drug(s), and the organization or association will be responsible for filing the claim. HHS also proposed requiring that a letter requesting consolidation of claims must accompany the claim and must document that each covered entity consents to the organization or association asserting a claim on its behalf.

Similarly, at the request of two or more manufacturers, section 340B(d)(3)(B)(v) of the PHSA permits the consolidation of claims brought by more than one manufacturer against the same covered entity if consolidation is appropriate and consistent with the statutory goals of fairness and economy of resources. HHS proposed that the claim must list each manufacturer and include documentation or information from each manufacturer demonstrating that the manufacturer meets the requirements listed in paragraph (d) for filing a claim. HHS also proposed that a letter requesting consolidation of claims must be submitted with the claim and must document that each manufacturer consents to the consolidation of the claims. The statutory authority for implementing the 340B ADR process does not permit consolidated claims on behalf of manufacturers by associations or organizations representing their interests. Therefore, HHS did not propose this option in the NPRM.

With regard to the consolidation of claims by manufacturers against a covered entity, HHS sought specific comment on the grounds under which consolidation would be consistent with the statutory goals of fairness and economy of resources, as required by section 340B(d)(3)(B)(v) of the PHSA. In addition, while HHS proposed, as required by the 340B statute, an ADR

process that allows manufacturers to consolidate claims against a covered entity, we recognized the operational challenges presented by the statutory requirement for a manufacturer to first audit the covered entity. HHS, therefore, sought comment on how manufacturers requesting a consolidated claim against a covered entity could satisfy the audit requirement. HHS received comments regarding the combining of claims for both manufacturers and covered entities. Both covered entities and manufacturers request the same drugs and alleged violations be present when making a request for combining claims and entering into the dispute process. HHS is finalizing this section as proposed as it did not receive specific comments on how to address the operational challenges set forth in the proposed rule and believes the process proposed to be sound, fair, and equitable to both parties. However, it should be noted that consolidation of claims by manufacturers against a single covered entity, or joint claims by multiple covered entities against one manufacturer shall be governed by this section guided by the relevant Rules of the Federal Rules of Civil Procedure (Rules), including Rules that contemplate multiple petitioners. Additionally, joinder, consolidation, and other third-party practice not referenced in this subsection (e) shall be governed by the Rules, as relevant, unless the parties and 340B ADR Panel agree otherwise. Below is a summary of the comments received and HHS' responses.

Comment: For consolidated manufacturer claims, commenters request that HHS should add a requirement that: (1) All manufacturers assert covered entity duplicate discount violations, diversion violations, or both arising out of the same policy or practice by the covered entity; and (2) all manufacturers assert these violations during the same time period. HHS must also recognize manufacturers' right to pursue claims (consolidated or otherwise) through a trade association or other agent of their choice.

Response: HHS disagrees. HHS believes that the above proposal would unnecessarily limit the scope of claims that could be brought against a covered entity, when the 340B statute provides only that the claim be based on a duplicate discount or diversion. The statutory ADR provisions allow associations to file joint ADR claims on behalf of covered entities; however, it does not include similar language for associations to file consolidated claims filed on behalf of manufacturers. Therefore, HHS will not alter the final rule to permit joint claims by associations representing manufacturers.

Comment: While the proposed rule outlines that covered entities must submit a letter requesting consolidation of claims, some commenters suggest that HHS further require covered entities to provide proof of consent of an organization or association asserting a claim on the covered entities' behalf. These commenters argue that the proposed rule implies that a covered entity would have to request and be granted permission in order to combine claims, which is not consistent with the statute.

Response: Section 340B(d)(3)(vi) allows for the combining of claims by a covered entities and does require proof of consent. HHS has outlined a process for resolving 340B disputes and has given the 340B ADR Panels wide latitude to establish the proper course of conduct and scope of the process including any additional deadlines, procedures, or instructions that may be necessary or desirable for a fair, efficient, and expeditious ADR proceeding.

Comment: Commenters recommend that HHS clarify that multiple covered entities may combine claims as long as they have in common an overcharge allegation relating to at least one of the same NDCs. For example, if one covered entity alleges overcharges against a manufacturer for three NDCs and another covered entity alleges overcharges against the same manufacturer for two out of three of those NDCs (potentially because the second covered entity only purchased two of the three drugs), these commenters suggest that covered entities should be permitted to combine their claims.

Response: Section 10.21(e) allows for the combining of covered entities' overcharge claims against the same manufacturer for the same drug or drugs. The 340B statute does not require that joint claims contain overcharge claims for the identical set of NDCs. Section 340B(d)(3)(B)(vi) states that ''multiple covered entities . . . (may) jointly assert claims of claims of overcharges by the same manufacturer for the same drug or drugs in one administrative proceeding[.]''

(f) Responding to a submitted claim.

In the NPRM, HHS proposed that once the parties have been notified that the claim has met the filing requirements (subsection (b) of the NPRM) and will move forward for review by the 340B ADR Panel, the opposing party will have 20 business days to submit a written response to the allegation to the 340B ADR Panel. The 340B ADR Panel may make subsequent requests for information regarding the claim as needed, and will consider any additional information provided by the named parties involved. However, if an opposing party does not respond to the ADR Panel's request for information or otherwise elects not to participate in the 340B ADR process, the 340B ADR Panel will issue its decision on the claim based on the information submitted in the claim. Commenters raised concerns regarding the lack of detail as it relates to timeframes and recommends set timeframes.

After consideration of the comments received, HHS is finalizing this section with some changes. In this final rule, HHS is extending the timeframe for responding to a claim. After an initiating party (or Petitioner) has received notification from HRSA that its claim will move forward to a 340B ADR Panel for review, the opposing party (or Respondent) will have 30 days to submit a written response to the 340B ADR Panel that may be of the type authorized by Rules 12, 13, or 56 of the Federal Rules of Civil Procedure. The 340B ADR Panel may issue additional instructions as may be necessary or desirable governing the conduct of ADR proceedings, including instructions pertaining to deadlines for submission of additional information that it may request. If the opposing party does not respond to the claim from the Petitioner, the 340B ADR Panel may enter a final agency decision by default in favor of the Petitioner. HHS believes that in a proceeding for damages, the Petitioner must still introduce evidence sufficient to support its claim for damages even though the merits have been resolved through default.

Comment: Several commenters raise concerns about the proposed rule's lack of detail regarding the timeframes for the 340B ADR Panel. They suggest that to better ensure predictability of the ADR process, HRSA should establish discreet timeframes for each of the steps in the ADR process for which HRSA is responsible. They explain that identifying these timeframes in the final rule will improve transparency of the process for all parties involved.

Response: HHS disagrees with the assertion that detailed timeframes must be established at this juncture for each step in the ADR process. Flexibility is needed as each dispute will be evaluated on its merits and the documents presented, and some disputes may take longer than others based on the level of complexity. The 340B ADR Panel is empowered to utilize the deadlines set forth in the

Federal Rules of Civil Procedure as necessary.

Comment: Some commenters recommend that HRSA change the period to respond to claims to 60 days as opposed to 20 business days, with potential extensions if needed. These commenters urge HRSA to provide more flexibility, especially as those involved in the process may not have had adequate prior notice of the subject of the claim. The commenters claim that the proposed 20 business day response time frame does not provide manufacturers sufficient time to review the data underlying a claim, assess the factual or legal questions raised by the claim, and prepare a response.

Response: HHS recognizes that there will be instances that require time beyond the stated deadlines. HHS has included in the final rule a provision that the ''340B ADR Panel may issue additional instructions as may be necessary or desirable governing the conduct of ADR proceedings, including instructions pertaining to deadlines for submission of additional information.''

§ 10.22 Information requests

Pursuant to section 340B(d)(3)(B)(iii) of the PHSA, regulations promulgated by the Secretary for the 340B ADR process will establish procedures by which a covered entity may discover and obtain information and documents from manufacturers and third parties as may be relevant to a claim that the manufacturer has overcharged the covered entity. The NPRM proposed that such covered entity information requests be facilitated by the 340B ADR Panel. HHS proposed that a covered entity must submit a written request for information to the 340B ADR Panel no later than 20 business days after the entity was notified that the claim would move forward for the 340B ADR Panel's review. The 340B ADR Panel will review the information/document request to ensure that it is reasonable and within the scope of the asserted claim. The 340B ADR Panel will notify the covered entity in writing if its request is deemed as such and permit the covered entity to submit a revised information/document request, if it is not.

In this section, HHS proposed that the 340B ADR Panel will consider relevant factors, such as the scope of the information/document request, whether there are consolidated claims, or the involvement of one or more third parties in distributing drugs on behalf of the manufacturer and that once reviewed, the 340B ADR Panel will submit the information/document request to the manufacturer, which must respond within 20 business days.

HHS also proposed that the manufacturer must fully respond in writing to the information request and submit its response to the 340B ADR Panel by the stated deadline and that the manufacturer is responsible for obtaining relevant information/documents from wholesalers or other third parties that may facilitate sales or distribution of its drugs to covered entities. HHS proposed that if a manufacturer anticipates it will not be able to fully respond by the deadline, the manufacturer may request one extension in writing within 15 business days. The extension request that is submitted to the 340B ADR Panel must include any available information, the reason why the deadline is not feasible, and outline a proposed timeline for fully responding to the information request. The 340B ADR Panel will review the extension request and notify both the manufacturer and the covered entity in writing as to whether the request for an extension is granted and the date of the new deadline. If a manufacturer does not respond to a request for information, HHS proposed that the 340B ADR Panel will issue its decision on the claim based on the information submitted in the submitted claim package. Many of the commenters recommended changes to the ability of parties to request and receive information during the course of the ADR proceedings including allowing a manufacturer to submit an information request, which was not addressed in the NPRM.

HHS has decided to broaden the scope of this section to include information requests from the 340B ADR Panel. To provide further guidance to the parties involved, HHS has also decided that covered entities' discovery shall be governed by the Federal Rules of Civil Procedure. While HHS limited the scope of these information requests to covered entities in the NPRM, consistent with the limited discovery requirements of the statute pertaining to covered entities, this final rule allows the 340B ADR Panel to request additional information from a party if deemed necessary to ensure that claims shall be resolved fairly, efficiently, and expeditiously. This leaves open the possibility that a drug manufacturer could petition the 340B ADR Panel to request further information from a covered entity. If the 340B ADR Panel determines that such a request would enhance its deliberations, the 340B ADR Panel could make the request to the covered entity. Based on comments received, HHS has also added (c) to this section to address actions the 340B ADR Panel may take if a party fails to fully respond to the information request.

Comment: Some commenters recommend that a covered entity should be afforded an opportunity to review the manufacturer's response before crafting and submitting its request for additional information. Once the covered entity has seen the manufacturer's position, it can better tailor its information request to the dispute, and request only those documents it needs to pursue its overcharge claim. HHS should allow covered entities 30 calendar days from the date on which it receives the manufacturer's response to submit an information request.

Response: The 340B ADR Panel is given wide latitude to determine the proper course of conduct in an ADR proceeding and may issue additional instructions as may be necessary or desirable governing the conduct of ADR proceedings including instructions pertaining to submission of additional information.

Comment: Some commenters recommend that HHS allow manufacturers to submit information requests regarding disputes just as covered entities can. They argue that manufacturers must have the right to submit information requests in the event that they are unable to obtain all relevant information during an audit or new information relevant to the dispute arises.

Response: Section 340B(d)(3)(B)(iii) of the PHSA expressly authorizes covered entities to ''discover and obtain such information and documents from manufacturers'' as may be relevant to their filed claims. As the statute does not provide similar authorization for manufacturer document requests, HHS declines to alter the final rule in this area. However, to the extent that a manufacturer believes an information request to a covered entity is necessary for the 340B ADR Panel's deliberations, it may petition the 340B ADR Panel to make the request to the covered entity.

Comment: The proposed rule allows 340B covered entities to request information relevant to their claim from manufacturers and third parties; however, commenters argue that the proposed rule does not hold a manufacturer accountable for actually producing the requested information. These commenters recommend that if a manufacturer fails to comply with the information request, the 340B ADR panel should rely on the information contained in the original submitted claim and issue a finding in favor of the covered entity due to lack of

information obtained from the manufacturer.

Response: HHS agrees. Section 10.22(c) has been added to address sanction for failure to respond or failure to respond fully to an information request.

Comment: Some commenters urge HHS to consider that the filing party should be required to share with the responding party all of the documents it has filed with HRSA to ensure that the ADR process benefits from the full and open exchange of information. These commenters explain that full disclosure of the filing documents also might prevent some parties from seeking judicial review of 340B ADR Panel final agency decisions. A party dissatisfied with a 340B ADR Panel final agency decision might be more prone to seek judicial review if it has not had the opportunity to review the evidence on which the 340B ADR Panel relied.

Response: HHS agrees. Section 10.22(b) allows the 340B ADR Panel to take into account the possibility that a manufacturer would need additional information in order to respond appropriately to the dispute in question. While it is expected that a manufacturer would have all the information needed through its audit of a covered entity, this section would allow the 340B ADR Panel to make an information request of any party and to share that information with the opposing party if necessary for the fair, efficient, and expeditious conduct of the ADR proceeding.

§ 10.23 Conduct of the ADR proceeding

HHS has added this section to address comments received regarding the needs of the parties as it relates to the conduct of these proceedings. HHS recognizes there are instances, sometimes beyond the control of the parties that warrant flexibility in how it conducts the proceedings and that may warrant additional instructions. This new section will allow for ADR proceedings to take place in the most fair, efficient, and expeditious manner, which could include video conference, in-person, or through other means. It will also allow the 340B ADR Panel discretion in admitting evidence and testimony during the course of a proceeding as well as provide the 340B ADR Panel with the additional flexibility to provide instructions during the proceeding in order to achieve a fair, efficient, and expeditious review. HHS has also decided that unless the parties agree otherwise and the 340B ADR Panel concurs, the Federal Rules of Civil Procedure (*https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_-_dec_1_2019_0.pdf*) and the Federal Rules of Evidence (*https://www.uscourts.gov/sites/default/files/federal_rules_of_evidence_-_dec_1_2019_0.pdf*), to the extent applicable, shall apply to proceedings. HHS has summarized and responded to comments received below.

Comment: Some commenters recommend HHS provide the parties with the opportunity to present evidence live in front of the 340B ADR Panel. The commenters explain that relying exclusively on a paper record could potentially lengthen the ADR process if the documents were interpreted differently by the parties and further clarification were needed before proceeding. A live process could allow for questions arising from paper records to be answered efficiently. These commenters explain that by enabling parties to present evidence and respond to questions from the 340B ADR Panel orally, HHS can provide a forum where information is shared among affected parties.

Response: HHS agrees that there may be instances where portions of the ADR may need to be conducted by telephone or video conference, or through other means. Therefore, HHS has clarified the means by which the process may be conducted in this final rule.

Comment: Several commenters suggest that HHS detail in the final rule how it plans to establish safeguards and protections to ensure that proprietary information submitted on behalf of either party is kept confidential by the 340B ADR Panel in order to minimize risk of harm.

Response: HHS appreciates the suggestion on addressing safeguards to ensure confidentiality and minimize disclosure risk. HHS believes adequate safeguards are in place to ensure that confidential, proprietary information is not disclosed.

§ 10.24 Final agency decision

In the NPRM, HHS proposed that the 340B ADR Panel would review the documents submitted by the parties to determine if there is adequate support to conclude that a violation occurred. HHS proposed a process whereby the 340B ADR Panel's draft agency decision letter would be sent to all parties, and the parties involved would have 20 business days to respond to the 340B ADR Panel. HHS sought specific comments on this process and whether this proposed process would facilitate or hinder the fair, efficient, and timely resolution of claims.

HHS also proposed that once the parties have reviewed and submitted comments in response to the draft agency decision letter, the 340B ADR Panel would prepare and submit its final agency decision letter to all parties in the dispute. In issuing a final agency decision letter, the 340B ADR Panel will be operating under an express, written delegation of authority from the Secretary of HHS to make such final agency decisions. This Regulation constitutes that *ex officio* delegation. The final agency decision made by the 340B ADR Panel would conclude the administrative resolution process; however, HHS proposed that the final agency decision letter also be submitted to HRSA to provide remedies and enforcement of determinations through mechanisms and sanctions as described section 340B(d)(1)(B) or (d)(2)(B), as appropriate.

HHS proposed that the 340B ADR Panel's final agency decision letter would be binding upon the parties involved, unless invalidated by an order of a court of competent jurisdiction, acting under Section 10 of the Administrative Procedure Act (5 U.S.C. 706), and in accordance with section 340B(d)(3)(C) of the PHSA. HHS is finalizing the rule as proposed with modifications. First, in this final rule, HHS is replacing ''HSB'' with ''HRSA Administrator,'' in order to elevate the responsibilities conducted under the ADR process. Second, this final rule adds section 10.24(d), which states the final agency decision will be precedential and binding on the parties. Lastly, given that HHS has added procedural protections and more clearly defined the ADR process, HHS does not feel that it is necessary to provide the parties an opportunity to respond to a draft agency decision.

Comment: Commenters explain that the proposed rule does not incorporate an appeals process and recommend that an appeals process be made available to all parties. These commenters also suggest that HHS publish all findings and decisions by the 340B ADR Panel to enable all parties to be informed and more compliant. These commenters suggest that publication of the ADR's decisions will also prevent inconsistent decisions and unsupported rulings.

Response: HHS agrees, as these ADR decisions will be precedential. Therefore, HHS will ensure that the final agency decisions are publically available (*e.g.,* by publication on the HRSA website). HHS does not believe that an appeals process is necessary given that an aggrieved party has a right to seek judicial review under section 10 of the Administrative Procedure Act (5 U.S.C. 706).

Comment: When deciding disputes, some commenters suggest that the 340B ADR Panel use a ''preponderance of the

evidence'' standard. Once the 340B ADR Panel reaches its decision, HHS should mandate the issuance of a summary that includes a transparent analysis of the reasons for the decision, without disclosing any proprietary or otherwise confidential information. HHS should also recognize that the 340B ADR Panel decision is binding on the parties involved in the dispute (unless otherwise overturned by a court acting pursuant to the Administrative Procedure Act), but is not binding on third parties.

Response: HHS agrees, as the final agency decisions will be precedential and binding on the named parties in the dispute. As such, HHS will ensure that all final agency decisions are publically available. HHS also agrees that the 340B ADR Panel use a ''preponderance of the evidence'' standard when making its determinations and has adjusted the final rule accordingly in section § 10.24(a).

Comment: Commenters suggest that HHS clarify that it will not impose sanctions on a party as a result of a 340B ADR Panel decision until the party has been given an opportunity to complete corrective action with respect to the 340B ADR Panel's findings.

Response: Section 340B(d)(3)(A) includes a requirement that the ADR process include the ''appropriate procedures for the provision of remedies and enforcement of determinations made pursuant to such process through mechanisms and sanctions described in paragraphs (1)(B) and (2)(B) (of 340B(d))'' Therefore, when appropriate, the 340B ADR Panel may make recommendations to HRSA for sanctions, including referrals to the HHS Office of Inspector General for its consideration of civil monetary penalties, as appropriate. Whether sanctions or remedial action is appropriate will be dependent on the type of violation that occurred.

Comment: A few commenters were concerned that the proposed rule does not address how HRSA will enforce the findings of the 340B ADR panel or any underlying manufacturer audit. These commenters explain that the NPRM does not address if, or how, HRSA will go about enforcing the findings of the 340B ADR Panel or the underlying manufacturer audits. For example, if the 340B ADR Panel's final agency decision requires covered entities to make any applicable repayments to manufacturers, timeframes should be established around such payment and, at a minimum, HRSA should permit affected manufacturers to withhold future discounts until HRSA, the manufacturer, and the covered entity have resolved the findings noted in the manufacturer's audits.

Response: Wide varieties of covered entities participate in the 340B Program, from small, rural health care facilities to large academic medical centers. HHS expects that the 340B ADR Panel will review violations ranging from minor and inadvertent to systematic and intentional. Given the wide variety of 340B Program participants and varying types of violations, HHS believes that the form of enforcement should be left open to permit HHS maximum flexibility in determining what is appropriate given the specific facts of each situation.

Comment: Some commenters urge HRSA to incorporate a timeframe for the issuance of 340B ADR Panel's final agency decisions. They recommend that the final agency decision should be issued 30 business days from the date when the submission of all requested information is complete and in complex cases, the process should be extended 15 business days, so that the final agency decision would be issued within 45 business days. The commenters argue that this approach would be consistent with Medicare where the deadline for initial determination decisions is 45 days and for redetermination decisions is 60 days.

Response: HHS disagrees. The 340B ADR Panel has been given wide latitude to determine the scope of the process and should not be held to a timeframe that does not allow for thorough and thoughtful consideration of all materials presented.

Comment: Some commenters state that the ADR process should be governed by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* They explain that a reviewing court should be authorized to hold unlawful and set aside ADR Panel decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence. The commenters request that HRSA clarify that the APA will apply to the ADR Process, including judicial review.

Response: The form of judicial review for 340B ADR Panel decisions is beyond the scope of this final rule.

Comment: Commenters support the proposal that HRSA has the sole authority to enforce the 340B ADR Panel's decision. The commenters explain that the 340B ADR Panel may not fully appreciate HRSA's historical enforcement practices, and the NPRM will ensure that HRSA retains responsibility for compliance with 340B statutory requirements.

Response: While HHS appreciates the support of HRSA having sole enforcement authority, this final rule contemplates and allows HRSA to take appropriate action, which could include enforcement action or referral to another HHS Operating Division or to another Federal agency. For example, if the 340B ADR Panel's final agency decision is that an overcharge did occur, HRSA could recommend the OIG review the overcharge to determine if it was knowing and intentional and should be assessed a civil monetary penalty.

Comment: Commenters express concern that HRSA should not use its enforcement authority to transform a 340B ADR Panel decision into a broad 340B policy decision. The commenters explain that enforcement should be limited to the parties to the ADR proceeding. 340B ADR Panel decisions should not have general applicability.

Response: As set forth in section 10.23(b)(2), 340B ADR Panel decisions will be final agency decisions, binding on the parties, and precedential.

III. Regulatory Impact Analysis

HHS has examined the effects of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 8, 2011), the Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy,

productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB).

HHS does not believe that this final rule will have an economic impact of $100 million or more in any 1 year, and is therefore not designated as an ''economically significant'' final rule under section 3(f)(1) of Executive Order 12866. This rule creates a framework for the Department to resolve certain disputed claims regarding manufacturers overcharging covered entities and disputed claims of diversion and duplicate discounts by covered entities audited by manufacturers under the 340B Program. HHS does not anticipate the introduction of an ADR process to result in significant economic impacts.

Executive Order 13771 (January 30, 2017) requires that the costs associated with significant new regulations ''to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This final rule is not expected to be an E.O. 13771 regulatory action because this final rule is not significant under E.O. 12866.

The Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. HHS will use an RFA threshold of at least a three percent impact on at least five percent of small entities.

The rule would affect drug manufacturers (North American Industry Classification System code 325412: Pharmaceutical Preparation Manufacturing). The small business size standard for drug manufacturers is 750 employees. Approximately 600 drug manufacturers participate in the 340B Program. While it is possible to estimate the impact of the final rule on the industry as a whole, the data necessary to project changes for specific manufacturers or groups of manufacturers is not available, as HRSA does not collect the information necessary to assess the size of an individual manufacturer that participates in the 340B Program. The rule would also affect health care providers. For purposes of the RFA, HHS considers all health care providers to be small entities either by virtue of meeting the Small Business Administration (SBA) size standard for a small business, or for being a nonprofit organization that is not dominant in its market. The current SBA size standard for health care providers ranges from annual receipts of $7.5 million to $38.5 million. Currently, in 2020,, 12,500 covered entities participate in the 340B Program, which represent safety-net healthcare providers across the country.

The final rule introduces an ADR mechanism to review manufacturer claims that covered entities have violated certain statutory obligations and covered entities claims that they have been overcharged for covered outpatient drugs by manufacturers. The documentation required as part of this administrative process are documents that manufacturers and covered entities are already required to maintain as part of their participation in the 340B Program. HHS expects that this documentation would be sufficiently available prior to submitting a claim. Therefore, the collection of this information would not result in an economic impact or create additional administrative burden on these businesses.

HHS believes the ADR process will provide a cost-effective option for resolving claims that would otherwise remain unresolved or prompt litigation. The final rule provides an option to consolidate claims by similar situated entities, and covered entities may have claims asserted on their behalf by associations or organizations, which could reduce costs. HHS has determined, and the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small health care providers or a significant impact on the operations of a substantial number of small manufacturers; therefore, it is not preparing an impact analysis for the purposes of the RFA. HHS estimates that the economic impact on small entities and small manufacturers will be minimal and less than 3 percent.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' In 2020, that threshold is approximately $156 million. HHS does not expect this rule to exceed the $156 million threshold.

Executive Order 13132—Federalism

HHS has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule would not adversely affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under Section 654(c) of the Treasury and General Government Appropriations Act of 1999.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Given the small number of requests for the informal dispute resolution process, HHS asserted in the proposed rule that the ADR process would not have a significant impact on the current reporting and recordkeeping burden for manufacturers or covered entities under the 340B Program. HHS solicited comments on the accuracy of this statement. No comments were received challenging the accuracy of this statement. Moreover, HHS believes that the 340B ADR Process is exempt from

the Paperwork Reduction Act requirements as it provides the mechanism and procedures for ''an administrative action or investigation involving an agency against specific individuals or entities'' pursuant to 44 U.S.C. 3518(c).

Dated: November 25, 2020.

Thomas J. Engels,

Administrator, Health Resources and Services Administration.

Dated: December 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

List of Subjects in 42 CFR Part 10

Biologics, Business and industry, Diseases, Drugs, Health, Health care, Health facilities, Hospitals, 340B Drug Pricing Program.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 42 CFR part 10 as follows:

PART 10—340B DRUG PRICING PROGRAM

■ 1. The authority citation for part 10 continues to read as follows:

Authority: Sec. 340B of the Public Health Service Act (42 U.S.C. 256b), as amended.

■ 2. Amend § 10.3 by adding in alphabetical order definitions for ''Administrative Dispute Resolution (ADR) Process'', ''Administrative Dispute Resolution Panel (340B ADR Panel)'', ''Claim'', ''Consolidated claim'', and ''Joint claim'' to read as follows:

§ 10.3 Definitions.

* * * * *

Administrative Dispute Resolution (ADR) Process means a process used to resolve the following types of claims, including any issues that assist the 340B ADR Panel in resolving claims:

(1) Claims by covered entities that may have been overcharged for covered outpatient drugs purchased from manufacturers; and

(2) Claims by manufacturers of 340B drugs, after a manufacturer has conducted an audit of a covered entity (pursuant to section 340B(a)(5)(C) of the Act), that a covered entity may have violated the prohibitions against duplicate discounts or diversion.

Administrative Dispute Resolution Panel (340B ADR Panel) means a decision-making body within the Department that, acting on an express, written delegation of authority from the Secretary of HHS, reviews and makes a precedential and binding decision for a claim brought under the ADR Process.

* * * * *

Claim means a written allegation filed by or on behalf of a covered entity or by a manufacturer for resolution under the ADR Process.

* * * * *

Consolidated claim means a claim resulting from combining multiple manufacturers' claims against the same covered entity;

* * * * *

Joint claim means a claim resulting from combining multiple covered entities' (or their membership organizations' or associations') claims against the same manufacturer for the same drug or drugs.

* * * * *

■ 2. Add subpart C to read as follows:

Subpart C—Administrative Dispute Resolution

Sec.
10.20 Administrative Dispute Resolution Panel.
10.21 Claims.
10.22 Information requests.
10.23 Conduct of the ADR proceeding.
10.24 Final agency decision.

§ 10.20 Administrative Dispute Resolution Panel.

The Secretary shall establish a 340B Administrative Dispute Resolution Board (Board) consisting of at least six members appointed by the Secretary with equal numbers from the Health Resources and Service Administration (HRSA), the Centers for Medicare & Medicaid Services (CMS), and the Office of the General Counsel (OGC) from which Administrative Dispute Resolution Panels (340B ADR Panel) of three members shall be selected by the HRSA Administrator (to review claims and, pursuant to authority expressly delegated through this rule by the Secretary, and to make precedential and binding final agency decisions regarding claims filed by covered entities and manufacturers). There shall also be one ex-officio, non-voting member chosen from the staff of the HRSA Office of Pharmacy Affairs (OPA). HRSA and CMS Board members shall have relevant expertise and experience in drug pricing or drug distribution. OGC Board members shall have expertise and experience in handling complex litigation.

(a) *Members of the 340B ADR Panel.* (1) For each case, the HRSA Administrator shall:

(i) Select from the Board three voting members, one from each of the three HHS operating or staff divisions involved (*i.e.,* CMS, HRSA, OGC) to form a 340B ADR Panel.

(ii) Remove an individual from a 340B ADR Panel for cause; and

(iii) Appoint replacement members from the Board should an individual be unable to complete his or her duties on a 340B ADR Panel.

(2) No member of a 340B ADR Panel may have a conflict of interest, as defined in paragraph (b) of this section.

(b) *Conflicts of interest.* All individuals who serve on a 340B ADR Panel will be screened for conflicts of interest prior to reviewing a claim. Conflicts of interest may include:

(1) Financial interest in a party involved, a subsidiary of a party involved, or in the claim before a 340B ADR Panel;

(2) Family or close relation to a party involved; and

(3) Current or former business or employment relation to a party.

(c) *Duties of the 340B ADR Panel.* The 340B ADR Panel will adjudicate each claim using the procedures described §§ 10.21, 10.22, 10.23, and 10.24.

(1) Review and evaluate documents and other information submitted by covered entities and manufacturers;

(2) Request additional information or clarification of an issue from any or all parties to make a final agency decision;

(3) When necessary, evaluate a claim in a separate session from the parties involved;

(4) Consult with OPA and the parties, as appropriate and necessary, regarding any inquiries or concerns while reviewing a claim; and

(5) Issue a final agency decision on each claim and submit the written decision to the parties, and to HRSA for appropriate action.

§ 10.21 Claims.

(a) *Initiating an action.* Any covered entity or manufacturer may initiate an action for monetary damages or equitable relief against a manufacturer or covered entity, as the case may be, by filing a written petition for relief with HRSA and mailing a copy of the petition with any attachments to the General Counsel or other senior official of the opposing party at its principal place of business by certified mail, return receipt requested, within three days of filing the claim. The petition should satisfy the pleading requirements of Rules 8, 10, and 11 of the Federal Rules of Civil Procedure, including setting forth the factual basis for invoking the 340B ADR Panel's jurisdiction. A claim must include all of the requirements in paragraph (d) of this section. Additional information to substantiate a claim may be submitted.

(b) *340B ADR Panel's jurisdiction.* The 340B ADR Panel shall have jurisdiction to entertain any petition where the damages sought exceed

$25,000 or where the equitable relief sought will likely have a value of more than $25,000 during the twelve-month period after the 340B ADR Panel's final agency decision, provided the petition asserts claims of the type set forth below.

(c) *Claims permitted.* The ADR process is limited to the following:

(1) Claims by a covered entity that it has been overcharged by a manufacturer for a covered outpatient drug, including claims that a manufacturer has limited the covered entity's ability to purchase covered outpatient drugs at or below the 340B ceiling price; and

(2) Claims by a manufacturer, after it has conducted an audit of a covered entity pursuant to section 340B(a)(5)(C) of the PHSA, that the covered entity has violated section 340B(a)(5)(A) of the PHSA regarding the duplicate discount prohibition, or section 340B(a)(5)(B) of the PHSA regarding the diversion prohibition, including claims that an individual does not qualify as a patient for 340B Program purposes and claims that a covered entity is not eligible for the 340B Program.

(d) *Limitation of actions.* (1) A covered entity or manufacturer must file a written claim for administrative dispute resolution with HRSA within 3 years of the date of the alleged violation. Any file, document, or record associated with the claim that is the subject of the ADR process must be maintained by the covered entity and manufacturer until the final agency decision is issued by the 340B ADR Panel.

(2) Notwithstanding Rules 8 and 10 of the Federal Rules of Civil Procedure, a covered entity filing a claim described in paragraph (c)(1) of this section must provide documents sufficient to demonstrate its claim that it has been overcharged by a manufacturer, along with any such other documentation as may be requested by the 340B ADR Panel.

(3) Notwithstanding Rules 8 and 10 of the Federal Rules of Civil Procedure, a manufacturer filing a claim under paragraph (c)(2) of this section must provide documents sufficient to demonstrate its claim that a covered entity has violated the prohibition on diversion or duplicate discount, along with any such documentation as may be requested by the 340B ADR Panel.

(e) *Combining claims.* (1) Two or more covered entities may jointly file claims of overcharges by the same manufacturer for the same drug or drugs if each covered entity that could file a claim against the manufacturer consents to the jointly filed claim, including submission of the required documentation, described in paragraph (d) of this section.

(2) An association or organization may file claims of overcharges by the same manufacturer for the same drug or drugs on behalf of multiple covered entities if each covered entity represented could file a claim against the manufacturer, is a member of the association or organization, meets the requirements described in paragraph (d) of this section, including submission of the required documentation, and each covered entity has agreed to representation by the association or organization on its behalf.

(3) A manufacturer or manufacturers may request to consolidate claims brought by more than one manufacturer against the same covered entity if each manufacturer could individually file a claim against the covered entity, consents to the filing of the consolidated claim, meets the requirements described in paragraph (d) of this section for that claim, and the 340B ADR Panel determines that such consolidation is appropriate and consistent with the goals of fairness and economy of sources. The 340B ADR Panel will not permit consolidated claims filed on behalf of manufacturers by associations or organizations representing their interests.

(4) Joinder, consolidation, and other third-party practice not referenced in this paragraph (e) shall be governed by the Federal Rules of Civil Procedure, as relevant, unless the parties and 340B ADR Panel agree otherwise.

(f) *Responding to a submitted claim.* Upon receipt of service of petition, the respondent must file with the 340B ADR Panel a written response to the Petition as set forth in Rule 12 or 56. The 340B ADR Panel may issue additional instructions as may be necessary or desirable governing the conduct of ADR proceedings, including instructions pertaining to deadlines for submission of additional information. If an opposing party does not respond to the petition, the 340B ADR Panel may enter a final agency decision by default in favor of the Petitioner. In a proceeding for damages, the Petitioner must still introduce evidence sufficient to support its claim for damages even though the merits have been resolved through default.

§ 10.22 Information requests.

(a) *Discovery.* The 340B ADR Panel may permit a covered entity limited discovery to obtain such information and documents as may be relevant to demonstrate the merits of a claim. Such discovery shall be governed, to the extent applicable, by the Federal Rules of Civil Procedure.

(b) 340B ADR Panel information requests. Taking into account any party's request for further information, the 340B ADR Panel may request additional information from either party.

(c) *Failure to respond to information requests.* If the 340B ADR Panel finds that a party has failed to respond or fully respond to an information request, the 340B ADR Panel make take the following actions, including:

(1) Holding facts to have been established in the proceeding;

(2) Precluding a party from presenting or contesting a particular issue;

(3) Excluding evidence; or

(4) Judgment in the proceeding or dismissal of proceeding.

§ 10.23 Conduct of the ADR proceeding.

(a) The 340B ADR Panel will determine, in its own discretion, the most efficient and practical form of the ADR proceeding. Unless the matter is resolved through a motion to dismiss or summary judgment under Rule 56, the 340B ADR Panel shall conduct an evidentiary hearing when there are material facts in dispute. The ADR proceeding may be conducted by video conference, in-person, or through other means.

(b) The 340B ADR Panel will determine the proper course of conduct in an ADR proceeding. Unless the parties agree otherwise and the 340B ADR Panel concurs, the Federal Rules of Civil Procedure, to the extent applicable, shall govern the proceedings.

(c) Unless the parties agree otherwise and the 340B ADR Panel concurs, the Federal Rules of Evidence shall apply to the proceedings.

(d) The 340B ADR Panel may issue additional instructions or guidance as may be necessary or desirable governing the conduct of ADR proceedings.

§ 10.24 Final agency decision.

(a) The 340B ADR Panel will review the evidence submitted by the parties and determine if the preponderance of the evidence supports the conclusion that a violation as described in § 10.21(c)(1) or (2) has occurred.

(b) The 340B ADR Panel will prepare an agency decision based on its review and evaluation of the evidence submitted by the parties, including documents provided as required in § 10.21(d), information requests in support of a claim, and responses to a claim.

(c) The agency decision will represent the decision of a majority of the 340B

ADR Panel's findings regarding the claim and discuss the findings supporting the decision.

(d) The agency decision constitutes a final agency decision that is precedential and binding on the parties involved unless invalidated by an order of a court of competent jurisdiction.

(e) The 340B ADR Panel will submit the final agency decision to all parties, and to HRSA for appropriate action regarding refunds, penalties, removal, or referral to appropriate Federal authorities.

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BILLING CODE 4165–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

RIN No. 2105–AE92

Disadvantaged Business Enterprise Program; Inflationary Adjustment

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The United States Department of Transportation (DOT) is amending the small business size limit under its Disadvantaged Business Enterprise (DBE) program, also known as the gross receipts cap, to ensure that small businesses may continue to participate in the Department's DBE program after taking inflation into account. This final rule provides an inflation adjustment to the size limit on small businesses participating in the DBE program and implements a statutory change to the size standard pursuant to the Federal Aviation Administration (FAA) Authorization Act of 2018.

DATES: This rule is effective January 13, 2021.

FOR FURTHER INFORMATION CONTACT: Chris Cialeo, Office of the General Counsel (C–10), U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–8789, *christopher.cialeo@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The DBE program for DOT-assisted contracts is a statutory program intended to ensure nondiscriminatory contracting opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Department's highway, mass transit, and airport financial assistance programs. The statutory provision governing the DBE program in the highway and mass transit financial assistance programs is section 1101(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, Dec. 4, 2015), and the statutory provision governing the DBE program as it relates to airport financial assistance programs is 49 U.S.C. 47113.

Under the Department's existing rules, to qualify as an eligible DBE firm, a firm's average annual gross receipts over the preceding three fiscal years cannot exceed a DOT-specific gross receipts cap. On April 2, 2007, in response to direction in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) to adjust this gross receipts cap annually for inflation, the Department published a final rule adjusting the gross receipts cap for its DBE program in 49 CFR part 26 from $19,570,000 to $20,410,000 (72 FR 15614). On April 3, 2009, the Department published another final rule adjusting the gross receipts cap for its DBE program from $20,410,000 to $22,410,000 (74 FR 15222). The Moving Ahead for Progress in the 21st Century (MAP–21) Act (Pub. L. 112–141, July 6, 2012) maintained the $22,410,000 gross receipts cap amount set by the April 2009 final rule. On October 2, 2014, the Department issued a final rule that increased the gross receipts cap to $23,980,000 (79 FR 59565). In 2015, The FAST Act maintained the $23,980,000 gross receipts cap set by the October 2014 rule. Section 1101(b)(2)(A)(ii) of the FAST Act reaffirms the Secretary of Transportation's requirement to adjust this amount annually for inflation. Accordingly, this final rule adjusts the gross receipts cap for inflation by increasing the gross receipts cap applicable to firms for purposes of Federal Highway Administration (FHWA)—and Federal Transit Administration (FTA)—assisted work to $26,290,000.

The Federal Aviation Administration (FAA) Reauthorization Act of 2018 (Pub. L. 115–254) removed the gross receipts cap for purposes of eligibility for FAA-assisted work. Therefore, the revised rule reflects that the gross receipts cap does not apply for purposes of determining a firm's eligibility for FAA-assisted work.

II. Business Size Standards for the DBE Program

To make an inflation adjustment to the gross receipts figures, DOT uses the Department of Commerce's price index for State and local consumption expenditures (gross output of general government). The Bureau of Economic Analysis at the Department of Commerce prepares constant dollar estimates of State and local government purchases of goods and services by deflating current dollar estimates by suitable price indexes. These indexes include purchases of durable and non-durable goods, and other services. Using these price deflators enables the Department to adjust dollar figures for inflation from past years.

The current inflation rate on purchases by State and local governments is calculated by dividing the price deflator for the fourth quarter of 2019 (116.030) by 2015's fourth quarter price deflator (105.829). See Bureau of Economic Analysis Table 3.10.4, Price Indexes for Government Consumption Expenditures and General Government Gross Output (January 30, 2020). The result of the calculation is 1.09639, which represents an inflation rate of 10.9639% from the fourth quarter of 2015. Multiplying the FAST Act's $23,980,000 standard for disadvantaged business enterprises in DOT financial assistance programs by 1.09639 equals $26,291,465, which will be rounded off to the nearest $10,000 is $26,290,000. Therefore, if a firm's gross receipts averaged over the firm's previous three fiscal years exceeds $26,290,000, it exceeds the small business size limit for participation in FHWA and FTA-assisted work under the Department's DBE program. The Department will adjust this amount for inflation on an annual basis. In subsequent years, the revised amount will be published on the Departmental Office of Civil Rights' website.

Regulatory Analyses and Notices

Under the Administrative Procedure Act (5 U.S.C. 553(b)(B)), an agency may waive notice and comment procedures if it finds good cause that such procedures are impracticable, unnecessary, or contrary to the public interest. The Department finds that notice and comment for this rule is unnecessary because it only relates to ministerial updates of business size standards and gross receipts caps to account for inflation, which does not change the standards or caps in real dollar terms. Accordingly, the Department finds good cause under 5 U.S.C. 553(b)(B) to waive notice and opportunity for public comment.

A. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and 49 CFR Part 5 (DOT Administrative Rulemaking, Guidance, and Enforcement Procedures)

This rule is not a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review. It is also not significant within the meaning of DOT regulatory policies and procedures. This rule is issued in accordance with the Department's rulemaking procedures found in 49 CFR part 5 and DOT Order 2100.6.

The Department does not anticipate that this rulemaking will have an economic impact on regulated entities. The rule is a ministerial adjustment for inflation of a statutory small business size standard. It will not impose burdens on any regulated parties.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities. The rule is a ministerial update to the size limits to define small businesses for the Department's Financial Assistance Program for Disadvantaged Business Enterprises. The only effect of the rule on small entities is to allow some small businesses to continue to participate in the DBE programs by adjusting for inflation, and to align the regulation with a change to the part 26 size standard for FAA-assisted work pursuant to the FAA Reauthorization Act of 2018. Therefore, the Department certifies that this rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism), and the Department has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Department has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

D. Executive Order 13175 (Tribal Consultation)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this rule will not significantly or uniquely affect the Indian tribal communities, and will not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $148.1 million or more in any one year (2 U.S.C. 1532). The definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. Since this rule pertains to a nondiscrimination requirement and affects only Federal financial assistance programs, the Unfunded Mandates Reform Act does not apply.

F. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The Department has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

H. National Environmental Policy Act

The agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, ''Procedures for Considering Environmental Impacts'' (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment or environmental impact statement. The purpose of this rulemaking is to make an inflation adjustment of the size limit on small businesses participating in the DBE program. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances pertaining to this rulemaking.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Civil rights, Disadvantaged business, Government contracts, Grant programs–transportation, Highways and roads, Mass transportation, Minority business, Reporting and recordkeeping requirements, Small business.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 1. The authority citation for part 26 is revised to read as follows:

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.;* Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324; 49 U.S.C. 47113, 47123; Sec. 150, Pub. L. 115–254, 132 Stat. 3215.

■ 2. In § 26.65, revise paragraph (b) to read as follows:

§ 26.65 What rules govern business size determinations?

* * * * *

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.104), over the firm's previous three fiscal years, in excess of $26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.

* * * * *

Issued this 25th day of November, 2020, at Washington, DC, under authority delegated in 49 CFR 1.27(a).

Steven G. Bradbury,

General Counsel.

[FR Doc. 2020–26549 Filed 12–11–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2018–0096, Notice No. 2]

RIN 2130–AC72

State Highway-Rail Grade Crossing Action Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing this final rule in response to the Fixing America's Surface Transportation Act mandate that FRA issue a rule requiring 40 States and the District of Columbia to develop and implement highway-rail grade crossing action plans. This final rule also requires ten States that developed highway-rail grade crossing action plans as required by the Rail Safety Improvement Act of 2008 and FRA's implementing regulation to update their plans and submit reports to FRA describing actions they have taken to implement them.

DATES: This final rule is effective January 13, 2021.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: James Payne, Staff Director, Highway-Rail Crossing and Trespasser Programs Division (telephone: 202–493–6005); Debra Chappell, Transportation Specialist (telephone: 202–493–6018); or Kathryn Gresham, Attorney Adviser, Office of the Chief Counsel (telephone: 202–493–6063).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This final rule revises FRA's regulation (49 CFR 234.11) on State highway-rail grade crossing action plans (Action Plans) to require 40 States and the District of Columbia (DC) to develop and implement FRA-approved Action Plans. The final rule also requires ten States that were previously required to develop Action Plans by the Rail Safety Improvement Act of 2008 [1] (RSIA) and FRA's implementing regulation at 49 CFR 234.11 to update their plans and submit reports describing the actions they have taken to implement their plans.

This final rule is intended to implement the Fixing America's Surface Transportation Act (FAST Act) mandate that the FRA Administrator promulgate a regulation requiring States to develop, implement (and update, if applicable) Action Plans.[2] In RSIA, Congress directed the Secretary of Transportation (Secretary) to identify the ten States that had the most highway-rail grade crossing (GX) collisions, on average, over the previous three years, and require those States to develop Action Plans for the Secretary's approval.[3] RSIA required the Action Plans to ''identify specific solutions for improving'' grade crossing safety and to ''focus on crossings that have experienced multiple accidents or are at high risk'' for accidents. Using FRA's database of reported GX accidents/incidents that occurred at public and private grade crossings, FRA determined the following ten States had the most reported GX accidents/incidents at public and private grade crossings during the three-year period from 2006 through 2008: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas. Therefore, on June 28, 2010, FRA issued a final rule (2010 final rule) requiring these ten States to develop Action Plans and submit them to FRA for approval (based on the Secretary's delegation of authority to the Federal Railroad Administrator in 49 CFR 1.89).[4]

Section 11401 of the FAST Act (Section 11401) [5] tasks the FRA Administrator with promulgating a regulation requiring these ten States to update the Action Plans they previously submitted to FRA under 49 CFR 234.11. This statutory mandate also directs FRA to include a regulatory provision that requires each of these ten States to submit a report to FRA describing: (a) What the State did to implement its previous Action Plan; and (b) how the State will continue to reduce GX safety risks. As for the other 40 States and DC, Section 11401(b)(1)(B) requires the FRA Administrator to promulgate a regulation requiring them to develop and implement State Action Plans.

The FAST Act mandate contains specific requirements for the contents of the Action Plans. As set forth in Section 11401(b)(2), each Action Plan must identify GXs that: (a) Have experienced recent GX accidents or incidents; (b) have experienced multiple GX accidents or incidents; or (c) are at high-risk for accidents or incidents. Section 11401(b)(2) further provides that each Action Plan must identify specific strategies for improving safety at GXs, including GX closures or grade separations, and that each State Action Plan must designate a State official responsible for managing implementation of the plan.

In addition, the FAST Act mandate contains requirements related to FRA's review and approval of State Action Plans, as well as requirements related to the publication of FRA-approved plans. For example, when FRA approves a State's Action Plan, Section 11401(b)(4) requires FRA to make the approved plan publicly available on an ''official internet website.''

If a State submits an Action Plan FRA deems incomplete or deficient, Section 11401(b)(6) requires FRA to notify the State of the specific areas in which the plan is deficient. In addition, Section 11401(b)(6) requires States to correct any identified deficiencies and resubmit their corrected plans to FRA within 60 days from FRA's notification of the deficiency. If a State fails to meet this 60-day deadline for correcting deficiencies identified by FRA, Section 11401(b)(8) requires FRA to post a notice on an ''official internet website'' that the State has an incomplete or deficient Action Plan. FRA personnel, including FRA regional grade crossing managers, inspectors, and specialists and experts from FRA's Highway-Rail Crossing and Trespasser Programs Division, are available to assist States with developing, implementing, and

[1] Public Law 110–432.

[2] 49 U.S.C. 11401.

[3] RSIA, Sec. 202.

[4] 75 FR 36551 (June 28, 2010) (codified at 49 CFR 234.11).

[5] 49 U.S.C. 11401.

updating their Action Plans. For example, as further explained in the Section-by-Section Analysis below, FRA will offer webinars as well as provide GX accident/incident data to States upon request. FRA will also assist State agencies that wish to use FRA's Office of Safety Analysis website (*https://railroads.dot.gov/safety-data*) to generate customized reports of GX accident/incident data.

II. Funding

FRA received comments recommending that Federal funding should be available to offset the costs associated with State efforts to develop and update Action Plans, as required by this final rule. Delaware DOT (DelDOT) commented that dedicated funding should be available for States to develop and implement their Action Plans as required by FRA, while the Vermont Agency of Transportation (VTrans) submitted comments encouraging FRA to include funding to States in carrying out this requirement. Otherwise, DelDOT asserted that the costs associated with developing and implementing an Action Plan would prohibit or delay the State's implementation of safety improvements.

The statutory mandate for this rulemaking did not contain any provision that would authorize dedicated Federal funding for the Action Plans. However, Section 11401(d) allows for States to use Federal funds allocated through the Federal Highway Administration's (FHWA) Railway-Highway Crossings (Section 130) Program to develop and update their Action Plans as required by this final rule. In addition, the two percent limitation on the use of Section 130 funds apportioned to a State allowed by 23 U.S.C. 130(k) for the compilation and analysis of data in support of the Rail-Highway Crossings Program annual reports does not restrict the use of Section 130 funds to develop or update Action Plans. However, FRA recommends States contact their local FHWA Division Office for more information, if they have questions about the use of Section 130 funds or any other FHWA-administered funds to develop or update their Action Plans.

Minnesota DOT (MNDOT) submitted comments requesting specific guidance on how States may use Section 130 funds to develop their Action Plans. In particular, MNDOT asked if States may use Section 130 funds to offset the cost of developing Action Plans at 100 percent funding, or whether States will be required to come up with a 10 percent match. In addition, if States will be required to come up with a 10 percent match, MNDOT asked if the State of Minnesota can use funds in its Grade Crossing Safety Account as the 10 percent match. Under 23 U.S.C. 130(f)(3), the Federal share of rail-highway crossing projects using Section 130 set-aside funds is 90 percent. The question regarding State of Minnesota Grade Crossing Safety Account funds falls outside the scope of this rulemaking, as the State of Minnesota administers the distribution of State funding. As such, FRA recommends that MNDOT coordinate with the appropriate agency to obtain guidance on that issue.

III. Section-by-Section Analysis

Section 234.1 Scope

This section discusses the scope of part 234. As proposed in the notice of proposed rulemaking (NPRM),[6] FRA is revising paragraph (a)(3) to reflect the revised requirements contained in 49 CFR 234.11 as a result of the FAST Act mandate and indicate that these revised requirements are within the scope of this part.

Section 234.5 Definitions

Although FRA proposed no new definitions in the NPRM, after reviewing the comments received in response to the NPRM, in this final rule, FRA is adding definitions for three terms used in § 234.11 to the list of definitions in § 234.5.

The first definition FRA is adding is the definition of the term ''accident/incident,'' which FRA is adopting, in part, from the definition of the term in 49 CFR 225.5. Specifically, this final rule defines ''accident/incident'' as any impact between railroad on-track equipment and a highway user at a GX or pathway grade crossing (PX). The definition further notes that the term ''highway user'' includes automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation, motorized and un-motorized.

FRA received a number of comments on its proposal to replace the term ''collisions'' in § 234.11(a) with the term ''accidents,'' and to use the term ''accident or incident'' in § 234.11(e) when describing required Action Plan elements. MNDOT and the Oregon Department of Transportation (ODOT) commented that use of the terms ''accidents'' (used in proposed paragraph (a)) and ''accident or incident'' (used in proposed paragraph (e)) would be confusing. MNDOT recommended that FRA define these terms in the final rule. ODOT recommended that FRA use a single word or word combination consistently throughout the final rule, instead of switching back and forth between ''accident'' and the word combination ''accident or incident.'' A resident of Chicago, Illinois also commented that the phrase ''accident or incident'' is too vague.

In addition, FRA received comments from one or more unnamed individuals calling themselves the ''State Program Managers Section 130/State [GX] Program Office,'' and self-described as having a combined 50 years of public service experience and over 25 years of experience managing Section 130 programs. FRA refers to this commenter as the ''130 Group'' to distinguish them from official comments submitted on behalf of Section 130 Program Managers for one or more State departments of transportation. In their comments, the 130 Group recommended FRA use the term ''collision'' or the term ''crash'' in this final rule for consistency with other highway safety programs that seek to mitigate the frequency and severity of incidents. The 130 Group explained that use of the term ''accident'' has been discouraged because a train always has the right of way and a vehicle must always stop or approach a grade crossing prepared to stop.

The Alaska Department of Transportation and Public Facilities (Alaska DOT&PF) also prefers the word ''crashes.'' Alaska DOT&PF asserted in its comments that ''crashes'' is the terminology more commonly recognized by traffic safety practitioners and interest groups and recommended that FRA at least explain why the term is not used, if not adopted in the final rule.

After considering these comments, in this final rule, FRA is adopting a slightly revised term, ''accident/incident.'' In making this decision, FRA relied heavily on the plain language of Section 11401(b), which specifically refers to ''[GX] accidents or incidents'' as one of the primary factors for identifying GXs that must be addressed by States in their Action Plans. FRA notes that the word combination ''accidents or incidents'' used in Section 11401(b) is essentially the same as the term ''accident/incidents,'' which has been used for years in FRA's accident reporting regulations in 49 CFR part 225.

This final rule also moves the existing definition of ''pathway grade crossing'' from § 234.301 (which applies only to FRA's Emergency Notification System regulations in subpart C to 49 CFR part 234) to § 234.5. Although FRA did not propose to move this definition in the

[6] 84 FR 60032 (Nov. 7, 2019).

NPRM, by moving it to § 234.5 in this final rule, the definition will now apply to all of FRA's grade crossing regulations in 49 CFR part 234. For purposes of this final rule, including the definition in § 234.5 will make clear the term's meaning as it is used in § 234.11, which as revised, requires States to address safety at PXs, as well as GXs, in their Action Plans. This change is consistent with the mandate of Section 11401(e), which defines ''highway-rail grade crossing'' to include locations where ''a pathway explicitly authorized by a public authority or a railroad carrier . . . crosses one or more railroad tracks either at grade or grade-separated.'' Specifically, in this final rule, FRA is defining the term ''pathway grade crossing'' in § 234.5 to mean a pathway that crosses one or more railroad tracks at grade and that is: (1) Explicitly authorized by a public authority or a railroad; (2) dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others; and (3) not associated with a public highway, road, or street, or a private roadway.

Pathways that are contiguous with, or separate but adjacent to, GXs are part of the GX and are not separate crossings. However, as explained in FRA's Guide for Preparing U.S. DOT Crossing Inventory Forms, pathways that intersect with one or more railroad tracks more than 25 feet from the location where a highway, road, or street intersects with one or more railroad tracks are generally separate PXs. The comments regarding this term and FRA's responses are further discussed below in the discussion regarding § 234.11.

FRA is also adding a definition of ''State highway-rail grade crossing action plan'' or ''Action Plan.'' This definition is being added in response to multiple comments from State agencies, including Alaska DOT&PF, Washington Utilities and Transportation Commission staff (Washington UTC staff), the South Dakota Department of Transportation (SDDOT) and the departments of transportation for Idaho, Montana, North Dakota, and Wyoming, recommending that FRA allow States the flexibility to coordinate, integrate, or incorporate their Action Plans with other reports, such as the Strategic Highway Safety Program (SHSP) or the State Transportation Improvement Program. Specifically, this final rule defines ''State highway-rail grade crossing action plan'' or ''Action Plan'' as a document submitted to FRA for review and approval by a State of the United States (or DC), which contains the elements required by § 234.11(e) to address safety at highway-rail and pathway grade crossings. Therefore, a State may comply with this final rule by submitting an existing document to FRA that addresses GX and PX safety, provided the existing document contains (or is amended to include) all the required elements in § 234.11(e).

Section 234.11 State Highway-Rail Grade Crossing Action Plans

Currently, paragraph (a) of this section indicates that the purpose of this section is to reduce ''collisions'' at GXs in the ten States that had the most GX collisions from 2006–2008 (the ''initial ten States''). Existing paragraph (a) also makes clear that this section does not restrict any other entity from adopting an Action Plan, nor would it restrict any State or DC from adopting an Action Plan with additional or more stringent requirements not inconsistent with this regulation. In the NPRM, FRA proposed to replace the word ''collisions'' with the word ''accidents'' for consistency with the language of Section 11401(b). For the reasons discussed above, in this final rule, FRA is revising paragraph (a) to state that the purpose of the section is to reduce ''accident/incidents'' at GXs and PXs nationwide by requiring States and DC to develop or update and implement Action Plans.

As revised, paragraph (a) reiterates the existing language clarifying that this section does not restrict any entity from adopting an Action Plan with additional or more stringent requirements, nor does it restrict any State or DC from adopting an Action Plan with additional or more stringent requirements not inconsistent with this regulation. For purposes of this section, unless otherwise stated, the term ''State'' refers to any one of the 50 States in the United States of America or DC; FRA also separately refers to or identifies DC within part 234 for clarity in some instances.

Consistent with the NPRM, paragraph (b) of this section requires 40 States (the States other than the initial ten States) and DC to develop individual Action Plans that address each of the required elements listed in paragraph (e) of this section, and to submit their individual plans to FRA for review and approval no later than 14 months after the final rule publication date. For the reasons discussed below, in this final rule, FRA is adding a definition of ''State highway-rail grade crossing action plan'' to § 234.11 to clarify that a State may prepare and submit a document specifically designed to satisfy the requirements of this section or submit an existing document that contains (or is amended to include) all the required elements in § 234.11(e).

For example, to satisfy the requirements of this final rule, a State may choose to update its SHSP and provide the updated SHSP to FRA for review and approval as its Action Plan. However, States should be mindful that updating an existing document to include all the required elements in § 234.11(e) does not change the underlying nature of the document. Accordingly, if a State chooses to update an existing document to include all the required elements in § 234.11(e), this final rule does not relieve the State from complying with all applicable State or Federal requirements that govern the existing document.

Also, if a State chooses to update an existing document, the State is strongly encouraged to add a separate chapter or appendix to address the required elements in paragraph (e) of this section. In the alternative, the State may add an index to the updated document that clearly identifies the specific pages on which the required elements in paragraph (e) of this section are addressed.

Paragraph (b) also requires 40 States (the States other than the initial ten States) and DC to submit their Action Plans electronically through FRA's website in Portable Document Format (PDF). FRA will provide a secure document submission site for States and DC to use to upload their Action Plans for FRA review and approval.

DelDOT, MNDOT, the 130 Group, and the departments of transportation for Idaho, North Dakota, South Dakota, and Wyoming submitted comments on the proposed requirement in paragraph (b) to submit individual Action Plans to FRA for review and approval. DelDOT noted that the State of Delaware currently experiences an extremely low number of train-related crashes and asserted that developing an Action Plan would draw resources away from other ongoing efforts to make a positive safety impact on the State and its communities. Accordingly, DelDOT recommended that FRA establish guidelines that, if met, would exempt a State from the requirement to develop an Action Plan.

The 130 Group also recommended that FRA establish a threshold that, if met, would exempt a State from the requirement to develop an Action Plan. Specifically, the 130 Group recommended that FRA establish a national car-train crash ratio threshold that would exempt States with car-train crash ratios lower than the threshold from the requirement to develop and

submit an Action Plan to FRA for review and approval.

Another commenter, identified as the Chicagoland Rail Safety Team (CRST), similarly recommended that FRA conduct an ''almost perfunctory'' review of the Action Plans submitted by States with the lowest number of grade crossing fatalities. In addition, CRST recommended that FRA allow States with the lowest number of grade crossing fatalities simply to complete an FRA-prepared questionnaire.

FRA also received multiple comments from State agencies, including Alaska DOT&PF, Washington UTC staff, SDDOT and the departments of transportation for Idaho, Montana, North Dakota, and Wyoming, recommending that FRA include a provision in this final rule allowing States the flexibility to coordinate, integrate, or incorporate their Action Plans with other reports, such as the SHSP or the State Transportation Improvement Program. The departments of transportation for Idaho, Montana, North Dakota, South Dakota, and Wyoming asserted that integrating the Action Plans required by this rulemaking with other plans may improve implementation, facilitate and simplify coordination, and promote synergy with other plans.

Section 11401(b) specifically directed FRA to issue implementing regulations requiring each State (except for the initial ten States) to develop and implement an Action Plan. Therefore, this final rule does not exempt any State from the requirement to develop a written plan to improve safety at GXs and PXs. However, recognizing that a number of States may have already developed written plans or other documents addressing GX and PX safety, as noted above, FRA has added a definition of ''Action Plan'' to this final rule that allows States to submit existing documents that address GX and PX safety, if the documents contain (or are amended to include) all the required elements listed in paragraph (e) of this section. As explained above, if a State chooses to update an existing document, the document must address all the required elements listed in paragraph (e) in a separate chapter or appendix so that it is clear how it complies with the requirements for an Action Plan. If a State decides to submit an existing document as its Action Plan to FRA for review and approval, without adding a separate chapter or appendix, the State should include an index that shows where the document addresses each required element listed in paragraph (e).

MNDOT commented that the 14-month period within which States are required to develop Action Plans is extremely aggressive. However, FRA does not have the flexibility to extend the 14-month period for States to develop and update Action Plans because FRA is required by Section 11401 to review and approve the Action Plans and then report to Congress information about the Action Plans and their implementation within three years of the date of this final rule. Therefore, FRA will work closely with States that seek FRA's assistance in preparing their Action Plans, and allow flexibility to submit existing documents that contain (or are amended to include) all the required elements listed in paragraph (e) of this section.

DelDOT urged FRA to clarify that the requirement in paragraph (b) to develop Action Plans does not contain a duty to update Action Plans after they have been approved by FRA. Except for the initial ten States, the statutory mandate in Section 11401(b) does not direct FRA to require States to update their Action Plans. Therefore, except for the initial ten States that are required to submit updated Action Plans this one time, this final rule does not require States to update their Action Plans after they are approved by FRA.

FRA recommends that States update their Action Plans even though they are not required to do so. The actions States must take to develop Action Plans and, more specifically, to develop specific strategies for improving grade crossing safety can, if done properly, significantly improve safety and complement other efforts by States to improve transportation safety generally, by focusing attention on the State's GX and PX safety needs. In this regard, Action Plans can supplement existing State efforts to increase the effectiveness of grade crossing improvements by adding a planning component to identify GXs and PXs that have experienced recent (or multiple) accident/incidents or are considered ''high-risk'' for having one or more accident/incidents in the future.

Currently, paragraph (c) of this section outlines requirements for the Action Plans that the initial ten States were required to submit to FRA by August 27, 2011. As proposed in the NPRM and in response to the statutory mandate in Section 11401(b), this final rule revises paragraph (c) to require each of the initial ten States to update their existing Action Plans and to provide individual reports on their efforts to implement their existing plans and on the continuation of their strategies to reduce GX and PX safety risks.

As also proposed in the NPRM, paragraph (c)(1) of this section requires each of the initial ten States to update their existing Action Plans to address each of the required elements listed in paragraph (e) of this section within 14 months of the final rule publication date. (Action Plans developed by the other 40 States and DC will be required to address these elements as well.) Paragraph (c)(1) also requires each of the initial ten States to submit their updated Action Plans to FRA for review and approval.

The list of required elements in paragraph (e) incorporates many of the elements that the initial ten States were required to address in their existing plans. However, as discussed below, there are new requirements that the initial ten States will need to address in their updated plans. For example, for consistency with Section 11401(b), States will need to address PX safety and States will need to identify the data sources used to classify PXs and GXs in one of the categories set forth in paragraph (e)(1). Below is a more detailed discussion of paragraph (e) requirements.

As proposed in the NPRM, paragraph (c)(2) requires each of the initial ten States to submit a report to FRA describing how the State implemented the Action Plan that it previously submitted to FRA under 49 CFR 234.11. Each of these initial ten States is also required by paragraph (c)(2) to describe in its report how the State will continue to reduce GX and PX safety risks. These requirements are derived from Section 11401(b).

This report, which must address each proposed initiative or solution contained in the State's Action Plan originally submitted to FRA under 49 CFR 234.11, can be submitted as an appendix to the State's updated Action Plan. As CRST recommends in its comments, FRA intends to use these implementation reports to identify States that have effective Action Plans in place, as well as States with Action Plans that need to be improved, so FRA can provide additional assistance that may be needed through focused outreach efforts.

Paragraph (c)(3) has been added to the final rule, in order to move the list of the initial ten States from paragraph (d), as proposed, into paragraph (c) for ease of reference. This change is not substantive.

Paragraph (d) of this section requires the initial ten States to submit their updated Action Plans and individual implementation reports electronically in PDF form. FRA will provide a secure document submission site for these

States to use to upload their updated Action Plans and implementation reports for FRA review.

As proposed in the NPRM, paragraph (e) of this section contains a list of required elements for new and updated State Action Plans. These elements are derived from Section 11401(b)(2), which mandates that each State Action Plan ''identify [GXs] that have experienced recent [GX] accidents or incidents or multiple [GX] accidents or incidents, or are at high-risk for accidents or incidents.''

As noted in the section-by-section discussion of § 234.5 above, States are required to address both GXs and PXs in their Action Plans. Congress specifically included PXs in Section 11401(b). Therefore, although not proposed in the NPRM, in deference to Congressional intent to require States to address both GXs and PXs, FRA is requiring States to address PXs in their Action Plans.

FRA received comments from the 130 Group expressing concern that this final rule might require States to address private grade crossings in their Action Plans. The 130 Group asserted that State efforts to regulate private crossings (especially when combined with the complications of access to private property) would require significantly more staff and would open ''a myriad of legal issues regarding government oversight of private infrastructure and operations.'' Therefore, the 130 Group recommended that paragraph (e)(1) be limited to public GXs.

Section 11401(b) specifically includes private GXs in its definition of the term ''GX.'' Therefore, FRA has not revised this final rule to limit its scope to public GXs. However, FRA recognizes that not all States exercise jurisdiction over private grade crossings. Accordingly, while this final rule requires States to assess risk levels at private grade crossings, and to address private grade crossings that present significant levels of risk, FRA recognizes that the ability of States to address risks at private grade crossings will depend on the level of the authority individual States exercise over those crossings (and, in some cases, the public/private nature of the roadway leading to the crossing).

In addition, FRA received comments from a resident of Chicago, Illinois and the CRST, urging FRA to encourage States to use an expanded definition of the term ''GX'' that would include 1,000 feet on either side of the actual intersection of the roadway with railroad tracks. CRST also recommended, in the alternative, that FRA send a letter to members of Congress seeking additional information about the Congressional intent underlying Section 11401. Specifically, CRST recommended that FRA confirm whether Congress intended States to focus their Action Plans on GXs as currently defined in 49 CFR 234.5, or whether Congress intends States to utilize a more expansive definition, such as CRST's proposed definition, which would include more trespassing casualties. In support of its recommendation, CRST pointed to data included in FRA's National Strategy to Prevent Trespassing on Railroad Property, which indicates that 74 percent of trespasser deaths and injuries occurred within 1,000 feet of a grade crossing. Similarly, the resident of Chicago, Illinois asserted that trespassing injuries and fatalities should not be excluded simply because they do not occur where pavement and rails intersect. This commenter urged FRA to require States to differentiate uniformly between trespasser and vehicle incidents in their Action Plans, so that States will collect and categorize this information separately as incidents occur.

FRA encourages States in their Action Plans to evaluate potential risks posed by trespassing within 1,000 feet of the actual intersection of the roadway with the railroad tracks.

Similarly, FRA encourages States to differentiate between motor vehicle crashes and pedestrian fatalities and injuries that occur at GXs and PXs in their Action Plans and to assess whether they need to take specific actions to address pedestrian safety at GXs and PXs. Nonetheless, FRA received multiple comments from States, including the Washington Utilities and Transportation Commission staff, SDDOT, and the State departments of transportation for Idaho, Montana, North Dakota, and Wyoming, expressing concern that this rulemaking should support State efforts to develop simple, straightforward and low-cost Action Plans and should not impose additional regulatory requirements that were not specifically included in the language of the FAST Act. Therefore, FRA strongly recommends that States with GXs and PXs located near locations identified as trespasser ''hot spots'' include strategies in their Action Plans to address trespassing, as some GXs and PXs may be used by individuals to gain access to the railroad right-of-way. However, in recognition of the fact that not all States have significant pedestrian safety concerns at their highway-rail and pathway crossings, FRA is not revising the definition of ''GX'' in § 234.5 to include the railroad right-of-way within 1,000 feet of the intersection of the roadway with the railroad tracks, nor is FRA requiring States to assume the additional burden of collecting and categorizing information about motor vehicle crashes and pedestrian fatalities and injuries separately. FRA is addressing the trespassing issue through implementation of its *National Strategy to Prevent Trespassing on Railroad Property* (available online at *https://railroads.dot.gov/national-strategy-prevent-trespassing*).

As proposed in the NPRM, paragraph (e)(1) would require States to identify in their Action Plans GXs that: (1) Have experienced at least one accident or incident within the previous three years; (2) have experienced more than one accident or incident within the previous five years; or (3) are at ''high-risk'' for accidents or incidents as defined by the relevant State or DC.

FRA received comments on the proposed three-year period in paragraph (e)(1)(i) from ODOT, which recommended that the time period be made consistent with the proposed five-year time period in proposed paragraph (e)(1)(ii). Asserting three years of accident or incident data may not be enough to make a determination, ODOT recommended that a consistent five-year period would be most appropriate.

However, as noted in the NPRM, FRA intended to use different time periods in paragraphs (e)(1)(i) and (e)(1)(ii) to differentiate between grade crossings that have experienced ''recent'' accident/incidents and grade crossings that have experienced ''multiple'' accident/incidents as Section 11401(b) requires. As explained in the NPRM, the three-year time period in paragraph (e)(1)(i) is intended to enable States to identify which individual GXs and PXs have experienced ''recent'' accident/incidents. The five-year time period in paragraph (e)(1)(ii) is intended to enable States to identify which individual GXs and PXs have experienced ''multiple'' GX accidents/incidents. This five-year timeframe is consistent with the five-year timeframe used by the initial ten States when they prepared their Action Plans pursuant to existing § 234.11.

FRA received comments on this 5-year period in paragraph (e)(1)(ii) from MNDOT, in which MNDOT noted the State of Minnesota has a very low number of GXs that have experienced more than one accident or incident in the previous five years. Therefore, MNDOT asked whether it would be permissible for a State to look back over a longer period to improve its analysis.

Thankfully, as MNDOT points out, some States have a very low number of GXs which have experienced more than one accident/incident in the previous

five years. FRA suggests that States with very low grade crossing accident/incident numbers should consider defining what constitutes a GX or PX with a ''high-risk for accidents or incidents'' in accordance with paragraph (e)(1)(iii) and addressing those crossings in their Action Plans. As proposed in the NPRM, paragraph (e)(1)(iii) allows a State to define what constitutes grade crossings with a ''high-risk for accidents or incidents'' and focus its Action Plan on those crossings. By choosing this option, as opposed to trying to identify GXs and PXs that have experienced previous accidents/incidents in accordance with paragraph (e)(1)(i) or (ii), States with low grade crossing accident/incident numbers can, within the constraints of paragraph (e)(1)(iii), use a different set of criteria to identify GXs and PXs to address in their Action Plans.

MNDOT also submitted comments on the proposed paragraph (e)(1)(iii), noting that the State of Minnesota has done significant work developing a risk ranking system for project selection. Therefore, MNDOT expressed optimism that, given FRA's proposal in the proposed rule to allow States the flexibility to define ''high risk'' GXs, MNDOT may be able to use their existing risk ranking system to define ''high risk'' GXs within the State of Minnesota and thereby reduce plan development costs.

However, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), the Association of American Railroads (AAR), and an individual commenter submitted comments expressing concern with the proposed language in paragraph (e)(1)(iii) that would allow States to define what constitutes a ''high risk'' GX. AFL–CIO asserted that the proposed language in paragraph (e)(1)(iii) would allow States to limit their efforts to grade crossings where an accident has already taken place, which it asserted would be inconsistent with the spirit of the underlying statutory mandate. Similarly, while noting that some level of risk standardization would likely benefit the nation as a whole, Mr. Gregory James submitted comments recommending that FRA disseminate minimum guidelines for identifying potentially problematic grade crossings.

AAR expressed concern that if FRA does not define what constitutes ''high risk'' of an incident occurring at a GX, the result would be 51 different definitions of what constitutes ''high risk.'' Therefore, AAR recommended that, at a minimum, FRA should include factors that States should consider when designating a grade crossing as ''high risk.'' For example, AAR recommended States consider factors such as profile deficiencies, skew, inadequate sight distances due to fixed obstructions, and the density of neighborhood development along the corridor near a crossing.

After considering all the comments received and evaluating the potential benefits and consequences of allowing States to define ''high risk'' grade crossings for themselves, FRA determined that the comments provided by AFL–CIO, Mr. James, and AAR have merit. Accordingly, in this final rule, FRA has revised proposed paragraph (e)(1)(iii) of this section to include a list of key factors that States are required to consider in their Action Plans when identifying ''high-risk'' crossings under paragraph (e)(1)(iii) of this section. These key factors in paragraph (e)(1)(iii) include the average annual daily traffic, the total number of trains per day that travel through the crossing, the total number of motor vehicle collisions that have occurred at the crossing during the previous 5-year period, the number of main railroad tracks at the crossing, the number of roadway lanes at the crossing, sight distance and roadway geometry at the crossing, and maximum timetable speed at the crossing.

FRA notes that the key factors listed in paragraph (e)(1)(iii) are minimum factors a State must consider if defining high-risk crossings under paragraph (e)(1)(iii). Therefore, FRA encourages States to consider any other factors that may be present at a particular crossing that may increase the risk of an accident/incident. Examples of potential additional factors a State may find useful to consider include: The volume and nature of any hazardous materials transported through the crossing, the frequency of any passenger trains traveling through the crossing, and the proximity of a school or emergency service provider, which could cause a high number of school buses or emergency service vehicles to travel through the grade crossing. AFL–CIO asserted in its comments that increased pedestrian volume may increase opportunities for an accident, while AAR identified the density of neighborhood development along the corridor near the crossing as a factor that can contribute to high risk levels at a GX.

When evaluating these risk factors and the overall risk levels at individual GXs and PXs under paragraph (e)(1)(iii), FRA recommends States consider the definition of ''risk'' provided in 49 CFR 270.5 and 271.5, in which the term ''risk'' is defined as ''the combination of the probability (or frequency of occurrence) and the consequence (or severity) of a hazard.'' FRA also recommends that States describe the process or formula used to assess risk at each crossing in their Action Plans. However, to obtain information about all the factors considered by States when identifying GXs and PXs in their Action Plans as ''high risk,'' paragraph (e)(1)(iii) requires States that identify ''high risk'' crossings under paragraph (e)(1)(iii) to include in their Action Plans the complete list of factors considered in making this determination.

As proposed in the NPRM, paragraph (e)(2) requires States to identify the data sources used to categorize the GXs and PXs in their Action Plans. To help States identify GXs and PXs that have experienced recent accident/incidents, multiple accident/incidents, or are at high-risk for accident/incidents, FRA will provide GX and PX accident/incident data to States upon request. FRA will also assist State agencies electing to use FRA's Office of Safety Analysis website to generate customized reports of GX accident/incident data.

In the NPRM, paragraph (e)(3) would require States to discuss specific strategies to improve safety at the identified crossings over a period of at least five years. FRA received a number of comments on this proposed minimum five-year time period, and for the reasons discussed below, FRA is revising proposed paragraph (e)(3) to provide for a minimum time period of four years.

The departments of transportation for Idaho, Montana, North Dakota, South Dakota, and Wyoming submitted comments noting that Congress established planning requirements in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Transportation Equity Act for the 21st Century (TEA–21), and the Safe Accountable Flexible Efficient Transportation Equity: A Legacy for Users Act (SAFETEA–LU) directing the State Transportation Improvement Program (STIP) to span four years. Accordingly, these State DOTs recommended that FRA allow States to align the time frame covered by their Action Plans with the four-year STIP time frame, but not require them to do so. The Alaska DOT&PF, on the other hand, submitted comments supporting the proposed five-year minimum time period. Alaska DOT&PF noted that some States are not able to insert grade separations or rail realignment projects into fiscally constrained STIPs.

After consideration of these comments, FRA has concluded that

providing the flexibility for State Action Plans to cover a minimum four-year time period for consistency with other surface transportation planning requirements is justified. Accordingly, FRA is revising proposed paragraph (e)(3) to provide that State Action Plans must discuss specific strategies to improve safety at the identified crossings over a period of ''at least four years.'' FRA intends this change to facilitate integration of the Action Plans required by this final rule with existing State planning mechanisms and documents (*e.g.,* STIPs, SHSPs, and State Rail Plans). However, nothing in this final rule restricts States from including specific strategies to improve crossing safety in their Action Plans for a period longer than four years.

AAR also submitted comments on paragraph (e)(3), recommending FRA clarify that, prior to making any changes to address blocked crossing concerns that could impact train operations, States must consult with the railroad primarily responsible for dispatching trains through the crossing as indicated by the name of the railroad on the Emergency Notification System (ENS) sign. FRA expects that States seeking to make changes to address blocked crossing concerns will, at a minimum, coordinate with the railroad primarily responsible for dispatching trains through the highway-rail or pathway grade crossing prior to making any changes that could impact train operations. Depending on the type of change envisioned, the State should contact the railroad primarily responsible for maintaining the highway-rail or pathway grade crossing (if different from the railroad primarily responsible for dispatching trains through the crossing) as well. However, a requirement that States must consult with railroads prior to implementing certain types of strategies in their Action Plans to address blocked crossing concerns falls beyond the scope of this rulemaking.

FRA also received comments on paragraph (e)(3) from Washington UTC staff, SDDOT, as well as the departments of transportation for Idaho, Montana, North Dakota, and Wyoming. In their comments, these State agencies recommended that the final rule include language allowing States to discuss the types of grade crossing improvement projects they will address and emphasize, as opposed to requiring States to identify specific projects to be undertaken. The departments of transportation for Idaho, Montana, North Dakota, South Dakota, and Wyoming asserted that this approach would allow States to set forth policy priorities in their Action Plans. FRA agrees that States should not be required to identify specific projects to be undertaken. Therefore, while FRA encourages States to identify specific projects that they may wish to highlight in their Action Plans, FRA would like to clarify that this final rule does not require project identification.

Given Section 11401's mandate that FRA prepare and submit a report to Congress within three years of issuing this final rule, FRA notes that it intends to evaluate each Action Plan to assess whether it provides sufficient information to inform Congress of specific strategies that will be implemented (or continue to be implemented) by individual States to improve GX safety. To this end, FRA agrees with CRST's comments that FRA should anticipate its reporting obligations to Congress, and during FRA's review of Action Plans, disapprove any plans that are not objective, observable, and measurable.

FRA received comments from multiple State agencies, including Washington UTC staff, SDDOT, and departments of transportation for Idaho, Montana, North Dakota, and Wyoming, recommending that the final rule include language providing for Action Plans to be considered deficient only if they are inconsistent with statutory requirements, so that modest deficiencies in regulatory planning or paperwork will not prohibit safety investments. While *de minimis* deficiencies in paperwork should not lead to an Action Plan being rejected, FRA disagrees with the recommendation to consider Action Plans deficient only if they are inconsistent with statutory requirements. Section 11401 specifically mandates that FRA issue a rule requiring States to develop and implement Action Plans that meet certain requirements. The regulatory requirements in this final rule respond to that mandate and enable the effective and consistent implementation of the statutory requirements in Section 11401. For example, paragraph (e)(4) of this section requires States to provide an implementation timeline for the strategies identified in their Action Plans. Although not specifically required by Section 11401, this requirement is designed to help ensure States implement the strategies identified in their Action Plans effectively.

As for the requirement in paragraph (e)(3) of this section, which requires States discuss specific strategies for improving GX and PX safety, CRST submitted comments recommending that FRA insist that States incorporate the safety of pedestrians (at crossings and along the railroad right-of-way) into their Action Plans. In support of this recommendation, CRST asserted that over the long term, pedestrian fatalities at grade crossings have not demonstrated a decreasing trend like vehicle occupant fatalities at GXs. Similarly, with respect to proposed crossing closure projects, CRST stated that care must be taken to ensure that closure of the grade crossing will not result in increased trespassing along the railroad right-of-way.

FRA agrees that States should incorporate the safety of pedestrians at GXs and PXs into their Action Plans. For example, the FAST Act requires States to consider crossing closures and grade separation projects. Therefore, to avoid introducing new or increased risk, FRA expects any State contemplating crossing-closure and/or grade-separation projects will evaluate not only the potential reduction in risk to motor vehicle occupants from the closure or separation project, but also the potential impact on trespassing at the location of any crossing slated for closure.

CRST also urged FRA to consider making additional changes in this final rule to address suicides that occur at crossings and along railroad rights-of-way. For example, CRST recommended that FRA insist that State Action Plans include efforts to reduce suicides at grade crossings, as well as along the railroad right-of-way, in areas in which suicides appear to be a significant problem. If a State has experienced a high number of suicides at one or more GXs or PXs, this final rule provides the flexibility for that State to develop and include in its Action Plan specific strategies to address the issue. FRA encourages any State that has experienced a high number of suicides at particular grade crossings to include specific strategies in its Action Plan to address suicides at those crossings.

CRST asserted that FRA's decision not to include suicide data in FRA's periodic summaries of rail-related injuries and illnesses associated with railroad operations may dissuade States from addressing suicides that occur at crossings and along the railroad right-of-way. Therefore, CRST recommended that FRA amend 49 CFR 225.41 (Suicide data) to allow (or require) FRA to report all deaths in FRA's summaries of ''total fatalities.'' In addition, a resident of Chicago, Illinois urged FRA to develop a mechanism in the final rule that would require railroads to release video obtained from their outward-facing locomotive cameras to State coroners and law enforcement officials upon

request, to facilitate State efforts to determine accurately the cause of death. Although FRA appreciates these comments and suggestions, both are outside the scope of the statutory authority for this rulemaking. FRA does, however, maintain several online resources that provide access to FRA's railroad trespassing data, including certain data related to suicides. One such resource, FRA's Trespass and Suicide Dashboard, allows users to interact visually with trespass and suicide data collected by FRA. Therefore, FRA encourages entities seeking to view FRA data on fatalities that occur at GXs (as defined in 49 CFR 234.5), as well as fatalities that occur along railroad rights-of-way, to visit our Trespass and Suicide Dashboard, which is accessible online through FRA's website. In addition, FRA notes that it has an ongoing rulemaking on Locomotive Image and Audio Recording Devices for Passenger Trains to implement a Congressional mandate.[7]

In adopting paragraph (e)(4), FRA has corrected a typographical error in the proposed rule. Paragraph (e)(4) requires States to provide an implementation timeline for the specific strategies they develop to improve safety at the GXs identified in their Action Plans. In the proposed rule, FRA erroneously indicated that the proposed requirement to discuss these specific strategies in the State Action Plans was contained in paragraph (d)(2) of this section. To correct this error, paragraph (e)(4) in the final rule requires States to provide an implementation timeline for ''the strategies discussed in paragraph (e)(3) of this section.''

As proposed in the NPRM, paragraph (e)(5) requires each State and DC to designate an official responsible for managing implementation of the Action Plan. As noted earlier, FRA will create a secure document submission site that States can use to upload Action Plans. The official designated under this paragraph will be given primary user access to the secure document submission site, as well as the authority to grant access to secondary users. Accordingly, the designated State official will need to register with FRA to gain primary user access to the secure document submission site.

Paragraph (f) of this section requires States and DC to provide contact information for their designated officials, so they can be invited to set up primary user accounts.

Paragraph (f)(2) also requires each State and DC to notify FRA if a new official is subsequently designated to manage implementation of its Action Plan and to provide contact information for the new designated official. FRA has modified paragraph (f)(2) from that proposed in the NPRM in response to comments submitted by the Alaska DOT&PF recommending that FRA not adopt the proposed requirement for States to maintain updated contact information. Alaska DOT&PF asserted that the proposed requirement was too onerous, especially for a one-time plan with no ongoing reporting requirement.

FRA agrees that an ongoing requirement to maintain current contact information for State Action Plans for many years seems unnecessary, given the absence of any requirement to update the plan. Therefore, FRA has modified paragraph (f)(2) from that proposed in the NPRM to limit the period of time States are required to maintain current contact information for their Action Plans to a four-year period after publication of this final rule. This requirement will help ensure FRA has current contact information while States implement their Action Plan strategies in accordance with their implementation timelines. This requirement will also help ensure FRA has current contact information available when FRA prepares the required report to Congress, while limiting the burden on States.

Paragraph (g) of this section sets forth FRA's review and approval process for Action Plans. As provided in paragraph (g)(1), FRA will update its website to reflect receipt of each new, updated, or corrected Action Plan. FRA encourages States to work with FRA staff as they develop their Action Plans. FRA will also offer webinars to assist States in developing and updating their Plans. As indicated in comments submitted by CRST, FRA's ability to provide technical assistance to States will help ensure States develop Action Plans that can be effectively evaluated and implemented.

To avoid delaying implementation of needed grade crossing safety improvements, paragraph (g)(2)(i) states that FRA will conduct a preliminary review of each new, updated, and corrected Action Plan within sixty (60) days of receipt. During this 60-day review period, FRA will determine whether a submitted plan has adequately addressed the elements prescribed in paragraph (e) of this section.

FRA acknowledges comments received on ways to improve the proposed review process for Action Plans. Washington UTC staff, and the departments of transportation for Idaho, Montana, North Dakota, South Dakota, and Wyoming recommended that FRA establish a staggered timeline for States to submit their Action Plans, in which States with the highest number of grade crossing accidents would be required to submit their plans first. Similarly, VTrans submitted comments recommending that the final rule allow States to submit their Action Plans at the same time that they submit their SHSPs (which are generally submitted in staggered, 5-year cycles).

FRA does not have the flexibility to allow for a staggered timeline or cycle for submitting Action Plans to FRA for review and approval because Section 11401 requires FRA to report to Congress information about the Action Plans and their implementation within three years. However, as noted above, FRA will offer webinars and work closely with any State that desires the Agency's assistance in developing its Action Plan. This involvement from FRA should help ensure the efficiency of the plan review process.

FRA anticipates that States with a high number of grade crossing accident/incidents will submit Action Plans that are more detailed than those of States with a low number of grade crossing accident/incidents. In this regard, FRA agrees with comments submitted by CRST and all Action Plans submitted under this regulation will be carefully reviewed. DelDOT commented that FRA's proposed review process would create confusion among State officials who may not feel confident implementing their Action Plans until more than 120 days have passed from the date of FRA's receipt of their plans. Alaska DOT&PF recommended that FRA include FHWA in the review and approval process for Action Plans, given the potential need for Federal aid highway funding to implement the strategies identified by States in their Action Plans.

Accordingly, in adopting paragraph (g)(2)(ii), FRA is clarifying that Action Plans will be considered conditionally approved sixty (60) days after receipt by FRA unless FRA notifies the State's designated point of contact that the Action Plan is incomplete or deficient. Therefore, if a State has not been notified that its Action Plan is incomplete or deficient, a State may proceed with implementation of its Action Plan after 60 days have elapsed from the date of FRA's receipt of its plan. In addition, States may verify the review status of their Action Plans by checking FRA's website or contacting FRA.

Paragraph (g)(2)(iii) states that FRA reserves the right to conduct a more comprehensive review of each ''new, updated, or corrected'' Action Plan,

[7] 84 FR 35712 (July 24, 2019); 49 U.S.C. 20168.

which may take up to 120 days to complete. In addition, FRA will continue to consult and coordinate with FHWA during FRA's review of Action Plans.

Paragraph (g)(3) specifically addresses Action Plans that FRA determines to be incomplete or deficient. As reflected in paragraph (g)(3)(i), if FRA finds a submitted Action Plan is incomplete or deficient, it will notify the appropriate designated official via email of the specific areas in which the plan is deficient or incomplete.

Paragraph (g)(3)(ii) requires States and DC to complete, correct, and resubmit within 60 days any Action Plan that FRA deems incomplete or deficient. This 60-day timeframe is derived from Section 11401(b)(7), which directs States to complete their Action Plans and correct deficiencies identified within 60 days of the date of FRA notification.

FRA received a number of comments from State agencies on the 60-day correction period contained in paragraph (g)(3)(ii), including comments from SDDOT, Washington UTC staff, and the departments of transportation for Idaho, Montana, North Dakota, and Wyoming, recommending that FRA include a provision in the final rule to allow States to request an extension of time to correct any deficiencies identified during FRA's review of their Action Plans, if additional time is needed to rectify them. Similarly, Alaska DOT&PF submitted comments recommending that the final rule allow at least 120 days for States to correct any deficiencies identified during FRA's review of their Action Plans.

FRA has not, however, established a separate process in this final rule that would allow a State to request additional time to correct deficiencies identified during FRA's review of its Action Plan. While FRA is sympathetic to the concerns expressed by these State agencies, Section 11401(b) directs States to correct deficiencies identified and resubmit their Action Plans within 60 days from the date on which FRA notifies them of the deficiencies. In addition, this 60-day correction period is twice as long as the 30-day period within which the initial ten States were required to correct any deficiencies identified in their Action Plans. Therefore, FRA has not expanded the 60-day correction period mandated by Section 11401(b). Nonetheless, as previously discussed, FRA intends to provide webinars and technical assistance to State agencies during the 14-month period between the publication date of this final rule and the submission deadline for State Action Plans to help ensure efficiency in their development and review.

As provided in paragraph (g)(4)(i), after FRA has completed its review and approves a new, updated, or corrected Action Plan, FRA will notify the State's designated official described in paragraph (e)(5) by email that the Action Plan has been fully approved.

Paragraph (g)(4)(ii) states that FRA will make each fully-approved Action Plan publicly available for online viewing. This provision is intended to comply with Section 11401(b)(4)'s requirement that the FRA Administrator make each approved Action Plan publicly available on ''an official internet website.'' In addition, to avoid confusion, FHWA will remove the original Action Plans submitted by the initial ten States from its website.

As provided in paragraph (g)(4)(iii), each State and DC are required to implement their Action Plans.

Paragraph (h) of this section provides that the Secretary may condition the awarding of a rail improvement grant to a State or DC on the submission of an FRA-approved Action Plan under this section. This language reflects the authority specifically granted to the Secretary in Section 11401(b)(5).

FRA received comments on the language in this paragraph from multiple State agencies. Washington UTC staff, SDDOT, and the departments of transportation for Idaho, Montana, North Dakota, and Wyoming submitted joint comments expressing concern that conditioning the awarding of highway-rail crossing funding or grants on having an approved plan is a risky approach that may impede important safety improvements that can save lives and reduce collisions. The departments of transportation for Idaho, Montana, North Dakota, South Dakota, and Wyoming also noted that State highway-rail crossing project selection should not be restricted solely by a State's FRA-approved Action Plan because safety, feasibility, engineering judgment, and other factors must also be considered.

FRA agrees that a State's selection of highway-rail crossing improvement projects should not be exclusively limited to the highway-rail crossing improvement projects that are specifically identified in the State's FRA-approved Action Plan. However, FRA believes a properly prepared Action Plan identifying GXs and PXs where recent accidents have occurred, or that a State characterizes as ''high-risk,'' can inform project selection. During FRA's review of applications for grant funding, FRA often looks for evidence of advance planning and identification of crossing safety needs through data-based risk analysis. Therefore, by discussing specific projects in their Action Plans, as well as the data sources used to identify safety needs that will be addressed by these projects, States can use their Action Plans as a vehicle for providing evidence of advance planning and data-based crossing risk analysis.

Section 234.301 Definitions

As noted in the discussion of § 234.5 above, in this final rule, FRA is removing the definition of ''pathway grade crossing'' from the list of definitions in § 234.301 (which applies only to FRA's Emergency Notification System regulations in subpart C to 49 CFR part 234). As previously discussed, by removing the definition of ''pathway grade crossing'' from § 234.301 and moving it to § 234.5, the definition of ''pathway grade crossing'' will now apply to all of FRA's grade crossing regulations in 49 CFR part 234.

IV. Regulatory Impact and Notices

A. Executive Order 12866, Congressional Review Act, and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action within the meaning of Executive Order 12866, ''Regulatory Planning and Review,'' and DOT's Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5. Pursuant to the Congressional Review Act,[8] the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2). Details on the estimated cost of this rule can be found in the Regulatory Evaluation, which FRA has prepared and placed in the docket (docket number FRA–2018–0096).

The purpose of the final rule is to reduce accident/incidents at GXs and PXs nationwide. The final rule requires each State and DC to submit or re-submit to FRA an Action Plan. The final rule also requires each of the 10 States that previously created an FRA-approved Action Plan to submit a report to FRA that describes how the State implemented its existing Plan and how the State will continue to reduce GX and PX safety risks.

Costs

The final rule specifically lists the required elements for Plans. To minimize the compliance costs, the final rule affords each State the flexibility to develop or update an Action Plan based upon the individual State's hazard assessment.

[8] 5 U.S.C. 801 *et seq.*

Section 11401(a) required FRA to develop and distribute a model State Action Plan. In conjunction with FHWA, FRA developed a ''Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices Guide.'' FRA shared this guide with States via letters that included the data requirements as discussed in Section 11401. The guide is currently available on DOT's website. In addition, previous Action Plans from the 2010 final rule have also been made available to the public on DOT's website. After issuing this final rule, FRA will provide States with assistance in developing their Action Plans.

Table 1 shows the costs associated with the final rule. The largest costs for the 10 States that have already developed an FRA-approved Action Plan are: Updating and submitting an Action Plan to FRA; submitting a report to FRA that describes how the previously approved Action Plan was implemented; and resubmitting (if necessary) an Action Plan if FRA determines the State's updated Action Plan submission to be incomplete. Collectively, the largest costs for the other 40 States and DC are: Developing and submitting an Action Plan to FRA; and resubmitting (if necessary) an Action Plan if FRA determines the State's previous Action Plan submission to be incomplete.

As shown in Table 1, the final rule will result in a total cost of $1.0 million (PV, 7%), and $1.1 million (PV, 3%).

TABLE 1—COST SUMMARY, DISCOUNTED AT 7% AND 3%

[2017 dollars] [9]

Costs	States updating existing plan		States creating new plan		All states	
	7%	3%	7%	3%	7%	3%
Develop or Update Action plan	$350,000	$364,000	$580,000	$602,000	$930,000	$966,000
Submitting Report to FRA	57,000	59,000	.....	.....	57,000	59,000
Resubmit Action Plan	17,000	18,000	24,000	25,000	41,000	43,000
Government Admin. Costs	.....	.....	.....	.....	20,000	21,000
Total Cost	424,000	441,000	604,000	627,000	1,048,000	1,089,000

FRA assumes that all costs will be incurred in the first year of analysis. The costs that are derived from the analysis do not include the costs of voluntary changes in investments or operations that States will make when implementing their Action Plans.

Benefits

This analysis discusses the non-quantifiable benefits associated with this final rule. FRA expects that States developing and implementing Action Plans may improve the way they allocate resources for GX and PX mitigation efforts. The final rule's primary benefit will come from a reduction in the number of GX and PX accident/incidents and the associated decrease in fatalities, injuries, and property damage, as well as diminished environmental impacts. Last, FRA anticipates that Action Plans may also reduce accident severity, as some States may develop and implement Action Plans that focus efforts on mitigating accident/incidents that are more likely to result in fatalities.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 [10] (RFA) and Executive Order 13272 [11] 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'' that will ''describe the impact of the proposed rule on small entities.'' [12] 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.

In the proposed rule, FRA identified 51 entities (the 50 States and DC) that will be affected by the rule. Each of the 50 States and DC have a population greater than 50,000. Therefore, FRA certified that the rule would not have a significant economic impact on a substantial number of small entities. FRA received no comments regarding the certification.

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. Federalism

Executive Order 13132, ''Federalism,'' [13] 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 governments 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 the final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this final rule, which complies with a statutory mandate, will not have federalism implications that impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements

[9] Numbers rounded to the nearest 1,000.

[10] 5 U.S.C. 601 *et seq.*

[11] 67 FR 53461, Aug. 16, 2002.

[12] 5 U.S.C. 603(a).

[13] 64 FR 43255, Aug. 10, 1999.

of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for this final rule is not required.

D. 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.[14] The sections that contain the information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section [15]	Respondent universe	Total annual responses	Average time per responses [16]	Total annual burden hours	Total cost equivalent [17]
234.11(b)—State Action Plans—Development and submission of new Action Plans (40 States + DC).	40 States + DC	1.3 plans + 2.3 plans + 4 plans + 6 plans.	700 hours + 550 hours + 200 hours + 60 hours.	3,377	$206,672
—(c)(1) Updated Action Plans (10 listed States in § 234.11(e)).	10 States	1 plan + 1 plan + 1.3 plans.	1,100 hours + 640 hours + 225 hours.	2,040	124,848
—(c)(2) Implementation reports (10 listed States in § 234.11(e)).	10 States	1 report + 1 report + 1.3 reports.	160 hours + 120 hours +. 40 hours	333	20,380
—(f)(2) Notification to FRA by State or DC of another official to assume responsibilities described under § 234.11(e)(6).	50 States + DC	2.7 notifications	5 minutes	.3	20
—(g) FRA review and approval of State Action Plans: Disapproved plans needing revision (40 States + DC).	40 States + DC	.7 plans + .7 plans + 1.3 plans.	105 hours + 60 hours + 24 hours.	142	8,690
—(g) FRA review and approval of State Action Plans: Disapproved plans needing revision (10 listed states in § 234.11(e)).	10 States	.3 plans + .3 plans + .3 plans.	165 hours + 96 hours + 34 hours.	98	6,016
Total	N/A	27 plans, reports, and notifications.	N/A	5,991	366,627

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, at 202–493–0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them 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 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 49 CFR 234.11 is 2130–0589.

E. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA),[18] the Council of Environmental Quality's NEPA implementing regulations,[19] and FRA's NEPA implementing regulations [20] 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.[21] 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 State Action Plan requirements as mandated by the FAST Act. 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 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.[22] 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.[23] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[24]

F. 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) [25] 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

[14] 44 U.S.C. 3501 *et seq.*

[15] The proposed burdens for §§ 234.11(d), (e), and (f)(1) are covered under §§ 234.11(b) and (c)(1) and (2).

[16] Based on input from FRA subject matter experts and feedback from States, the 40 States and DC that currently do not have an FRA-approved Action Plan are grouped into four burden levels: High, medium, and low, and minimal burden. For the 10 States, they are grouped into three burden levels: High, medium, and low.

[17] An hourly compensation rate of $61.20 was used to calculate the total cost equivalent.

[18] 42 U.S.C. 4321 *et seq.*

[19] 40 CFR parts 1500 through 1508.

[20] 23 CFR part 771.

[21] 40 CFR 1508.4.

[22] 23 CFR 771.116(b).

[23] 16 U.S.C. 470.

[24] Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[25] 91 FR 27534 (May 10, 2012).

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.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995,[26] 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 such regulations incorporate requirements specifically set forth in law.) Section 202 of the Act [27] 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 the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, 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 the expenditure, in the aggregate, of $100,000,000 or more in any one year 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.'' [28] 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.[29] FRA determined this final rule will not burden the development or use of domestically produced energy resources.

List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

The Final Rule

For the reasons discussed in the preamble, FRA is amending part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SAFETY

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311; Sec. 11401, Div. A, Pub. L. 114–94, 129 Stat. 1679 (49 U.S.C. 22501 note); and 49 CFR 1.89.

■ 2. In § 234.1, revise and republish paragraph (a) to read as follows:

§ 234.1 Scope.

(a) This part prescribes minimum—

(1) Maintenance, inspection, and testing standards for highway-rail grade crossing warning systems;

(2) Standards for the reporting of failures of highway-rail grade crossing warning systems and for the actions that railroads must take when such systems malfunction;

(3) Requirements for certain identified States to update their existing State highway-rail grade crossing action plans and submit reports about the implementation of their existing plans and for the remaining States and the District of Columbia to develop State highway-rail grade crossing action plans;

(4) Requirements that certain railroads establish systems for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls; and

(5) Requirements for reporting to, and periodically updating information contained in, the U.S. DOT National Highway-Rail Crossing Inventory for highway-rail and pathway crossings.

* * * * *

■ 3. Revise § 234.5 by adding in alphabetical order definitions of ''Accident/incident,'' ''Pathway grade crossing,'' and ''State highway-rail grade crossing action plan or Action Plan'' to read as follows:

§ 234.5 Definitions.

As used in this part:

Accident/incident means any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing or pathway grade crossing. The term ''highway user'' includes automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation motorized and un-motorized.

* * * * *

Pathway grade crossing means a pathway that crosses one or more railroad tracks at grade and that is—

(1) Explicitly authorized by a public authority or a railroad;

(2) Dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others; and

(3) Not associated with a public highway, road, or street, or a private roadway.

* * * * *

State highway-rail grade crossing action plan or Action Plan means a document submitted to FRA for review and approval by a State of the United States (or the District of Columbia), which contains the elements required by § 234.11(e) to address safety at highway-rail and pathway grade crossings.

* * * * *

■ 4. Revise § 234.11 to read as follows:

§ 234.11 State highway-rail grade crossing action plans.

(a) *Purpose.* The purpose of this section is to reduce accident/incidents at highway-rail and pathway grade crossings nationwide by requiring States and the District of Columbia to develop or update highway-rail grade crossing action plans and implement them. This section does not restrict any other entity from adopting a highway-rail grade crossing action plan. This section also does not restrict any State or the District of Columbia from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *New Action Plans.* (1) Except for the 10 States identified in paragraph (c)(3) of this section, each State and the District of Columbia shall develop a State highway-rail grade crossing action plan that addresses each of the required

[26] Public Law 104–4, 2 U.S.C. 1531 *et seq.*

[27] 2 U.S.C. 1532.

[28] 66 FR 28355 (May 22, 2001).

[29] 82 FR 16093 (Mar. 31, 2017).

elements listed in paragraph (e) of this section and submit such plan to FRA for review and approval not later than February 14, 2022.

(2) Each State and the District of Columbia shall submit its highway-rail grade crossing action plan electronically through FRA's website in Portable Document Format (PDF).

(c) *Updated Action Plan and implementation report.* (1) Each of the 10 States listed in paragraph (c)(3) of this section shall develop and submit to FRA for review and approval an updated State highway-rail grade crossing action plan that addresses each of the required elements listed in paragraph (e) of this section, not later than February 14, 2022.

(2) Each of the 10 States listed in paragraph (c)(3) of this section shall also develop and submit to FRA, not later than February 14, 2022, a report describing:

(i) How the State implemented the State highway-rail grade crossing action plan that it previously submitted to FRA for review and approval; and

(ii) How the State will continue to reduce highway-rail and pathway grade crossing safety risks.

(3) The requirements of this paragraph (c) apply to the following States: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas.

(d) *Electronic submission of updated Action Plan and implementation report.* Each of the 10 States listed in paragraph (d)(2) of this section shall submit its updated highway-rail grade crossing action plan and implementation report electronically through FRA's website in PDF form.

(e) *Required elements for State highway-rail grade crossing action plans.* Each State highway-rail grade crossing action plan described in paragraphs (b) and (c) of this section shall:

(1) Identify highway-rail and pathway grade crossings that:

(i) Have experienced at least one accident/incident within the previous 3 years;

(ii) Have experienced more than one accident/incident within the previous 5 years; or

(iii) Are at high-risk for accidents/incidents as defined in the Action Plan. Each State or the District of Columbia that identifies highway-rail and pathway grade crossings that are at high-risk for accidents/incidents in its Action Plan shall provide a list of the factors that were considered when making this determination. At a minimum, these factors shall include:

(A) Average annual daily traffic;

(B) Total number of trains per day that travel through each crossing;

(C) Total number of motor vehicle collisions at each crossing during the previous 5-year period;

(D) Number of main tracks at each crossing;

(E) Number of roadway lanes at each crossing;

(F) Sight distance (stopping, corner and clearing) at each crossing;

(G) Roadway geometry (vertical and horizontal) at each crossing; and

(H) Maximum timetable speed;

(2) Identify data sources used to categorize the highway-rail and pathway grade crossings in paragraph (e)(1) of this section;

(3) Discuss specific strategies, including highway-rail grade crossing closures or grade separations, to improve safety at those crossings over a period of at least four years;

(4) Provide an implementation timeline for the strategies discussed in paragraph (e)(3) of this section; and

(5) Designate an official responsible for managing implementation of the State highway-rail grade crossing action plan.

(f) *Point of contact for State highway-rail grade crossing action plans.* (1) When the State or the District of Columbia submits its highway-rail grade crossing action plan or updated Action Plan and implementation report electronically through FRA's website, the following information shall be provided to FRA for the designated official described in paragraph (e)(5) of this section:

(i) The name and title of the designated official;

(ii) The business mailing address for the designated official;

(iii) The email address for the designated official; and

(iv) The daytime business telephone number for the designated official.

(2) If the State or the District of Columbia designates another official to assume the responsibilities described in paragraph (e)(5) of this section before December 16, 2024, the State or the District of Columbia shall contact FRA and provide the information listed in paragraph (f)(1) of this section for the new designated official.

(g) *Review and approval.* (1) FRA will update its website to reflect receipt of each new, updated, or corrected highway-rail grade crossing action plan submitted pursuant to this section.

(2)(i) Within 60 days of receipt of each new, updated, or corrected highway-rail grade crossing action plan, FRA will conduct a preliminary review of the Action Plan to ascertain whether the elements prescribed in paragraph (e) of this section are adequately addressed in the plan.

(ii) Each new, updated, or corrected State highway-rail grade crossing action plan shall be considered conditionally approved for purposes of this section sixty (60) days after receipt by FRA unless FRA notifies the designated official described in paragraph (e)(5) of this section that the highway-rail grade crossing action plan is incomplete or deficient.

(iii) FRA reserves the right to conduct a more comprehensive review of each new, updated, or corrected State highway-rail grade crossing action plan within 120 days of receipt.

(3) If FRA determines that the new, updated, or corrected highway-rail grade crossing action plan is incomplete or deficient:

(i) FRA will provide email notification to the designated official described in paragraph (e)(5) of this section of the specific areas in which the Action Plan is deficient or incomplete and allow the State or the District of Columbia to complete the plan and correct the deficiencies identified.

(ii) Within 60 days of the date of FRA's email notification identifying the specific areas in which the highway-rail grade crossing action plan is incomplete or deficient, the State or District of Columbia shall correct all deficiencies and submit the corrected State highway-rail grade crossing action plan to FRA for approval. The corrected highway-rail grade crossing action plan shall be submitted electronically through FRA's website in PDF format.

(4)(i) When a new, updated, or corrected State highway-rail grade crossing action plan is fully approved, FRA will provide email notification to the designated official described in paragraph (e)(5) of this section.

(ii) FRA will make each fully-approved State highway-rail grade crossing action plan publicly available for online viewing.

(iii) Each State and the District of Columbia shall implement its fully-approved highway-rail grade crossing action plan.

(h) *Condition for grants.* The Secretary of Transportation may condition the awarding of any grants under 49 U.S.C. ch. 244 on the State's or District of Columbia's submission of an FRA-approved State highway-rail grade crossing action plan under this section.

§ 234.301 [Amended]

■ 5. Amend § 234.301 by removing the definition of ''Pathway grade crossing.''

Issued in Washington, DC.

Quintin C. Kendall,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 2020–26064 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 201207–0328]

RIN 0648–BJ18

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This action implements approved measures for the Mid-Atlantic Fishery Management Council's Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. This rule changes the summer flounder commercial state quota allocation system and fishery management plan goals and objectives. This action is intended to increase equity in state allocations when annual coastwide commercial quotas are at or above historical averages, while recognizing the economic reliance coastal communities have on the state allocation percentages currently in place.

DATES: Effective January 1, 2021.

ADDRESSES: Copies of Amendment 21, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: *http://www.mafmc.org.*

A copy of the Record of Decision (ROD) for the Final EIS (FEIS) can be obtained from the NOAA Fisheries Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage summer flounder under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The joint FMP became effective in 1988, establishing measures to manage summer flounder fisheries. Summer flounder is an important commercial and recreational species. Currently, 60 percent of the total allowable landings limit (TAL) is allocated to the commercial fishery (coastwide annual commercial quota), with the remaining 40 percent allocated to the recreational fishery. Available quotas are fully utilized by both sectors in most fishing years. The coastwide annual commercial quota is allocated to each of the states in the management unit (Maine-North Carolina) on a percentage basis. The existing commercial state-by-state allocations were last modified in 1993.

Amendment 21 was approved by the Council and Commission in March 2019. A notice of availability (NOA) for the amendment published in the **Federal Register** on July 29, 2020 (85 FR 45571), with a comment period ending on September 28, 2020. We published a proposed rule in the **Federal Register** on August 12, 2020 (85 FR 48660), with a comment period ending on September 11, 2020.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. After considering public comment on the NOA and proposed rule, we approved Amendment 21 on October 19, 2020. This rule implements the management measures in Amendment 21. The details of the development of the measures in Amendment 21 were described in the NOA and proposed rule, and are not repeated here.

Approved Measures

State Commercial Allocations

Amendment 21 changes the state-by-state commercial quota allocations for summer flounder when the coastwide quota exceeds 9.55 million lb (4,332 mt). When the coastwide quota is 9.55 million lb (4,332 mt) or less, the quota will be distributed according to the current allocation percentages. In years when the coastwide quota exceeds 9.55 million lb (4,332 mt), any additional quota, beyond this threshold, will be distributed in equal shares to all states except Maine, Delaware, and New Hampshire, which would split 1 percent of the additional quota. The Council and Board selected this allocation alternative to balance preservation of historical state access and infrastructure at recent quota levels, while providing equitability among states when the stock and quota are at high levels.

TABLE 1—APPROVED STATE-BY-STATE SUMMER FLOUNDER QUOTA ALLOCATIONS

State	Allocation of baseline quota ≤9.55 mil lb (4,332 metric tons) (percent)	Allocation of *additional* quota beyond 9.55 mil lb (4,332 metric tons) (percent)
ME	0.04756	0.333
NH	0.00046	0.333
MA	6.82046	12.375
RI	15.68298	12.375
CT	2.25708	12.375
NY	7.64699	12.375
NJ	16.72499	12.375
DE	0.01779	0.333
MD	2.03910	12.375
VA	21.31676	12.375
NC	27.44584	12.375
Total	100	100

Concurrent to this action we are considering changes to the 2021 specifications for summer flounder, scup, and black sea bass (85 FR 73253; November 17, 2020). If the revised 2021 summer flounder acceptable biological catch and corresponding specifications are approved, state allocations of summer flounder would be initially distributed as shown in Table 2. Final 2021 allocations, which will take into account any 2019 or 2020 overages through October 31, 2020, will be provided in the final rule establishing the 2021 specifications.

TABLE 2—INITIAL 2021 SUMMER FLOUNDER STATE-BY-STATE QUOTAS

State	Initial 2021 quotas * amendment 21 allocations (lb)	Initial 2021 quotas * amendment 21 allocations (mt)
ME	14,342	6.51
NH	9,844	4.47
MA	1,015,179	460.48
RI	1,861,550	844.38
CT	579,376	262.80
NY	1,094,113	496.28
NJ	1,961,062	889.52
DE	11,499	5.22
MD	558,559	253.36
VA	2,399,576	1,088.43
NC	2,984,903	1,353.93
Total	12,490,000	5,665.37

* Initial quotas do not account for any previous overages.

Revised Summer Flounder FMP Goals and Objectives

The original FMP objectives were adopted via Amendment 2 to the Summer Flounder FMP in 1993 and have remained unchanged since that time. Amendment 21 revises the FMP goals and objectives. The FMP previously contained only management objectives, while the revision contains three overarching goals linked to more specific objectives. The goals are: (1) Ensuring sustainability of both the summer flounder stock and fishery; (2) increasing the effectiveness of management measures through partnerships, enforcement, and data collection; and, (3) optimization of the social and economic benefits from the summer flounder stock. Additional information on these changes can be found in the Amendment 21 FEIS.

Comments and Responses

We received seven comment letters on the NOA and the proposed rule. Four comments were received on the proposed rule and three comments were received on the NOA. The state of New York and the New York Department of Environmental Conservation jointly submitted the same comment in response to the proposed rule and NOA (hereinafter referenced as ''New York''), resulting in six unique comments on the proposed rule and NOA. Three comments, one from an industry group in Rhode Island and two from members of the public, supported the revised allocation system. The only comment that did not support approval of the revised allocation system was from New York. The comment submitted by New York consisted of a letter and nine supporting attachments, which ultimately requested that we disapprove Amendment 21. Similar to arguments made in ongoing and past litigation and its comments on the Draft EIS, New York contends that the revised allocations and resulting quotas are not in accordance with Magnuson-Stevens Act's National Standards 2, 4, 5, and 7. See comments 5–7, below, for more information.

Two comments on the proposed rule were not relevant to the proposed measures. One of these comments was related to the allocation split between the commercial and recreational sectors, and the perceived inequity of current recreational management. These issues are currently being considered by the Council and Commission in a separate joint action to address commercial/recreational sector allocations. The other comment, from a member of the public, stated that the total quota should be reduced below 9.5 million lb (4,332 mt), to 6.5 million lb (2,971 mt) because the current quota levels are unsustainable. Amendment 21, as an action, does not set summer flounder quotas. However, the process used to set quotas does so in a manner that ensures that catch levels are sustainable and overfishing is prevented. These comments were not related to the proposed commercial state allocation changes or management objective revisions, and, therefore, are not discussed further.

Comment 1: An industry group in Rhode Island commented on the proposed rule in support of the proposed allocation changes because the revised allocations allow states to keep their existing shares of summer flounder, which they greatly depend on, but also provide those states allocated a lower quota with an increased share when the summer flounder quota reaches the threshold.

Response 1: We agree and have approved the Council's proposed allocation changes. The Council and Board selected the approved approach to balance the historical distribution of allocations with the need to equitably provide additional quota to states with lower quotas when summer flounder is abundant.

Comment 2: One comment on the NOA supported the approval of Amendment 21. This commenter also misunderstood the proposed measures, and stated support for 9.55 million lb (4,332 mt) cap on summer flounder catch.

Response 2: We agree with this commenter's support of Amendment 21 and have approved the amendment as recommended by the Council and Commission. However, we note that Amendment 21 does not constrain future commercial summer flounder catch limits to 9.55 million lb (4,332 mt). This is the threshold level for the change in the allocation formula.

Comment 3: One comment on the NOA supported the approval of Amendment 21. Specifically, this commenter supported the Council's updates to the management objectives. This commenter also supported the allocation change because it adapts to changing population levels.

Response 3: We agree and have approved Amendment 21.

Comment 4: One commenter asked why Maine, Delaware, and New Hampshire do not get distributed shares of the excess quota.

Response 4: Under this amendment, Maine, Delaware, and New Hampshire do get distributed additional shares of commercial summer flounder quota. The distribution of the baseline 9.55 million lb (4,332 mt) quota remains unchanged by this action. In years when the coastwide quota exceeds 9.55 million lb (4,332 mt), any additional quota beyond this threshold will be distributed in equal shares to all states except Maine, Delaware, and New Hampshire, which would split 1 percent of the additional quota. These states receive a smaller portion of the additional quota because they have a very limited fishery for summer flounder. To date, Maine and New Hampshire have no reported commercial summer flounder landings in 2020, and none for the 2019 fishing year. Delaware also has no reported 2020 landings, and 2019 landings were less than 1,300 lb (0.59 mt).

Comment 5: New York contends that the revised allocation system in the amendment is inconsistent with National Standard 2 because it is not based upon the best scientific information available. Specifically, New York states that it is not based on current, reliable information about the summer flounder fishery; the continuation of the 1993 formula is based upon flawed, outdated information from the 1980s; and the amendment's proposed method to evenly distribute excess landings appears to be based upon no scientific information whatsoever.

Response 5: We disagree with New York's position that the current and the revised allocation approaches are not based on relevant data sources or the best available scientific information. The 1980–1989 landings data used in the base allocation formula represent the best scientific information available for commercial landings, by state, from that time period, which was prior to imposing state-based allocations.

Landings since 1993 have been constrained by the allocation formulas, so more recent data would simply reflect the same percentages as the 1980–1989 data or would be skewed toward states that exceeded their quota allocations. The 1980–1989 base years were originally selected because they represented a period of relatively unrestricted fishing effort and, therefore, could serve as a proxy for state level effort and interest in the fishery absent management controls.

New York has long asserted that a different accounting method (*i.e.,* a ''box method'' rather than weigh-out data) was used for tracking New York's landings during the 1980s, and that this method would account for a higher level of landings than shown in current dealer data. However, despite numerous opportunities to provide this information, it appears that records of these alternative landings do not exist or are not readily available for review, and it is not clear that these data would be comparable to existing landings data if they were available.

More recently, New York has claimed that its summer flounder fishery during that period was infiltrated by organized crime, resulting in unreported landings and making it impossible to to collect accurate landings information in New York for that timeframe.

After the initial state allocations were developed, Connecticut made similar arguments about inaccuracies in landings data and was able to document the higher levels of landings in that state. As a result, the Council revised Connecticut's allocation through Amendment 4 to the FMP. In contrast, New York has not presented any additional basis for similar adjustments to its historical landings data and, in fact, has suggested that there is not a way to gather more accurate data for New York landings during that timeframe.

Comment 6: New York contends that the revised allocation system should be based on recent trends in the distribution of summer flounder, and that because the revised allocation does not address the shift in stock distribution, the resulting allocation is not fair or efficient and results in excessive costs for New York fishermen, contrary to National Standard 5.

Response 6: The Council and Board did consider revising allocations based on recent summer flounder stock distribution information (alternative 2B), but ultimately did not select that alternative. While a reallocation scheme based only on proximity to the center of summer flounder biomass might allow for more efficient access for states with fleets targeting summer flounder that are closer to the center of biomass, it would also disadvantage states with traditionally more long-distance fleets and fleets historically dependent on summer flounder by reducing their allocation. While National Standard 5 directs that management measures should consider efficiency in the utilization of fishery resources when practicable, the NMFS National Standard 5 Guidelines recognize that pure efficiency considerations should not prevent the attainment of other social or biological objectives. 50 CFR 600.330(b)(2)(ii). Of relevance here, National Standard 8 directs that management measures take into account the importance of fishery resources to fishing communities to allow for the sustained participation of such communities. 50 CFR 600.345. Substantial reductions in allocation, resulting in quotas below historical averages for states that have historically depended on the summer flounder fishery would increase their operation costs, and the cost of the infrastructure relative to the value of the fishery overall. Along the coast, there is substantial variability in the mobility of each state's fleet, the traditional areas of operation for each state's fleet, the targeted species of each state's fleet, and economic dependence on summer flounder within each state. The Council selected the proposed allocation formula to balance preservation of historical state access and infrastructure at recent quota levels, with the intent to provide equitability among states when the stock and quota are at higher levels.

We disagree that the revised allocation formula does not address the shift in stock distribution. While the formula is not based on the biomass distribution, it does generally reduce the proportion of quota for states at the southern end of summer flounder distribution (North Carolina, Virginia, and New Jersey) and increase allocation for many northern states, including New York, reflecting the shift of the center of summer flounder biomass. Increased allocations during years with higher biomass levels, may allow these states to liberalize management measures, such as possession limits, increasing the efficiency of vessels landing in their ports. Had the revised allocation formula been used when setting 2020 state-by-state quotas, New York's quota would have been 10.61 percent higher than under status quo allocations. While there is no guarantee that summer flounder quotas will remain above 9.55 million lb (4,332 mt), the trigger was based on the average of quotas from 2014–2018 and 2009–2018. The proposed 2021 quota is higher than the 2020 quota, at 12.49 million lb (5,665 mt).

Comment 7: New York contends that the revised allocation is inconsistent with National Standard 4 because it would allocate fishing privileges in the commercial summer flounder fishery between the states in a manner that is neither fair and equitable, reasonably calculated to promote conservation, nor carried out in a manner to prevent any entity from acquiring an excessive share. Specifically, New York states that ''. . . the outdated 1993 Allocation regime is unfair to fishermen and other market participants in New York, to the benefit of fishermen and other market participants in North Carolina and Virginia, without any rational conservation basis. The Proposed Amendment would substantially retain this model with only incremental relief for New York in abundant years, making it inconsistent with Magnuson Standard 4.''

Response 7: The new allocation was specifically developed to balance historical allocations and access with equitability across states. When the quota is above the threshold the remaining quota is distributed equally to all states (with the exception of Maine, New Hampshire and Delaware). New York's comments suggest that a significant portion of the quota should have been reallocated to New York, due to the stock distribution and resulting fishery dynamics. While this type of reallocation scheme would have been favorable for New York fishermen, it would have disadvantaged other states that have a historical dependence on this fishery. The National Standard 4 Guidelines specifically state that the Council should consider other factors relevant to the FMP's objectives, including the dependence on the fishery by present participants and coastal communities when considering allocation changes.

Additionally, according to the Guidelines, an allocation of fishing privileges should be rationally connected to the achievement of optimal yield (OY) or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. Objective 3.1 of the FMP states that reasonable access to the fishery throughout the management unit should be provided and that fishery

allocations and other management measures should balance responsiveness to changing social, economic, and ecological conditions with historic and current importance to various user groups and communities. By balancing between historic participants from southern states and New York's desire for increased quota based on shifts in summer flounder distribution Amendment 21 reflects this objective of the FMP.

New York also contends that the new allocation will not prevent excessive shares from being accumulated. Specifically New York states that ''. . . the Proposed Amendment would provide the fishing industries in North Carolina and Virginia an excessive share of fishing privileges.'' The National Standard 4 Guidelines state that ''an allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.'' 50 CFR 600.235(c)(3)(iii) (emphasis added). The new allocation formula will, in years when the quota exceeds 9.55 million lb (4,332 mt), reduce the proportion of quota that both North Carolina and Virginia will receive, compared to the status quo. Approval of the new allocation formula does not, in fact, increase these states' quota shares in a manner that would not otherwise exist. Moreover, state landings quotas do not result in excessive shares in the summer flounder fishery. The concept of excessive shares refers to individuals and/or corporations having market control. This Amendment revises the allocation of landings among the states. Within and among the states there are hundreds of Federal and state permitted vessels in the fishery, which prevents any individual from exercising market power in a manner that would be considered an excessive share.

National Standard 4 guidelines state that allocations should be reasonably calculated to promote conservation. Numerous methods of allocating fishing privileges can be considered ''conservation and management'' measures under section 303 of the Magnuson-Stevens Act. State allocations promote conservation by reducing the potential for a ''race to fish'' that can result from coastwide allocations, allowing for a more orderly prosecution of the fishery through management at the state landings level. Inherent in such a state allocation system is a division of the quota among the states. The new allocation formula is designed to provide equitable access to the resource compared to the status quo. When the stock biomass is high, as it is currently, quota above 9.55 million lb (4,332 mt) is distributed evenly to states with an active summer flounder fishery, including New York. This results in a shift of quota from states with historically higher quotas to northern states such as New York, Connecticut, and Massachusetts. These states receive additional access to the stock when it is healthy, which should increase the economic and social benefits to these communities without unfairly disadvantaging states and communities that have historically relied on the quota.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

For the reasons discussed below, the Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner constitutes good cause, under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date of this action. This action implements a new state-by-state allocation formula for the commercial summer flounder fishery, which should be effective by the start of the summer flounder fishing year on January 1, 2021.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the FEIS, in support of the Amendment, that is developed by the Council. An initial draft was received by NMFS in March 2020, and a final draft was submitted in May 2020. A NOA for the FEIS was prepared for Amendment 21, as required by the National Environmental Policy Act, and published on July 31, 2020 (85 FR 46094) with a comment period ending on August 31, 2020. In addition, as required by the Magnuson-Stevens Act, an NOA for Amendment 21 published on July 29, 2020 (85 FR 45571), with a comment period ending on September 28, 2020. A proposed rule was published on August 12, 2020 (85 FR 48660), with a comment period ending on September 11, 2020.

The summer flounder fishery operates on the calendar year. Annual publication of the summer flounder quotas is required prior to the start of the fishing year, by December 31. Amendment 21 has already been approved (October 19, 2020), and this final rule must be effective as soon as possible to enable the use of the new allocation formula in the 2021 summer flounder specifications. If this rule were not effective prior to the start of the fishing year, the resulting mid-year change to the allocations and state quotas would cause unnecessary harm to the fishery and would be contrary to the public interest. Based on historic participation and harvest patterns, the summer flounder fishery is expected to be very active at the start of the fishing season in 2021. If this rule is not effective on January 1 and interim specifications go into effect, it would create unnecessary challenges for individual states when setting commercial possession and/or trip limits, which apportion the catch over the entire calendar year. Moreover, if the current formula were used to develop the state quotas at the beginning of the year, there is the potential for a ''race to fish'' for states whose quotas would be lower using the new formulas, which could ultimately result in landings overages.

Furthermore, the revised allocation formula is intended to create a more equitable distribution of quota and provide relief for states that have had lower quotas relative to their fleet's reliance on the summer flounder fishery in recent years.

The 30-day delay in implementation of this rule is also unnecessary because this rule contains no new measures (*e.g.,* requiring new nets or equipment) for which regulated entities need time to prepare or revise their current practices.

The Council prepared a FEIS for this FMP amendment. The FEIS was filed with the Environmental Protection Agency on July 23, 2020. A notice of availability was published on July 31, 2020 (85 FR 46094). In approving the FMP amendment on October 19, 2020, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. NMFS did not receive any comments that were

specifically in response to the IRFA. The FRFA incorporates sections of the preamble (**SUPPLEMENTARY INFORMATION**) and analyses supporting this rulemaking, including the Amendment 21 EIS (see **ADDRESSES**). A description of the action, why it is being considered, and the objectives of and the legal basis for this rule are contained in the supplemental information report and preamble to the proposed rule, and are not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action can be found in the Comments and Responses section of this rule. In the proposed rule, we solicited comments on a revised allocation formula for distributing commercial summer flounder quota to states, and updated FMP goals and objectives. The majority of comments supported the proposed measures. There were no comments that specifically addressed the IRFA.

Description and Estimate of the Number of Small Entities to Which This Rule Would Apply

The entities (*i.e.,* the small and large businesses) that may be affected by this action include fishing operations with summer flounder moratorium (commercial) permits. The recreational fishery is not impacted by this action, and therefore entities with recreational party/charter permits are not considered here, nor are private recreational anglers which are not considered ''entities'' under the Regulatory Flexibility Act (RFA). For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million, for all its affiliated operations worldwide.

Vessel ownership data were used to identify all individuals who own commercial fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses, which may be affected by this action. Based on this grouping, a total of 607 affiliates reported revenues from commercial summer flounder landings during the 2016–2018 period, with 601 of those business affiliates categorized as small businesses and 6 categorized as large businesses.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of This Rule

There are no reporting, recordkeeping, or other compliance requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Rule

The action does not duplicate, overlap, or conflict with other Federal rules.

Description of Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The approved measures (*i.e.,* the suite of preferred alternatives) includes implementation of revised commercial quota allocation system for the summer flounder fishery. Specifically, this action creates state allocations that vary with overall stock abundance. For all years when the annual commercial quota is at or below 9.55 million lb (4,332 mt), the state allocations will remain status quo. In years when the annual coastwide quota exceeds this trigger, the first 9.55 million lb (4,332 mt) will be distributed according to status quo allocations, and the additional quota, beyond 9.55 million lb (4,332 mt), will be distributed by equal shares (with the exception of Maine, New Hampshire, and Delaware, which would split 1 percent of the additional quota).

Additional non-preferred alternatives were also considered. For the purposes of the RFA, only the preferred alternatives and those non-preferred alternatives which would minimize negative impacts to small businesses are required to be considered. Economic impacts would vary by state and community under all alternatives, but alternatives 2A (status quo) and alternatives 2C (the preferred alternative) are likely to have fewer negative impacts overall compared to other alternatives. Therefore, the preferred alternative (2C) is compared to the status quo (alternative 2A) in the quantitative analysis. Although not required, we also provide a brief summary of the relative impacts of the two additional non-preferred options (2B and 2D).

The analysis was conducted assuming full utilization of the 2020 commercial quota of 11.53 million lb (5,230 mt). Results indicate that the proposed action of a quota reallocation threshold of 9.55 million lb (4,332 mt) increases fleetwide revenue by $400,000 relative to No Action, and ex-vessel price by $0.04 per pound relative to No Action. The proposed action is estimated to yield a decrease in fishery-wide revenue of $150,000 as compared to the quota reallocation threshold of 8.4 million lb (3,810 mt) (Alternative 2C–1). This slight decrease in revenue under the proposed action, relative to the highest revenue-generating alternative, is not expected to disproportionately impact small entities.

Additional alternatives, 2B and 2D, were considered but not recommended by the Council. Alternatives 2B and 2D had more negative impacts on small businesses than the selected alternative. Alternative 2B considered revisions to the quota allocation based on recent summer flounder biomass distribution, while alternative 2D (the ''scup model''), considered a significant change in summer flounder management by creating a winter season that was open to any vessel with a summer flounder permit.

Compared to the other allocation alternatives, the impacts of alternative 2D are the most difficult to determine, as this alternative is associated with the highest uncertainty regarding impacts on vessel participation, fishing effort, landings patterns, and market responses. Relative to alternative 2A, alternative 2D is expected to have a higher magnitude of positive or negative impacts to states and businesses, due to the substantial change in the management system that will benefit some and negatively impact others. Shoreside communities would also be impacted by alternative 2D. Many states have invested heavily in shoreside infrastructure to support their fleets. Under alternative 2D, the distribution of landings in the winter would be driven more by vessel preference and market factors, which would positively impact some shoreside businesses and negatively impact others.

Alternative 2B would shift quota allocation from the Southern region of the management unit (North Carolina through New Jersey) to the Northern region (New York through Maine). Compared to alternative 2C, alternative 2B is more likely to have a higher magnitude of positive or negative impacts (depending on the state), as allocation changes would be permanently revised from status quo, while under 2C there is the potential for

status quo allocation. Additionally, option 2C has a higher likelihood of costs and benefits being shared more equally over time as the quota fluctuates above and below the trigger point.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a fishery bulletin that serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO) (see **ADDRESSES**), and fishery bulletin (*i.e.,* compliance guide) will be sent to all holders of commercial permits for the summer flounder fishery. The fishery bulletin and this final rule will be posted on the GARFO website.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 7, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.102, paragraph (c)(1) is revised to read as follows:

§ 648.102 Summer flounder specifications.

* * * * *

(c) * * *

(1) *Distribution of annual commercial quota.* (i) For years when the annual commercial quota is at or below 9,550,000 lb (4,332 mt), the quota will be distributed to the states, based upon the following percentages (state followed by percent share in parenthesis): Maine (0.04756); New Hampshire (0.00046); Massachusetts (6.82046); Rhode Island (15.68298); Connecticut (2.25708); New York (7.64699); New Jersey (16.72499); Delaware (0.01779); Maryland (2.03910); Virginia (21.31676); and North Carolina (27.44584).

(ii) For years when the annual commercial quota is greater than 9,550,000 lb (4,332 mt), the quota up to this amount will be distributed as outlined in paragraph (c)(1)(i) of this section, and the additional quota above 9,550,000 lb (4,332 mt) will be distributed based upon the following percentages (state followed by percent share in parenthesis): Maine (0.333); New Hampshire (0.333); Massachusetts (12.375); Rhode Island (12.375); Connecticut (12.375); New York (12.375); New Jersey (12.375); Delaware (0.333); Maryland (12.375); Virginia (12.375); and North Carolina (12.375).

* * * * *

[FR Doc. 2020–27193 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 240
Monday, December 14, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2020–0014]

RIN 1601–AA98

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/ALL–046 Counterintelligence Program System of Records

AGENCY: Office of the Secretary, U.S. Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security is giving concurrent notice of a new system of records pursuant to the Privacy Act of 1974 for the ''U.S. Department of Homeland Security/ALL–046 Counterintelligence Program System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of counterintelligence, criminal, civil, and administrative investigative and enforcement requirements.

DATES: Comments must be received on or before January 13, 2021.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0014 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions please contact: Constantina Kozanas, (202–343–1717), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS) proposes to create a new DHS system of records titled ''DHS/ALL–046 Counterintelligence Program System of Records.''

DHS developed the Counterintelligence (CI) Program to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of Foreign Intelligence Entities (FIE). FIEs are known or suspected foreign state or non-state organizations or persons that conduct intelligence activities to acquire information about the United States, block or impair intelligence collection by the United States Government, influence United States policy, or disrupt systems and programs owned or operated by or within the United States, all of which may impact or influence DHS operations and missions. The term includes foreign intelligence and security services, international terrorists, transnational criminal organizations, and drug trafficking organizations conducting intelligence-related activities.

DHS is issuing this notice of proposed rulemaking to exempt this system of records from certain provisions of the Privacy Act. The system of records notice is published elsewhere in this **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, and similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a notice of proposed rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL–046 Counterintelligence Program System of Records. Some information in this system relates to official DHS national security, law enforcement, counterintelligence, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to: preclude subjects of these activities from frustrating these processes; avoid disclosure of counterintelligence sources, assets and methods, inquiries and investigations; protect the identities and physical safety of confidential informants and law enforcement personnel; ensure DHS's ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard classified information. Disclosure of a counterintelligence inquiry or investigation, to the subject of said inquiry or investigation, could have an adverse effect on the outcome of the inquiry or investigation.

In appropriate circumstances, when compliance would not appear to

interfere with or adversely affect the law enforcement and counterintelligence purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records DHS/ALL–046 Counterintelligence Program System of Records is also publishing elsewhere in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

* * * * *

■ 2. In appendix C to part 5, add paragraph 83 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

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83. The DHS/ALL–046 Counterintelligence Program System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL–046 Counterintelligence Program System of Records covers information held by DHS in connection with various missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The system of records covers information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified on a case-by-case basis and determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS and the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because providing access or permitting amendment to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (e)(12) (Matching Agreements) because requiring DHS to provide notice of a new or revised matching agreement with a non-Federal agency, if one existed, would impair DHS operations by indicating which data elements and information are valuable to DHS's analytical functions, thereby providing harmful disclosure of information to individuals who would seek to circumvent or interfere with DHS's missions.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Constantina Kozanas,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2020–27314 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–9N–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 439

[Docket No. FSIS–2016–0026]

RIN 0583–AD70

Changes to Accreditation of Non-Federal Analytical Testing Laboratories.

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to revise the regulations prescribing the statistical

methods used in measuring the performance of chemistry laboratories in its voluntary Accredited Laboratory Program (ALP) and to expand the scope of accreditations offered by the program. Currently, participants in the ALP are accredited for the analysis of food chemistry (moisture, protein, fat, and salt), specific chemical residues, and classes of chemical residues. FSIS is proposing to change the statistical method it uses to evaluate laboratory proficiency testing (PT) sample results to the z score approach for those accreditations that are currently evaluated by Cumulative Summation (CUSUM). FSIS also is proposing to accredit non-Federal laboratories for microbiological indicator organisms and pathogen testing, in response to industry interest. Additionally, the Agency is proposing to make various minor edits and changes to the regulation for the sake of clarity and to incorporate all sample types under the jurisdiction of FSIS (*e.g.,* to include egg products), as appropriate for the associated analyte, and to improve program flexibility. Improving program flexibility includes updating definitions to remove specific references that are currently limiting the program.

DATES: Comments on this proposed rule must be received on or before February 12, 2021.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0026. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202)720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 720–0399.

SUPPLEMENTARY INFORMATION:

Background

FSIS accredits non-Federal analytical laboratories under its Accredited Laboratory Program (ALP). Under this voluntary program, FSIS accredits laboratories to conduct analyses of official meat and poultry samples for food chemistry (moisture, protein, fat, and salt), specific chemical residues, and classes of chemical residues. In response to the meat and poultry industries' need for more rapid analytical results as food testing expanded, and because of limitations in FSIS laboratory capacity at the time of this need, these programs were established to accredit non-Federal laboratories for certain tests of both meat and poultry products. In 1980 (45 FR 73947) and again in 1985 (50 FR 15435), the Agency proposed to consolidate these programs and establish an ALP that contained standards and procedures for non-Federal laboratories eligible to analyze official samples when necessary. A final rule was issued in 1987 (52 FR 2176). A subsequent 1993 final rule (58 FR 65254) established user fees for the ALP and adjusted the standards and procedures established in the earlier rule for this program. A non-Federal laboratory seeking FSIS accreditation must pay a nonrefundable accreditation fee to cover the costs of the ALP.

In 2008, a final rule was issued (73 FR 52193) to accommodate the adoption of newer methods for analyzing chemical residues and to make editorial changes to the accredited laboratory regulations to reflect Agency reorganizations and program changes. This rule also consolidated the accredited laboratory regulations from 9 CFR 318.21 of the meat inspection regulations and 9 CFR 381.153 of the poultry products inspection regulations into a single new part, 9 CFR part 439.

The ALP monitors each non-Federal laboratory currently accredited under the program to ensure that these laboratories are operating at a level of quality that produces reliable results that can be used to support decisions in establishments' food safety systems. The PT program administered by the ALP supports this effort. Monitoring is achieved by evaluating PT results for acceptable analytical performance and assessing quality assurance through on-site reviews of each laboratory's management system and facility assets.

Statistical Methods

To ensure compliance with the regulatory provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), samples of meat and poultry products are periodically tested. These tests are conducted to determine the content of food chemistry components and the presence of violative concentrations of veterinary drugs or other chemical residues. FSIS's own laboratories, as well as accredited non-Federal laboratories carry out these analyses. To assess the proficiency of the non-Federal laboratories participating in the ALP, testing events are administered by FSIS, whereby PT samples of meat and poultry products are prepared and sent to participating laboratories for chemical analysis of targeted food chemistry components as well as targeted compounds, such as residues of veterinary drugs, polychlorinated biphenyls (PCBs), and pesticides. The concentration of the targeted analytes is unknown to the non-Federal laboratories. The laboratories' performance on the analysis of the PT sample is then evaluated and scored by the ALP using a statistical tool (CUSUM) developed by FSIS. The FSIS CUSUM, currently defined at 9 CFR 439.1(h), is based on a class of cumulative summation statistical procedures for assessing whether a process is in control.

The use of CUSUM statistics for scoring laboratory performance in the ALP was implemented in 1987 (''Meat and Poultry Inspection; Accredited Laboratory Program,'' (52 FR 2176; January 20, 1987)). At the time that this rule was published, the analytical chemistry community did not have consensus-based guidance and standards for statistical evaluation of PT results. Consequently, FSIS developed the CUSUM PT sample scoring system specifically to evaluate the analytical performance of the laboratories in the ALP. However, Cumulative Summation statistics do not completely address all aspects of analytical process quality control. Instead, *z score* based statistics are now considered the appropriate tool for evaluating PT performance, and are better suited for the accreditations currently offered by the ALP. The z

score is widely used for evaluating laboratory performance on PT sample analysis and is easily understood. *Z score* based statistics are accepted by the analytical chemistry community and consensus-based standard-setting bodies, such as International Organization for Standardization (ISO) and The NELAC Institute. Expanding the ALP to include additional accreditations could result in accreditations in which the z score may not be applicable. In such cases, the ALP intends to begin using ISO 13528:2015(E) Corrected version 2016 (''ISO 13528'') ''Statistical methods for use in proficiency testing by interlaboratory comparison,'' October 15, 2016) as the source for statistical tools and PT performance evaluation. As the ISO standard is updated, FSIS will adopt the changes, as appropriate. Regarding any significant, substantive changes, FSIS may issue a **Federal Register** notice about changes to its statistical methods.

The intended use of CUSUM statistics, on which FSIS based its creation of the customized CUSUM PT scoring system, is to detect trends, typically in quality control, for a process in a single facility. A level of acceptability (maximum or minimum CUSUM) is established in each case. If this level is exceeded, corrective actions are implemented to bring the process back in control and then the cumulative sum is reset. The FSIS CUSUM PT scoring system has thresholds for acceptability. Participants receive CUSUM scores in three different categories for each PT event. For each sequential event over the period of one calendar year, the scores in each category are added to the scores from the previous event. If a participant's score in any category exceeds the thresholds for acceptability in the one-year time period, the participant is notified and must take corrective actions. Unlike cumulative summation statistics that are only reset after corrective actions, the FSIS CUSUM scores for each participant are reset to zero at the beginning of each year without cause.

FSIS is proposing to amend the ALP regulations at 9 CFR part 439 to replace the prescriptive statistics with requirements presented in the ISO 13528 Standard as the measures it would use to evaluate chemistry laboratory performance based on PT-sample analysis. *Z* score statistics consistent with ISO 13528 would be used where CUSUM scoring is currently used by the ALP. The *z* score statistics are described in detail in ISO 13528 and are briefly described here along with reasons why *z* scores adequately replace CUSUM scoring for PT evaluation.

The *z* score and the common variation *z′* score (which includes uncertainty in the calculation of the performance score) are widely used and easy to calculate. The *z* score is currently calculated as:

$$z_i = (x_i - x_{pt})/\sigma_{pt}$$

where x_i is the participant's result, x_{pt} is the assigned value of the PT sample analyte, and σ_{pt} is the standard deviation for the proficiency assessment.

The *z′* score is calculated as:

$$z'_i = (x_i - x_{pt})/(\sigma^2{}_{pt} + \mu^2(x_{pt}))^{0.5}$$

where μ is the uncertainty of the assigned value.

For the purposes of the ALP, the *z′* score is considered part of *z* score statistics.

CUSUM scoring, as currently set forth in 9 CFR 439.1(h) and 439.20(h)(3)–(5), addressed three main categories in evaluating PTs:

(1) *Systematic Laboratory Difference:* Which is consistent positive or negative bias for a single laboratory's results over time. Both positive and negative biases are determined in the same manner (only changing for the direction of the bias). Scoring for Systematic Laboratory Difference is represented by CUSUM P for positive bias and CUSUM N for negative bias.

(2) *Variability:* Which is the combination of random fluctuations and systematic differences. Scoring for Variability is represented by CUSUM V.

(3) *Individual Large Discrepancy:* Which is the magnitude and frequency of large differences between the results of an accredited laboratory and the accepted value of the PT. Scoring for Individual Large Discrepancy is represented by CUSUM D.

All of the ALP CUSUM scoring (P, N, V, and D) is performed on the individual laboratory-reported PT results relative to the accepted or assigned value of the PT material. Each ALP CUSUM category has a limit that, if exceeded, incurs a penalty. Scores are monitored over the calendar year to detect exceedances.

The proposed change from the use of CUSUM scoring to *z* score procedures for statistical evaluation of laboratory performance would not affect the ability of FSIS to address these three main categories (Systemic Laboratory Difference, Variability, and Individual Large Discrepancy) in evaluating PTs and would provide evaluation of equivalent purpose and depth.

First, with regard to Systematic Laboratory Difference, CUSUM analyzes for both the direction and magnitude of bias via positive and negative scores. The *z* score equivalently provides this information by the value of the score. The sign of the *z* score value (positive or negative) indicates the direction of the bias relative to the accepted value of the PT sample. Because *z* score statistics are based on standard deviation, the score is normalized around the accepted value of the sample (represented by zero). A participant's PT result that exactly matches the accepted value incurs a zero *z* score. A PT result that is slightly greater than the accepted value will have a *z* score that is slightly greater than zero. This presents an advantage over CUSUM scoring because one can easily visualize the *z* scores compared to zero in graphic form.

CUSUM scoring often returns a zero score, even for deviations from the accepted value. CUSUM scoring will accept PT results up to a threshold and return a zero score. The threshold is dynamic and depends on the magnitude of difference between the PT result and the accepted value and also on the concentration of the analyte in the PT sample. Therefore, CUSUM P and N do not allow the same level of preciseness that *z* scores do in evaluating closeness of the reported result to the accepted value of the PT sample.

Second, with regard to Variability, *z* score statistics provide the magnitude of the deviation from the accepted value. This would successfully replace CUSUM V for Variability. The *z* score has the added benefit of being directional (it indicates both positive and negative variation), while CUSUM V is not. The variations are also easier to detect visually because the *z* scores are normalized relative to the PT accepted value and graphs generated from these data are easily understood.

Third, with regard to Individual Large Discrepancy, CUSUM D is readily replaceable by *z* score statistics. For *z* scores, typically a value greater than 3.0 or less than -3.0 indicates an unacceptable value and may indicate performance problems. The *z* score has the added benefit of being directional (it indicates both positive and negative deviation). The CUSUM D is not directional. Currently, the CUSUM D is monitored over time in order to detect repeated failures. It is expected that any laboratory will occasionally report a PT sample result that falls outside the acceptable range for the sample accepted value, which results in an individual failing score that is random in nature. Repeated failures are not random and constitute a trend. Under this proposed rule, FSIS would continue to monitor the *z* scores for each accredited laboratory to detect trends

that indicate performance issues. As stated above, FSIS monitors CUSUM scores for one calendar year for exceedances. After this period of time, FSIS resets CUSUMs. Because z scores are not reset, changing from CUSUMs to z score statistics offers the advantage of detecting repeated exceedances over an extended period of time.

Updating the ALP statistical tools would also eliminate the need for employing a standardizing value, which is a number used to transform the result of a computation to a unitless measure, representing the performance standard deviation of an individual result. The *z* score is already unitless and is directly based on standard deviation statistics. Eliminating the need for a standardizing value would have the added benefit of making it easier to add relevant chemical residues of current concern to the PT sample program. The added flexibility for the ALP to create and offer PT samples that contain veterinary drug and chemical residues of current concern would increase the opportunities for laboratories to prove that they can successfully analyze samples for these compounds. Standardizing values are specific to each matrix/residue combination and require the evaluation of extensive background information in order to calculate each standardizing value. The *z score* approach does not involve such a requirement and is readily adaptable to the addition of new residues.

Another limitation of the current ALP PT structure has been that analytes in samples must be easy to detect, with minimal measurement uncertainty, for the CUSUM statistics to remain viable. It is common to have some chemical elements and compounds that are difficult to measure in a sample, even under the best of circumstances. Laboratory PT sample results for these difficult analytes are expected to be relatively poor, exhibiting large measurement uncertainty. The *z* score would allow the ALP to take the uncertainty into account when scoring laboratory performance for these difficult analytes. There is no such consideration with CUSUM scoring. As a result, the PT samples in the past largely excluded difficult analytes, regardless of the food safety concerns that those residues might have. Because the *z′* score takes the uncertainty into account, the ALP would be able to include analytes that are difficult to analyze in PT samples and generate resulting scores that do not penalize laboratories for an issue that lies with the analyte instead of the laboratory.

Furthermore, when there is more than one residue analyte in a single PT sample, the ALP has been combining the results for a single score. Combining results is not an accepted practice in the PT community. Changing to the *z* score approach would easily allow scoring for individual analytes.

A comparison of *z* scores and CUSUM scores from seventeen separate ALP food chemistry PT sample events with a focus on outliers shows that it is a good replacement for CUSUM scoring.[1] When using both CUSUM scoring and *z* scores, individual results are evaluated for outliers. The outliers are removed to determine the study comparison mean and then placed back into the study evaluation for scoring the individual laboratories. The ALP evaluation, which used 61 individual ALP CUSUM scores and 61 individual *z* scores for the same sets of laboratory results, showed that when CUSUM scoring indicated the presence of an outlier, the *z* scores either also indicated the outlier or returned a score warning that the result was close to becoming an outlier. Conversely, when the *z* scores indicated an outlier that CUSUM scoring did not, the result still sustained a relatively large ALP CUSUM score increase. One of the 61 results that was an outlier among the ALP CUSUMs was not an outlier among the *z* scores and there was no warning that the result was close to becoming an outlier. However, the *z* score was very close to the warning limit. Warning limits are *z* scores between −3 and −2, and also between 2 and 3. Results that incur a *z* score in the warning limit are not considered outliers, but are a signal to the laboratory that it may have an emerging problem and should be prepared to troubleshoot the analytical system.

The ALP evaluation also considered use of the product code, which is currently part of CUSUM calculations, to determine if it needed to be retained in any capacity within the ALP. This was done by examining the percent relative standard deviation (Percent RSD) of the PT comparison means within and among product classes (classes are defined by meat type and fat content, *e.g.,* low-fat ham). Product classes are represented numerically by product codes, which are assigned by product type, salt content, and moisture content. Product codes are then used in selecting the standardizing values for calculating CUSUMs. Not all product codes were available for this assessment. In the evaluation, the Percent RSD appears to be largely affected by the relative amount of a constituent, just as the product code is determined, in part, by the relative amount of a target analyte. As expected, the lower the constituent content, the larger the Percent RSD. All Percent RSD values were less than 8, which is well within accepted norms for inter-laboratory studies of this type. If the Percent RSD results for the evaluation had approached 20, it may have indicated the need to retain product codes. No other trends were detected related to the product codes. The product codes are only needed for CUSUM scoring and are not required for any other purpose in the ALP. Therefore, removing the use of product codes from the program is supported.

Expansion of the ALP To Include Foodborne Pathogen Testing

Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) (AMA), FSIS provides certain laboratory services, for a fee, to establishments and others upon request. FSIS provides four general types of analytic testing to industry: Microbiological testing (*i.e.,* indicator organisms and foodborne pathogens), chemical residue and contaminant testing, food composition testing including speciation, and pathology testing. As discussed throughout this proposal, FSIS also accredits non-Federal laboratories, for a fee, to conduct analytic testing of meat and poultry. Under the AMA at 7 U.S.C. 1622(o),[2] FSIS accredits non-Federal laboratories to conduct food chemistry testing, *i.e.,* testing of a food's nutritional components. Additionally, under the Food, Agriculture, Conservation, and Trade Act (1990 Farm Bill), FSIS accredits non-Federal laboratories, for a fee, to conduct testing for chemical residues on food (7 U.S.C. 138–138i).

FSIS's current regulations provide for accreditation of non-Federal laboratories to conduct only the chemical analysis of the nutritional components of and specific chemical residues in food. This limits the opportunities for industry to use analytical results from accredited non-Federal laboratories as part of their food safety systems in support of the Agency's food safety mission. FSIS is thus proposing to accredit non-Federal laboratories for microbiological testing,[3]

[1] The FSIS ALP Evaluation Report comparing samples using *z* scores and CUSUM statistics is available on the FSIS website at: *http://www.fsis.usda.gov/wps/wcm/connect.*

[2] Citation of 7 U.S.C. 1622(o) was inadvertently omitted from the regulations at 9 CFR part 439. FSIS proposes to add it to the regulations with this proposed rule.

[3] Like accreditation for food chemistry testing, this new accreditation for microbiological testing would be authorized by the AMA at 7 U.S.C.

Continued

in response to industry interest. In the future, these changes would potentially allow ALP-accredited laboratories that conduct process control laboratory testing, already done by regulated establishments to support their food safety systems, to include those results in future FSIS databases for Agency consideration in process performance categorizations. Participating laboratories that join the ALP as a result of this expansion would be required to participate in the program PT events and undergo on-site audits just as ALP-accredited laboratories currently do.

Request for Stakeholder Comments

The Agency is interested in comments concerning this proposal. The Agency specifically requests comments from regulated industry and non-Federal laboratories on (1) how to best manage data associated with an expanded ALP program, (2) any food matrix and analyte pairs they are interested in seeing offered in a possible expanded ALP accreditation program, (3) whether ISO 17025 accreditation should be a prerequisite to membership in the ALP since it is recognized as providing the general requirements for the competence of testing and calibration laboratories, and (4) ways to incentivize membership in the ALP, to include a possible annual fee reduction for laboratories already ISO 17025 accredited if not a requirement.

Additional Regulatory Changes

Most of the proposed changes to 9 CFR part 439 are associated with the removal of the ALP CUSUM statistics and expanding the program to include microbiological testing (*e.g.,* indicator organisms and foodborne pathogens). Expanding the program would potentially allow FSIS to include data from industry, in addition to data from official samples, for Agency consideration in assessing an establishment's process performance. The Agency is proposing to remove the ''official sample'' definition from the regulation because this will allow the Agency the flexibility to consider data from industry to assess process performance. The proposed changes also provide the flexibility to add matrices of interest to industry that are under FSIS jurisdiction, such as egg products, and would better align the program description and requirements with the way the program currently operates and with future program updates. A robust ALP can provide industry with additional accredited non-federal analytical laboratories to perform their testing in order to provide quality and reliable results to support their food safety systems. Other existing ALP requirements in 9 CFR part 439 for obtaining and maintaining accreditation, including education, experience, and legal requirements, would remain the same.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order (E.O.)13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Need for the Rule

According to Agency experts, there were approximately 55 food chemistry laboratories participating in the ALP in 2012. Since then, participation has declined to 38 laboratories in 2019. Of those laboratories, 29 were accredited for food chemistry, 13 for chemical residue chlorinated pesticides analysis, and 4 for chemical residue PCBs analysis. Participation in the ALP might be bolstered by expanding the ALP to include additional analytes, such as indicator organisms and foodborne pathogens. In addition, switching from the CUSUM PT sample scoring system currently used by the ALP to *z score*-based statistics should simplify the accreditation process for both the laboratories and the Agency.

Expected Industry Cost Savings

Although the proposed rule does not change the accreditation fee structure,[4] it would reduce the number of samples non-Federal food chemistry laboratories would have to analyze to attain and maintain food chemistry accreditation. Based on industry data, laboratories charge approximately $67 [5] per sample. Current criteria for obtaining accreditation (9 CFR 439.10(d)(2)(i)) require that laboratories analyze a set of 36 samples (9 CFR part 439.1 (k) ''Initial accreditation check sample'') for food chemistry to obtain initial accreditation or to remove probationary status in food chemistry. The estimated cost for analyzing the sample set (also known as qualification set) is approximately $2,412 (36 × $67 = $2,412). This number of samples is not necessary to statistically evaluate laboratory performance for admittance to the program. FSIS is proposing to permit the ALP to offer laboratories smaller sets for food chemistry accreditation. The smaller qualification sets would reduce costs for laboratories and still be large enough to evaluate laboratory performance. Agency experts provided an estimated cost of analysis of approximately $938 when using 14 samples per set (14 × $67 = $938), a reduction of $1,474 ($2,412 − $938 = $1,474) per qualification set for food chemistry. This analysis assumes that between 1 and 6 establishments would have to complete qualification sets in any given year.[6] The Agency seeks comment on this assumption. Based on this assumption the annual savings ranges from $1,474 (1 × $1,474) to $8,844 (6 × $1,474), with a mid-point of $5,159 (3.5 × $1,474).

Additionally, the proposed changes to the accreditation process (9 CFR 439.10(d)(4)(ii)) are expected to reduce industry costs. Current criteria state that if a laboratory's second set of qualification samples do not meet the criteria for obtaining accreditation, laboratories must submit a new application, all fees, and all documentation of corrective action required for accreditation. FSIS is proposing to no longer require food chemistry laboratories to reapply and pay the fees again before receiving the third qualification sample set. Instead, fees would be paid after the third set or if the initial accreditation process is not completed within eleven months. This is expected to reduce an applicable laboratory's accreditation cost between $2,100 and $5,000.

Regulatory Flexibility Analysis

The FSIS Administrator (Administrator) has made a preliminary determination that this proposed rule

1622(o). Notably, that provision directs and authorizes the Secretary to conduct any activities and provide any services (such as accreditation services) necessary to facilitate the marketing, distribution, processing, and utilization of agricultural products, including meat and poultry products.

[4] Fees and charges for laboratory accreditation are provided in 9 CFR 391.

[5] This cost is based on publicly listed industry prices provided by N.P Analytical Laboratories, *https://www.npal.com/#/Services/OurServices,* accessed on 1/9/2018.

[6] In 2016, there were 2 new applicants and 4 probation applicants, in 2017, there were no new applicants and 1 probation applicant.

would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). First, this rule's impact is limited to a small number of entities and participation in the program is voluntary. Second, while the proposed changes are expected to reduce accreditation costs, these cost savings are not anticipated to be significant and would apply to accredited laboratories regardless of size.

Executive Order 13771

Consistent with E.O. 13771 (82 *FR* 9339, February 3, 2017), we have estimated that this proposed rule would yield cost savings. Therefore, if finalized as proposed, this rule is expected to be an E.O. 13771 deregulatory action.

Paperwork Reduction Act

FSIS has reviewed this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has determined that there is no new information collection related to this proposed rule. FSIS collects information for the ALP under OMB approval numbers 0583–0082 and 0583–0163.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services.

Executive Order 13175

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410, *Fax:* (202) 690–7442, *Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 439

Laboratories.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III by revising part 439 to read as follows:

PART 439—ACCREDITATION OF NON-FEDERAL LABORATORIES FOR ANALYTICAL TESTING OF MEAT, POULTRY, AND EGG PRODUCTS

Sec.
439.1 Definitions.
439.5 Applications for accreditation.
439.10 Criteria for obtaining accreditation.
439.20 Criteria for maintaining accreditation.
439.50 Refusal of accreditation.
439.51 Probation of accreditation.
439.52 Suspension of accreditation.
439.53 Revocation of accreditation.
439.60 Notifications and hearings.

Authority: 7 U.S.C. 138f, 450, 1901–1906, 1622(o); 21 U.S.C. 451–470, 601–695; 7 CFR 2.18, 2.53.

§ 439.1 Definitions.

(a) *Accredited Laboratory Program (ALP)*—The voluntary FSIS program in which non-Federal laboratories are accredited as capable of performing analyses with the level of quality that is necessary to maintain accreditation in the program, on samples of raw or processed meat, poultry, and egg products, and through which a proficiency testing sample program for quality assurance is conducted.

(b) *Food chemistry*—Analysis of raw or processed meat or poultry products for the components moisture, protein, fat, and salt.

(c) *Initial accreditation proficiency testing sample*—A sample provided by the ALP to a non-Federal laboratory to determine whether the laboratory's analytical capability meets the standards for acceptance into the program. The concentration or presence of the targeted analyte(s) and the composition of the components in the sample is unknown to the laboratory.

(d) *Inter-laboratory accreditation maintenance proficiency testing sample*—A sample provided by FSIS to an accredited laboratory to assist in determining whether the laboratory is maintaining acceptable analytical performance for a given analyte or component. The concentration or presence of the targeted analyte(s) and the composition of the components in the sample is unknown to the laboratory.

(e) *ISO 13528*—ISO 13528:2015(E) Corrected version 2016, ''Statistical methods for use in proficiency testing by interlaboratory comparison,'' October 15, 2016, or updated versions.

(f) *Probation*—The period commencing with official notification to an accredited laboratory that it no longer satisfies the ALP performance requirements specified in this part, and ending with official notification that

accreditation is fully restored, is suspended, or is revoked.

(g) *Refusal of accreditation*—An action taken by FSIS when a laboratory that is applying for accreditation is denied the accreditation.

(h) *Responsibly connected*—Any individual, or entity, that is a partner, officer, director, manager, or owner of 10 percent or more of the voting stock of the applicant or recipient of accreditation or an employee in a managerial or executive capacity or any employee who conducts or supervises the analysis of FSIS samples.

(i) *Revocation of accreditation*—An action taken by FSIS against a laboratory thereby removing the laboratory's certification of accreditation and participation in inter-laboratory accreditation maintenance proficiency testing sample events.

(j) *Suspension of accreditation*—An action taken by FSIS against a laboratory thereby temporarily removing the laboratory's certification of accreditation and participation in the inter-laboratory accreditation maintenance proficiency testing sample events. Suspension of accreditation ends when accreditation either is fully restored or is revoked.

(k) *z score*—A statistically derived number representing a laboratory's performance for analyzing proficiency testing samples. The ALP calculates and interprets *z* scores consistent with ISO 13528.

§ 439.5 Applications for accreditation.

(a) Participation in the ALP is voluntary. Application for accreditation must be made on designated paper or electronic forms provided by FSIS, or otherwise in writing, by the owner or manager of a non-Federal analytical laboratory. Application forms may be obtained by contacting the ALP at *ALP@usda.gov.* The forms must be sent to the ALP or may be submitted electronically. The application must specify the kinds of accreditation sought by the owner or manager of the laboratory. A laboratory whose accreditation has been refused, or revoked for performance reasons may reapply for accreditation after 60 days from the effective date of that action, and must provide written documentation specifying what corrections were made and illustrate to FSIS that the corrections are effective or would reasonably be expected to be effective.

(b) At the time that an application for accreditation is filed with the ALP, the laboratory must submit a check, bank draft, or money order in the amount specified by FSIS as directed in 9 CFR 391.5, made payable to the U.S. Department of Agriculture, along with the completed application for the accreditation(s).

(c) Application for Accreditation will not be processed or allowed to advance, without further procedure, if the accreditation fee(s) is delinquent.

(d) FSIS will issue a bill annually in the amount specified by FSIS in 9 CFR 391.5 for each accreditation held and are due by the date required. Bills are payable by check, bank draft, or money order made payable to the U.S. Department of Agriculture.

§ 439.10 Criteria for obtaining accreditation.

(a) Analytical laboratories may be accredited for the analyses of foodborne indicator and pathogen analytes, or a specified chemical residue or a class of chemical residues, in raw or processed meat, poultry, and egg products. Analytical laboratories may be accredited for the analyses of food chemistry components in raw or processed meat and poultry products.

(b) Accreditation will be granted only if the applying laboratory successfully satisfies FSIS requirements that are stated in this part.

(c) To obtain FSIS accreditation, an analytical laboratory must:

(1) Be supervised by a person holding, at a minimum, a bachelor's degree in biology, chemistry, microbiology, food science, food technology, or a related field.

(i) For food chemistry accreditation, the supervisor must also have one year of experience in food chemistry analysis, or equivalent qualifications.

(ii) For chemical residue accreditation, either the supervisor or the analyst assigned to analyze the sample must also have three years of experience determining analytes at or below part per million levels, or equivalent qualifications.

(iii) For indicator organisms or pathogen accreditation, either the supervisor or the analyst assigned to analyze the sample must also have three years of experience in foodborne pathogen analyses, or equivalent qualifications.

(2) Demonstrate the capability to achieve quality assurance levels that are within acceptable limits as determined by evaluation that is consistent with ISO 13528 for the analysis of initial accreditation proficiency testing samples, in the analyte category for which accreditation is sought. FSIS and AOAC analytical test procedures are acceptable for use in this program. FSIS procedures may be found on the USDA FSIS website at *www.fsis.usda.gov.* AOAC procedures may be found on the AOAC website at *www.aoac.org.*

(3) Complete a second set of proficiency testing samples if the results of the first set of proficiency testing samples are unsuccessful.

(i) The second set of proficiency testing samples will be provided within 30 days following the date of receipt by FSIS of a request from the applying laboratory. The second set of proficiency testing samples will be analyzed only for the analyte(s) for which unacceptable initial results had been obtained by the laboratory.

(ii) If the results of the second set of proficiency testing samples are unsuccessful, the laboratory may request a third set of proficiency testing samples after a 60-day waiting period, commencing from the date of notification by FSIS of unsuccessful results. The third set of proficiency testing samples will be analyzed only for the analyte(s) for which unacceptable initial results had been obtained by the laboratory.

(iii) If the laboratory is unsuccessful for the third set and still wishes to pursue accreditation, the ALP will require a new application and an application fee if the initial accreditation process is not completed within eleven months. Documentation of corrective action(s) related to the previous unsuccessful accreditation attempt must be submitted to and accepted by the ALP.

(4) Allow inspection of the laboratory facility and pertinent documents by FSIS officials prior to the determination of granting accredited status.

(5) Pay the accreditation fee by the date required.

§ 439.20 Criteria for maintaining accreditation.

(a) *Accreditation.* To maintain accreditation, an analytical laboratory must fulfill the requirements of this section.

(b) *Records.* To demonstrate traceable and appropriate application of equipment, standards, procedures, analysts, and approvals related to accreditation, an accredited laboratory must:

(1) Maintain laboratory quality control records for the most recent three years that samples have been analyzed.

(2) Maintain complete records of the receipt, analysis, and disposition of samples for the most recent three years that samples have been analyzed.

(3) Maintain in a secure electronic format or in a standards book, all records, readings, and calculations for prepared standards. Entries are to be dated and the analyst identified at the time of the entry, and manual calculations verified and documented

by the supervisor, or by the supervisor's designee, before use of the standard. The standards records are to be retained for three years after the last recorded entry. The certificates of analysis are to be kept on file for purchased standards for at least the period of time that the materials are in use.

(4) Maintain records of instrument maintenance and calibration. The records are to be retained for three years after the last recorded entry.

(5) As provided in paragraph (e) of this section, records are to be made available for review by any duly authorized representative of the Secretary of Agriculture, including ALP personnel or their designees.

(c) *Samples.* Inter-laboratory accreditation maintenance proficiency testing sample.

(1) An accredited laboratory must analyze inter-laboratory accreditation maintenance proficiency testing samples and return the results to the ALP by the due date, which is usually within approximately three weeks of sample receipt. This must be done whenever requested by FSIS and at no cost to FSIS.

(2) Results must be those of the accredited laboratory. Analyses of proficiency testing samples must not be contracted out by the accredited laboratory.

(d) *Corporate changes.* The ALP must be informed within 30 days of any change of address or in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity.

(e) *On-site review.* An accredited laboratory must permit any duly authorized representative of the Secretary to perform both announced and unannounced on-site laboratory reviews of facilities and records, both hard copy and electronic, during normal business hours, and to copy any records pertaining to the laboratory's participation in the ALP.

(f) *Analytical test procedures.* An accredited laboratory must use analytical test procedures designated by the FSIS ALP as being acceptable. FSIS and AOAC analytical test procedures are acceptable.

(g) *Quality assurance levels.* An accredited laboratory must demonstrate the capability to maintain quality assurance levels that are within acceptable limits as evaluated by the ALP in the analysis of inter-laboratory accreditation maintenance proficiency testing samples for the analyte category for which accreditation was granted. An accredited laboratory will successfully demonstrate the maintenance of these capabilities if its results from inter-laboratory accreditation maintenance proficiency testing samples satisfy ALP evaluation criteria based on ISO 13528, to include performance evaluation by *z* score statistics.

(h) *Fees.* An accredited laboratory must pay the annual required accreditation fee when it is due.

(i) *Probation.* If placed on probation, an accredited laboratory must meet the ALP requirements as prescribed in this section in order to remove the probation status.

(1) The laboratory must successfully analyze a set of initial accreditation proficiency testing samples for the analyte(s) that triggered the probation and submit the analytical results to FSIS by the due date, which is typically within approximately three weeks of receipt of the samples.

(2) Similarly satisfy criteria for accreditation maintenance proficiency testing samples specified by the ALP in this part.

(3) Provide written corrective action documentation, related to the issue that triggered the probation, to the ALP by the date required.

(j) *Suspension.* If placed on suspension, an accredited laboratory must meet the ALP requirements as prescribed in this section in order to remove the suspension status. If the laboratory is unsuccessful in meeting the requirements to remove the suspension status, accreditation will be revoked.

(1) Laboratories that are suspended due to performance or response issues enter a waiting period of 60 days from the effective date of that action. After the 60-day period has passed and if the laboratory wishes to pursue reinstatement to the ALP, the laboratory must submit a written corrective action plan specifying what corrections were made and illustrate to FSIS that the corrections are effective or would reasonably be expected to be effective.

(i) After the corrective action plan has been accepted by the ALP, the laboratory must successfully analyze a set of initial accreditation proficiency testing samples for the analyte(s) that triggered the suspension and meet all other program requirements including payment of any annual fees that are due. The ALP may perform an on-site inspection at the laboratory's facility and/or require the laboratory to provide documentation to confirm that it meets the requirements of the program.

(ii) The suspended laboratory is allowed two attempts to successfully analyze the initial accreditation proficiency testing set(s) of samples.

(2) Laboratories that are suspended due to indictment or charges as described in § 439.52 may not seek removal of suspension status until being cleared of said indictment or charges.

§ 439.50 Refusal of accreditation.

Upon a determination by the Administrator, a laboratory will be refused accreditation for the following reasons:

(a) A laboratory will be refused accreditation for failure to meet the requirements of the ALP as stated in this part.

(b) A laboratory will be refused accreditation if the laboratory or any individual or entity responsibly connected with the laboratory has been convicted of, or is under indictment for, or has charges on any information brought against them in a Federal or State court concerning any of the following violations of law:

(1) Any felony.

(2) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(3) Any misdemeanor based upon a false statement to any governmental agency.

(4) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

(5) Altering any official sample or analytical finding; or substituting any analytical result from any other laboratory and representing the result as its own.

§ 439.51 Probation of accreditation.

Upon a determination by the Administrator, a laboratory will be placed on probation for the following reasons:

(a) If the laboratory fails to complete more than one inter-laboratory accreditation maintenance proficiency testing sample analysis within 12 consecutive months, unless written permission is granted by the Administrator.

(b) If the laboratory does not respond to ALP inquiries related to its participation in the program or fails to meet any of the requirements or criteria set in this part.

(c) If the laboratory does not successfully demonstrate the maintenance of quality assurance capabilities including its results from inter-laboratory accreditation maintenance proficiency testing samples. ALP evaluation criteria are based on ISO 13528, to include performance evaluation by *z* score statistics.

§ 439.52 Suspension of accreditation.

A laboratory will be suspended from the program if probation status is not rectified according to program requirements stated in this part. The accreditation of a laboratory will be immediately suspended if the laboratory or any individual or entity responsibly connected with the laboratory is indicted or has charges on information brought against them in a Federal or State court for any of the following violations of law. A laboratory must notify the ALP within 30 calendar days if any of these situations occur.

(a) Any felony.

(b) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(c) Any misdemeanor based upon a false statement to any governmental agency.

(d) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

(e) Altering any official sample or analytical finding; or substituting any analytical result from any other laboratory and representing the result as its own.

§ 439.53 Revocation of accreditation.

A laboratory will have its accreditation revoked from the program if suspension status is not rectified. The accreditation of a laboratory will also be revoked for the following reasons:

(a) An accredited laboratory will have its accreditation revoked if the Administrator determines that the laboratory or any responsibly connected individual or any agent or employee has:

(1) Altered any official sample or analytical finding; or

(2) Substituted any analytical result from any other laboratory and represented the result as its own.

(b) An accredited laboratory will have its accreditation revoked if the laboratory or any individual or entity responsibly connected with the laboratory is convicted in a Federal or State court of any of the following violations of law. A laboratory must notify the ALP within 30 calendar days if any of these situations occur.

(1) Any felony.

(2) Any misdemeanor based upon acquiring, handling, or distributing of unwholesome, misbranded, or deceptively packaged food or upon fraud in connection with transactions in food.

(3) Any misdemeanor based upon a false statement to any governmental agency.

(4) Any misdemeanor based upon the offering, giving or receiving of a bribe or unlawful gratuity.

§ 439.60 Notification and hearings.

Accreditation of any laboratory will be refused, suspended, or revoked under the conditions previously described in this part 439. The owner or operator of the laboratory will be sent written notice of the refusal, suspension, or revocation of accreditation by the Administrator. In such cases, the laboratory owner or operator will be provided an opportunity to present, within 30 days of the date of the notification, a statement challenging the merits or validity of such action and to request an oral hearing with respect to the denial, suspension, or revocation decision. An oral hearing will be granted if there is any dispute of material fact joined in such responsive statement. The proceeding will be conducted thereafter in accordance with the applicable rules of practice, which will be adopted for the proceeding. Any such refusal, suspension, or revocation will be effective upon the receipt by the laboratory of the notification and will continue in effect until final determination of the matter by the Administrator.

Paul Kiecker,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 123

RIN 3245–AG98

Regulatory Reform Initiative: Streamlining and Modernizing the 7(a), Microloan, and 504 Loan Programs To Reduce Unnecessary Regulatory Burden

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) is proposing to remove or revise various regulations affecting its business loan programs because these regulations are obsolete, unnecessary, ineffective, or burdensome. In addition, one of the regulations that SBA is proposing to remove is cross-referenced in a regulation in SBA's Disaster Loan Program; SBA is proposing to make a conforming change to that regulation. SBA also is making several technical amendments to the regulations to incorporate recent statutory changes and other non-substantive changes. These changes are being proposed to carry out the mandate in various Executive Orders to reduce the number and costs of the regulations that Federal agencies impose on the public.

DATES: Comments are requested on or before February 12, 2021.

ADDRESSES: You may submit comments, identified by RIN 3245–AG98, using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Search for the rule by RIN number 3245–AG98 and follow the instructions for submitting comments.

Mail: Linda Reilly, Chief, 504 Loan Program Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Linda Reilly, Chief, 504 Loan Program Division, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Loan Program Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; phone: (202) 205–9949; email address: *linda.reilly@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. General Information

The mission of SBA is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses, and by assisting in economic recovery of communities after disasters. In carrying out this mission, SBA has developed a regulatory policy that is implemented primarily through several core program offices: Office of Capital Access, Office of Disaster Assistance, Office of Entrepreneurial Development, Office of Government Contracting and Business Development, Office of International Trade, and Office of Investment and Innovation. SBA's regulations are codified at title 13 of the Code of Federal Regulations (CFR),

chapter I, and consist of parts 100 through 199.

This rulemaking primarily addresses the regulations in part 120, Business loans. The SBA programs that are governed by the regulations contained in part 120 include the following: The 7(a) Loan Program authorized pursuant to section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a)); the Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m)); and the Development Company Program (the 504 Loan Program) authorized pursuant to Title V of the Small Business Investment Act of 1958, as amended (15 U.S.C. 695 *et seq.*). Because this rulemaking proposes to remove a regulation that is cross-referenced in SBA's Disaster Loan Program regulations, this rule would also make one conforming change to a regulation in part 123, Disaster loans. The Disaster Loan Program is authorized pursuant to section 7(b) of the Act (15 U.S.C. 636(b)).

Federal agencies have an ongoing responsibility to ensure that the regulations they issue do not have an adverse economic impact on those affected by those rules. This responsibility has been reinforced over the years in various executive orders that have expressly directed agencies to review their regulations with an eye towards reducing the time and money the public must spend to comply with the regulatory requirements. The most recent of these executive orders are discussed below; each of them provides the framework for SBA's efforts to reduce the regulatory burden on the participants in the agency's programs. One of SBA's primary objectives in carrying out these efforts is to continue to promote economic growth, innovation, and job creation in the small business sector, and to ensure that victims of disasters have the clear policy and procedural guidance they need to quickly obtain financial assistance to rebuild their lives.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from any cancelled regulations to offset the cost of the new regulation, such that its net cost is no greater than zero.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things, eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

D. Executive Order 13563

Under Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), agencies are obligated to conduct a retrospective review of their regulations to seek more affordable, less intrusive means to achieve policy goals, and to give careful consideration to the benefits and costs of their regulations. Executive Order 13563, similar to the mandates in Executive Order 13771 and Executive Order 13777, also requires agencies to review existing rules to remove outdated regulations that stifle job creation and make the U.S. economy less competitive.

E. Comments Received in Response To Request for Information

On August 15, 2017, SBA published a request for information in the **Federal Register** seeking input from the public in identifying those regulations that affected parties believe impose unnecessary burdens or costs that exceed their benefits, eliminate jobs or inhibit job creation, or are ineffective or outdated. See 82 FR 38617. On October 13, 2017, SBA extended the period for public comments until November 15, 2017. See 82 FR 47645. SBA reviewed the comments submitted by the public in response to that request. After considering these comments and reviewing the regulations in 13 CFR part 120, SBA is proposing that the regulations identified below in the section-by-section analysis be either removed or revised. Except for the one conforming change to the Disaster Loan Program in part 123, SBA is proposing the removal of regulations in other parts of title 13 in separate rulemakings.

F. Section-by-Section Analysis

Section 120.2. SBA proposes to remove paragraphs (a)(1)(i) and (ii) of this section because SBA has not received funding to make direct or immediate participation 7(a) loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.10. SBA is proposing to remove the references to non-lending technical assistance providers (NTAPs) in the definition of ''Risk Rating'' because SBA has not issued grant funds to NTAPs for many years.

Section 120.103. SBA proposes to remove this section on farm enterprises, which refers to an outdated Memorandum of Understanding between SBA and the United States Department of Agriculture (USDA), because it is unnecessary. Although Federal financial assistance to agricultural businesses is generally available from USDA, SBA is also statutorily authorized to make non-disaster business loans to agricultural enterprises under sections 3(a)(1) and 7(a) of the Small Business Act and Title V of the Small Business Investment Act.

Sections 120.110. This section lists the types of businesses that are ineligible for SBA business loans. For clarity, SBA is proposing to make changes to two of the types of businesses on the list. First, SBA would amend paragraph (h), which currently provides that businesses ''engaged in any illegal activity'' are ineligible, by revising it to provide that the business is ineligible if it is ''engaged in any activity that is illegal under Federal, State, or local law''. SBA wants to make it clear, consistent with its longstanding interpretation of this regulation, that the business is ineligible if it is engaged in any activity that is illegal at any level of government in the jurisdiction in which the business is operating.

Second, SBA is proposing to remove and reserve paragraph (k), which currently provides that a business is ineligible if it is ''principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting''. This provision, which was promulgated in 1996, is not consistent with current Supreme Court jurisprudence in that it focuses on the nature of the business and whether the business has a major religious component instead of on how the loan proceeds from any SBA business loan

will be used. In both *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017) and *Espinoza* v. *Montana Department of Revenue,* ____ U.S. ____((June 30, 2020), the Court held that the government may not deny a public benefit to an entity solely because of its religious status, character, or identity. Accordingly, to conform SBA's regulations to current Supreme Court jurisprudence, SBA is proposing to remove paragraph (k) from section 120.110, and will apply relevant case law to assure that the intended use of the loan proceeds of SBA business loans is consistent with the requirements of the First Amendment's Establishment Clause..

Third, SBA proposes to revise paragraph (n), which currently provides that a business is ineligible if an Associate ''is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude''. With respect to ineligibility based on indictment for a crime, SBA would change this paragraph to provide that a business is ineligible if an Associate ''is under indictment'' instead of ''has been indicted''. SBA wants to make clear, consistent with its longstanding interpretation of this regulation, that the business is not ineligible if an Associate has a history of ever being indicted (but not convicted), but would be ineligible only if an Associate is under indictment when the business submits a loan application or prior to loan approval. In addition, SBA is proposing to replace the phrase, ''a crime of moral turpitude'', which is not always easily defined and can vary by State, with ''a crime involving or related to financial misconduct or a false statement''. SBA believes that the proposed standard is clearer and more relevant to SBA's responsibility to carry out the business loan programs in a financially prudent manner.

Section 120.111. SBA is proposing to revise this section by removing a duplicative sentence at the end of the introductory text.

Section 120.120. This section describes the eligible uses of loan proceeds. For clarity, SBA is proposing to revise paragraph (a)(1), which currently provides that a Borrower may use loan proceeds to ''acquire land (by purchase or lease)'', to add that the land must be ''actively used in the applicant's business operations (except that a Borrower may lease a portion of the property in accordance with 13 CFR 120.131 and 120.870(b))''. This change reflects SBA's prohibition against financing passive activities other than Eligible Passive Companies under 13 CFR 120.111.

Section 120.173. SBA proposes to remove this section, which prohibits the use of lead-based paint if loan proceeds are for the construction or rehabilitation of a residential structure. This regulation is unnecessary because 16 CFR part 1303 already bans paint containing a concentration of lead in excess of 0.009% (90 parts per million) for use in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface.

Section 120.190. SBA proposes to remove the reference to immediate participation loans in paragraph (a) and to remove paragraph (d), which refers to direct loans, because SBA has not received funding for immediate participation or direct loans for over 30 years and believes that it may be confusing to the public to refer to such loans when they are not available from the agency.

Section 120.192. This section states that loan applicants will receive notice of approval or denial of the loan application by the Lender, Certified Development Company (CDC), Microloan Intermediary, or SBA, as appropriate. SBA provided notice to the applicant only when it made direct loans. Because SBA has not received funding for direct loans for over 30 years, it is no longer necessary to include the reference to SBA in this section.

Section 120.211. SBA is proposing to remove this section, which describes the statutory limits for direct loans and immediate participation loans, because SBA has not received funding to make these loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the agency.

Section 120.212. This section establishes the maturities for a 7(a) loan. Paragraph (b) of this section establishes the loan term at ten years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years. When the loan is used to finance equipment or leasehold improvements, SBA is proposing to amend paragraph (b) to allow a Lender to add a reasonable period, not to exceed 12 months, to the loan term when necessary to complete the installation of the equipment and/or complete the leasehold improvements.

Section 120.213. SBA is proposing to remove paragraph (b), which describes the interest rate charged by SBA for direct loans, for which SBA has not received funding for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency. The remainder of the section would be revised accordingly.

Sections 120.214. Paragraph (c) of section 120.214 currently allows Lenders to use one of three base rate options for calculating the maximum variable interest rate for 7(a) and 504 loans: The prime rate (Prime), the Optional Peg Rate, and the thirty-day London Interbank Offered Rate (LIBOR) plus 3 percentage points. SBA is proposing to remove the LIBOR option in paragraph (c)(ii). The U.K. Financial Conduct Authority announced on July 27, 2017, that it would phase-out LIBOR by the end of 2021, and no generally accepted replacement for LIBOR has been identified or widely adopted at this time. To provide certainty to SBA Lenders and Borrowers in advance of LIBOR's sunset in 2021, SBA is proposing to remove from the regulation the reference to LIBOR as an optional base rate for variable rate 7(a) and 504 loans.

Lenders will only be able to use Prime or the Optional Peg Rate as the base rate for any loan approved after the effective date of this rule. In addition, for any loans outstanding with interest rates based on LIBOR, SBA recommends that Lenders review their loan documents to determine if the documents provide a fallback base rate (*i.e.,* Prime or the Optional Peg Rate) without having to modify the loan documents. If there is no such flexibility, Lenders will need to work with Borrowers to modify their loan documents on an individual basis before LIBOR sunsets in 2021. Such modifications must be in compliance with the procedures set forth in the current versions of SBA Standard Operating Procedures 50 10 and 50 57. If such loans have been sold on the secondary market, Lenders will need to obtain the consent of investors to modify the base rate in the loan agreement. With only 3% of SBA's total portfolio of non-disaster business loans using LIBOR as a base rate, the process of phasing out LIBOR should not have a significant economic impact on a substantial number of small entities in SBA's business loan programs.

In addition, SBA is proposing to use loan amounts as the basis upon which the variable interest rate is set, instead of loan maturities. Paragraph (e) would be removed and paragraph (d) would be revised to reflect the maximum variable interest rates for all 7(a) loans as follows:

(1) For all 7(a) loans of $50,000 and less, the maximum interest rate shall not exceed six and a half (6.5) percentage points over the base rate;

(2) For all 7(a) loans greater than $50,000 and up to and including $250,000, the maximum interest rate shall not exceed six (6.0) percentage points over the base rate;

(3) For all 7(a) loans greater than $250,000 and up to and including $350,000, the maximum interest rate shall not exceed four and a half (4.5) percentage points over the base rate; and

(4) For all 7(a) loans greater than $350,000, the maximum interest rate shall not exceed three (3.0) percentage points over the base rate.

By basing the rates on loan amounts and allowing Lenders to charge higher rates for smaller loans, Lenders would have more incentive to make smaller loans to businesses in need of credit on reasonable terms. Recent data shows that SBA loans up to $150,000 have been declining over the last four years, and yet it is not uncommon for small businesses to max out their credit on credit cards or through financial technology companies (Fintech) where interest rates can range between 19–21% for credit cards and can exceed 45% for Fintech. Currently, the maximum variable interest rate that Lenders may charge is 2.25 percentage points over the base rate for loans with maturities of less than seven years and 2.75 percentage points over the base rate for loans with maturities of seven years or more, with an additional 2% more than these maximums for loans of $25,000 or less and an additional 1% more than these maximums for loans over $25,000 but not exceeding $50,000. SBA expects that the incentive created by allowing Lenders to charge the higher interest rates proposed above, particularly for smaller loans, will encourage Lenders to make loans that they would not otherwise make, thereby increasing the availability to small businesses of needed credit at a more reasonable interest rate with an SBA participating Lender. The proposed changes also recognize that, historically, smaller loans are riskier and have a higher default rate and, therefore, a higher maximum interest rate is warranted.

The maximum variable interest rates described above would apply to all types of 7(a) loans. Currently, the maximum variable interest rate that Lenders are permitted to charge may vary depending upon the type of 7(a) loan the Lender is making, *i.e.,* SBA Express, Export Express, Community Advantage Pilot, or regular 7(a). By standardizing the maximum variable interest rates for all 7(a) loans, SBA is streamlining and simplifying its regulations, and reducing the burden on Lenders. If this rule is adopted, SBA Express and Export Express Lenders may continue to use, in accordance with the statutory authority of section 7(a)(31) and 7(a)(34) of the Small Business Act, respectively, the same base rates they use on their similarly-sized, non-SBA guaranteed commercial loans, as well as their established change intervals, payment accruals, and other interest rate terms. However, the interest rate must never exceed the maximum allowable interest rate stated in paragraph (d) of this section and these loans may be sold on the Secondary Market only if the base rate is one of the base rates allowed in § 120.214(c). In addition, if this rule is adopted, SBA will allow Community Advantage Lenders to charge the higher interest rate in paragraph (1) above for loans of $50,000 or less (such Lenders can already charge 6 percentage points over the Prime rate for loans up to $250,000, the maximum loan amount under the Community Advantage Pilot).

Other proposed changes to this section include removing the requirement in the introductory paragraph of § 120.214 that SBA's approval is required for a Lender to use a variable rate of interest. By removing this approval requirement, SBA is further streamlining its regulations. SBA is also proposing to amend the second sentence of the introductory paragraph of § 120.214 by moving it to § 120.214(d) and revising it to clearly state that the initial maximum variable interest rate is determined as of the date that SBA received the loan application.

Section 120.215. SBA is proposing to remove this section, which establishes the interest rates for smaller loans. The interest rates for all 7(a) loans would be covered by § 120.213 and the proposed amendments to § 120.214.

Section 120.220. SBA is proposing two changes to this section. First, paragraph (a)(3) currently states that ''[i]n fiscal years when the 7(a) program is at zero subsidy, SBA will not collect a guarantee fee in connection with a loan made under section 7(a)(31) of the Small Business Act to a business owned and controlled by a veteran or the spouse of a veteran.'' This regulatory paragraph implements section 7(a)(31)(G) of the Small Business Act, which provides that the guarantee fee imposed by section 7(a)(18) of the Small Business Act is waived in connection with a loan made under the SBA Express Loan Program to a veteran or the spouse of a veteran except in any fiscal year in which the 7(a) program is not operating at zero subsidy. However, section 1102(d) of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136, 134 Stat. 281) removed the exception and, accordingly, SBA proposes to remove it from section 120.220(a)(3).

Second, paragraph (b) of this regulation establishes the deadlines for paying the SBA guaranty fee. For a loan with a maturity in excess of 12 months, this provision currently requires the Lender to pay the fee electronically within 90 days after SBA approval of the loan. In practice, SBA has been giving Lenders an additional 30 days to pay this fee, for a total of 120 calendar days after SBA loan approval, before cancelling the guarantee. With the efficiencies that have been created by electronic banking, SBA believes that these payments should be made in less time than 120 days and is proposing to require that the fee be paid within 45 days after loan approval. If the fee is not paid by the 45th day, SBA will give the Lender a grace period of an additional 30 days. If the fee is not paid by the 75th day, SBA will cancel the guarantee. For loans with a maturity of 12 months or less, SBA will continue to cancel the guarantee if the fee is not paid by the 10th business day after the Lender receives SBA loan approval.

Section 120.222. SBA is proposing a technical correction to § 120.222 to remove an extra word (''in'') that was inserted in error.

Section 120.310. SBA is proposing to remove the reference to direct loans in this provision, which governs the Disabled Assistance Loan Program (''DAL''), to make this regulation consistent with section 7(a)(10) of the Small Business Act, which authorizes ''guaranteed'' loans under the DAL program, but not direct loans.

Section 120.315. SBA is proposing to remove this section in its entirety, which establishes the interest rate and limit on the loan amount with respect to direct DAL loans, to make this regulation consistent with section 7(a)(10) of the Small Business Act, which authorizes guaranteed loans only and not direct loans.

Section 120.320. SBA is proposing to remove this provision in its entirety. It references SBA's authority under section 7(a)(11) of the Small Business Act to guarantee or make direct loans to businesses owned by low income individuals. However, direct loans have not been funded for over 30 years and this provision does not add anything to the general authority that SBA has under section 7(a) of the Small Business Act to make guaranteed loans to businesses owned by low income individuals.

Section 120.330. SBA is proposing to remove the reference to direct loans in this section because SBA has not

received funding to make these loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Sections 120.350 and 120.352. The regulations governing SBA guaranteed loans to qualified employee trusts or ''Employee Stock Ownership Plans'' (ESOPs) are set forth in §§ 120.350 through 120.354. SBA is proposing a technical amendment to both § 120.350 and § 120.352 to incorporate the statutory change made in Section 862 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) that permits SBA to guarantee a loan to the small business concern (rather than the qualified employee trust), if the proceeds from the loan are used only to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern. SBA is proposing this technical amendment in order to ensure that the regulations are consistent with the statute and to provide clarity to SBA Lenders and SBA employees with respect to guaranteed loans involving ESOPs. Additional guidance governing these loans will be provided in SOP 50 10.

Sections 120.360 and 120.361. SBA is proposing to remove these sections, which describe an outdated veteran's loan program for direct and guaranteed loans to Vietnam-era veterans and certain disabled veterans. SBA has not received funding to make direct 7(a) loans in the Veterans Loan Program for over 30 years and SBA's existing Loan Program Requirements provide special consideration for veteran-owned businesses. These regulations are, therefore, obsolete.

Section 120.370. SBA is proposing to remove this section, which describes SBA's authority under section 7(a)(12) of the Small Business Act to finance pollution control facilities, because the $1 million cap set forth in section 7(a)(12)(B) for these pollution control loans was superseded when Congress raised the guaranty limit in section 7(a)(3) to $3.75 million. In addition, this provision is otherwise unnecessary because SBA is authorized under the general authority of section 7(a) to make guaranteed loans for pollution control facilities.

Section 120.375. SBA is proposing to remove this section's reference to direct loans to firms participating in the 8(a) Program because direct loans have not been funded for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.376. SBA is proposing to remove paragraph (a), the second sentence of paragraph (c), and paragraph (d), all of which describe requirements for direct loans or an immediate participation loan related to the loan program for participants in the 8(a) Program, for the same reasons expressed under the discussion of section 120.375 above. The remaining paragraphs would be redesignated accordingly.

Sections 120.380 through 120.383. SBA is proposing to remove these sections, which govern the program to provide defense economic transition assistance, because this program is no longer being funded. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.420. SBA is proposing to remove paragraph (b), which defines ''Bank Regulatory Agencies,'' because this term is no longer used in part 120, and the term ''Federal Financial Institution Regulator,'' which is used instead, is defined in 13 CFR 120.10. The remaining paragraphs would be redesignated accordingly.

Section 120.432. SBA is proposing to amend § 120.432(a) to implement its longstanding policy of holding Assuming Institutions and investors responsible for the contingent liabilities (including repairs and denials) associated with 7(a) loans originated by failed insured depository institutions, whether the 7(a) loans are purchased by a Lender through a Federal Deposit Insurance Corporation (FDIC) loan sale or transferred to an Assuming Institution through a whole bank transfer.

SBA is proposing this modification to ensure consistent treatment of all portfolio loan transfers whether through voluntary bank mergers or asset sales, or through FDIC-led portfolio transfers following the failure of a Lender. SBA is also proposing to modify the regulatory language to include a statement that clarifies the applicability of the paragraph and the ability for the Agency to agree otherwise in writing (*i.e.,* to affirm the validity of the guaranties). SBA also is proposing to modify the regulatory language to remove the specific reference to the FDIC and make it applicable to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator.

Section 120.453. SBA is proposing to remove this section, which states that servicing and liquidation responsibilities for PLP Lenders are set forth in subpart E of part 120, as unnecessary. PLP Lenders are required to service and liquidate their loans in accordance with the same standards set forth in subpart E that are applied to non-delegated Lenders.

Section 120.470. SBA is proposing to revise paragraph (d)(1) of this provision by increasing the dollar amount that a small business lending company (SBLC) may disburse with the signature of only one bonded officer from $1,000 to $10,000, provided that such action is covered under the SBLC's fidelity bond. SBA believes this change would reduce burden on SBLCs without introducing significant risk to the program.

Section 120.532. SBA is proposing to remove this section, which refers to SBA's authority to assume a Borrower's obligation under terms and conditions set by SBA (see section 5(e) of the Small Business Act), because SBA does not use this authority and believes it may be confusing to the public for the regulations to refer to the availability of a loan moratorium under this section when it is not available from the Agency.

Section 120.540. Paragraph (g) of this section provides that a Lender may appeal an SBA office's decision, pertaining to an original or amended liquidation plan, to the Director of the Office of Financial Assistance (D/FA) within 30 days of the decision. The office within SBA that is now responsible for considering these appeals is the Office of Financial Program Operations (OFPO). Accordingly, SBA is proposing to amend this paragraph by replacing ''D/FA'' with ''Director/Office of Financial Program Operations (D/OFPO)'' where it first appears and with ''D/OFPO'' thereafter.

Section 120.542. Paragraph (d) of this section provides that a Lender may appeal an SBA decision to decline to reimburse all, or a portion, of the fees and/or costs incurred in conducting liquidation to the D/FA, and that the decision of the D/FA (or designee) will be made in consultation with the Associate General Counsel for Litigation. The office within SBA that is now responsible for considering these appeals is OFPO. Accordingly, SBA is proposing to amend this paragraph by replacing ''D/FA'' with ''D/OFPO'' wherever it appears.

In addition, paragraph (e) of this section provides that a Lender may appeal a decision by SBA to decline to reimburse all, or a portion, of the legal fees and/or costs incurred in conducting debt collection litigation to the Associate General Counsel for Litigation. It further provides that the Associate General Counsel makes this decision in consultation with the D/FA. The office within SBA that is now

responsible for consulting with the Associate General Counsel is OFPO. Accordingly, SBA is proposing to amend this paragraph by replacing ''D/FA'' with ''D/OFPO''.

Section 120.701. SBA is proposing to remove paragraph (g) of this section, which defines ''Non-lending technical assistance provider,'' (NTAP) because SBA has not issued grant funds to NTAPs for many years. The remaining paragraph (h) would be redesignated accordingly.

Section 120.706. SBA proposes to revise paragraph (a) of this section to increase the maximum outstanding amount of loans that an Intermediary may borrow from SBA from $5 million to $6 million. This change incorporates the increase made by section 853(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, 15 U.S.C. 636(m)(3)(C).

Section 120.707. SBA is proposing to revise the regulation at § 120.707(b) to increase the maximum maturity of a loan from an Intermediary to a Microloan borrower from 6 years to 7 years. This change would allow for a longer repayment period for these small loans.

Section 120.712. In § 120.712(b), SBA is proposing to incorporate a recent statutory change to the percentage of grant funds that may be used by the Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers. In § 120.712(d), SBA is proposing to incorporate a recent statutory change to the percentage of grant funds the Intermediary may use to contract with third parties to provide technical assistance to Microloan borrowers.

Section 120.714. SBA proposes to remove § 120.714, which describes how grants are made to non-lending technical assistance providers. SBA no longer makes such grants and there are no NTAPs currently participating in the Microloan Program. SBA is therefore proposing to eliminate this section to reduce confusion.

Section 120.715. SBA is proposing to remove this section, which describes the Deferred Participation Loan Pilot, under which SBA was authorized to guarantee a loan that an Intermediary in the Microloan Program obtained from another source. SBA proposes to remove § 120.715 in its entirety as this pilot expired in Fiscal Year 2000 and SBA no longer has the authority to guarantee such loans.

Section 120.800. SBA is proposing to remove this section, which describes the purpose of the 504 program, because it is unnecessary. The 504 Loan Program is described in § 120.2(c).

Section 120.812. SBA is proposing to revise paragraph (a)(2) to provide that a newly certified CDC may petition for more than a single one-year extension of probation. In addition, SBA is proposing to revise paragraph (d) to clarify that, if SBA declines the CDC's petition for permanent status, the CDC will no longer have authority to participate in the 504 Loan Program and SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

Section 120.840. SBA is proposing to make a technical correction to § 120.840(b) by replacing the reference in this section to the Director, Office of Financial Assistance with ''appropriate SBA official in accordance with Delegations of Authority.'' In addition, SBA is proposing to revise § 120.840(b) to reflect the modernized application submission process for ALP, which will allow CDCs to submit ALP applications electronically into the Corporate Governance Repository, rather than apply to the Lead SBA Office.

Section 120.845. Paragraph (c)(1) of this section, which sets forth the eligibility criteria for the Premier Certified Lenders Program, refers to the criteria that are listed for the Accredited Lenders Program in § 120.841(a) through (h). However, the criteria are listed only in § 120.841(a) through (f). SBA is proposing, therefore, to amend paragraph (c)(1) by removing ''through (h)'' at the end of the sentence and adding ''through (f)'' in its place.

Section 120.850. SBA is proposing to remove this section because the designation of Associate Development Company ceased to exist on January 1, 2004.

Section 120.862. SBA is proposing to amend paragraph (b) by adding the three energy public policy goals described in paragraphs (I), (J) and (K) of section 501(d)(3) of the Small Business Investment Act of 1958, as amended, to the list of economic development objectives. These three goals relate to the reduction of energy consumption by at least 10 percent, the increased use of sustainable design, and plant, equipment and process upgrades of renewable energy sources. This change would make the regulations consistent with the statute.

Section 120.1400. Under current 13 CFR 120.1400(a), a CDC that obtains approval for 504 loans after October 20, 2017, and an SBA Supervised Lender that makes 7(a) guaranteed loans after October 20, 2017, consent to the applicable receivership remedies in 13 CFR 120.1500(c). Pursuant to SOP 50 10 5(J), SBA deemed the consent by a CDC under 13 CFR 120.1400(a)(1), and the consent by an SBA Supervised Lender under 13 CFR 120.1400(a)(2), to take effect on January 1, 2018, which was the effective date of the SOP 50 10 5(J). The proposed amendments to this rule would codify the SOP provision into the rule. The amendments to these paragraphs would also clarify that the CDC's or the SBA Supervised Lender's consent does not preclude them from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership.

Section 120.1500. SBA is proposing to amend paragraphs (c)(3) and (e)(3) to incorporate into the regulations the factors set forth in the current SOP 50 10 that SBA considers when seeking the appointment of a receiver and the scope of the receivership. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR 120.1500, and typically, SBA will use its receivership authority as a remedy of last resort. The proposed factors vary slightly depending upon the type of SBA Lender and whether the SBA Lender has assets unrelated to SBA loan program activities.

Section 123.17. SBA is proposing to amend this section to remove the reference to lead-based paint. As stated above, SBA is proposing to remove § 120.173, Lead-based paint, which prohibits the use of lead-based paint if loan proceeds are for the construction or rehabilitation of a residential structure. That section is unnecessary because 16 CFR part 1303 already bans paint containing a concentration of lead in excess of 0.009% (90 parts per million) for use in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface. Removing the reference to lead-based paint in § 123.17 conforms this regulation to the removal of § 120.173 and will avoid confusion.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule does not constitute a ''significant regulatory action'' under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive effect or retroactive effect.

Executive Order 13132

SBA has determined that this proposed rule would not have federalism implications as defined in Executive Order 13132. It would 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. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

As discussed above, SBA received a significant number of public comments in response to the **Federal Register** document requesting the public's input.

Executive Order 13771

The designation, as regulatory or deregulatory under E.O. 13771, of any final rule resulting from the notice of proposed rulemaking will be informed by comments received. Details on the preliminary estimates of costs and cost savings are below.

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of $358,724 and a net present value of $5,125,645 in savings, both in 2016 dollars.[1] This rule is a comprehensive effort to remove regulations that are confusing, misleading, or unnecessary, as well as to make various technical amendments and other changes to clarify and streamline the program, including: Removing language about immediate participation loans and direct loans because SBA has not received funding for immediate participation or direct loans for over 30 years, removing information about a pilot program that has expired, removing references to grant funds that are no longer provided, and removing the reference to SBA's authority to assume a Borrower's loan obligations under a loan moratorium. The removal of these regulations will save Lenders and loan applicants time reading, researching, and inquiring about these obsolete or inactive programs and reduce confusion around whether they exist.

For each year between FY 2015 and FY 2019, SBA estimates that approximately 2,161 active 7(a) Lenders, CDCs, and Microloan Intermediaries could have potentially read about these programs in the regulations. Assuming that 20 percent (432) of these Lenders would read about the program in the regulations and that each would save two hours from not reading the removed information or researching/inquiring about obsolete programs, this would be 864 reduced hours of burden. Valuing this time at $124.90 per hour (the median wage of a financial manager based on 2019 Bureau of Labor Statistics (BLS) data and adding 100% more for benefits and overhead), this produces total savings per year of $107,914 in current dollars. These savings would be expected to continue into perpetuity.

In addition, some percentage of Borrowers would read about the program in the regulation and each would save approximately two hours from not reading the removed information, researching, or inquiring about the program. Assuming 2 percent of the 331,533 Borrowers with active loans would read the regulation (or about 6,630), this represents a total of 13,260 hours of burden reduced. Valuing this time at $38.28 per hour (the median wage of the general population based on 2019 BLS data and adding 100% more for benefits and overhead), this produces total savings per year of $507,593 in current dollars. These savings would be expected to continue into perpetuity.

In addition to these quantifiable benefits, there are several benefits of this rule that are unquantifiable. For instance, SBA is proposing to increase the dollar amount that an SBLC may disburse with the signature of only one bonded officer from $1,000 to $10,000, provided that such action is covered under the SBLC's fidelity bond. SBA believes this change would reduce burden on SBLCs without introducing significant risk to the program.

Further, SBA is proposing to allow a Lender to add a reasonable period, not to exceed 12 months, to the loan term when necessary to complete the installation of equipment and/or complete leasehold improvements. It is difficult to estimate how many Lenders will utilize this flexibility or how many Borrowers will require it, but the added flexibility is a benefit to Borrowers.

SBA proposes to increase the maximum outstanding amount of SBA loans that an Intermediary may borrow from $5 million to $6 million. This change incorporates the increase made by section 853(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, 15 U.S.C. 636(m)(3)(C) and is a benefit for Intermediaries.

SBA does not anticipate many Borrowers will be affected by the removal of LIBOR as an optional base rate for variable rate SBA business loans, but there will be some unavoidable cost associated with its sunset. SBA estimates the percentage of loans affected by the change to be 3% of the approximately 331,533 active SBA business loans, or about 9,946 loans. We assume the terms of all these loans will need to be updated, which is a conservative estimate, and that this will create an hour of burden for both a financial manager and a Borrower. Estimating the value of the financial manager's time at $124.90 per hour (the median wage of a financial manager based on 2019 BLS wage data and adding 100% for benefits and overhead) and valuing the Borrower's time at $38.28 per hour (the median wage of the general population based on 2018 BLS data and adding 100% more for benefits and overhead), this produces a burden of $1,622,988 in the first year that LIBOR is discontinued and would not be repeated in subsequent years. It is important to note that, because LIBOR is being phased-out by the U.K. Financial Conduct Authority, these costs will be incurred regardless of whether or not SBA removes the reference to LIBOR in its regulations.

Additionally, SBA is proposing to use loan amounts as the basis upon which the variable interest rate is set instead of using loan maturities for all 7(a) loans. SBA is proposing to apply the new variable interest rate maximums to all 7(a) loans. Currently, approximately 22% of 7(a) loans charge the maximum variable interest rate so increasing the maximum allowable interest rate is unlikely to cause the other 78% to increase their rates. It is difficult to speculate what proportion of the 22% that currently charge the maximum allowable interest rate will increase their rates, but the forces of the competitive marketplace will limit their ability to charge significantly higher rates, making the new rate maximums unlikely to create a significant cost for Borrowers. Also, it is not uncommon for small businesses to max out their credit on credit cards or through financial technology companies (Fintech) where interest rates can range between 19–21% for credit cards and can exceed 45% for Fintech, and SBA loans would be a more reasonable alternative with the proposed maximum rates in this rule.

[1] The net present value was calculated using the annualized savings discounted by 7% over a perpetual time horizon based in 2016 dollars.

Due to efficiencies that have been created by electronic banking, SBA believes that payments should be made in less time and is proposing to require that the SBA guaranty fee be paid within 45 days after loan approval. This change is not expected to create any additional burden for Lenders since they make electronic payments now and should be able to easily comply with the proposed timeframe.

Lastly, SBA is proposing to remove the exception related to the guarantee fee that is collected from veterans or from the spouse of a veteran on Express Loans. The guarantee fee on these loans is waived for veterans and their spouses in fiscal years when the 7(a) program is at zero subsidy, but there was a statutory exception to this waiver for fiscal years when the 7(a) program is not at zero subsidy. Section 1102(d) of the CARES Act eliminated this exception and, accordingly, SBA is proposing to remove this exception to conform the regulations to the statutory change. SBA considers this proposed change a transfer of the cost for the 7(a) loan program which will not affect the total resources available to loan participants. The fees collected from participants in the loan program are set at the amounts needed to cover the cost of the program, but are capped at a statutory limit which can result in periods when the program is operating in positive subsidy. The proposed change will transfer the cost of the service away from veterans and their spouses to non-veteran participants or SBA, resulting in either increased fees for nonveterans, or will require appropriations to subsidize the operations of the program. Thus, the elimination of guarantee fees for veterans and their spouses will result in a distributional shift and will not cause a new cost to society.

Table 1 displays the savings and costs of this rule over the first two years it is effective, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

TABLE 1—SCHEDULE OF COSTS/(SAVINGS) OVER 2 YEAR HORIZON

[Current dollars]

	Savings	Costs
Year 1	$ (615,506)	$1,622,988
Year 2	(615,506)	0

TABLE 2—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE

[2016 Dollars]

	Estimate
Annualized Savings	$ (433,505)
Annualized Costs	74,781
Annualized Net Savings	(358,724)

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a proposed rule, the Regulatory Flexibility Act (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)). However, 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.

This rule is a comprehensive effort to remove information from the regulations that are confusing and misleading, which would save Lenders and Borrowers time in reading and inquiring about obsolete or inaccurate information. SBA estimates the total annual savings to Lenders and Borrowers to be $615,506 in current dollars, as detailed in the Executive Order 13771 section above.

In addition, there are some costs associated with this rule that could impact small businesses. The removal of LIBOR as an optional base rate for variable rate 7(a) loans will cause some Borrowers to modify their loan documents to specify a new base rate. Any costs associated with modifying loan documents are an unavoidable result of the phase-out of LIBOR that will occur in 2021. SBA estimates only 3% of active SBA business loans could be affected by this change and that the burden created would be $1,622,988 in the first year that LIBOR is discontinued and would not be repeated in subsequent years, as detailed in the Executive Order 13771 section above.

The annualized net savings of this rule is estimated to be $358,724 in 2016 dollars. Given that savings would be spread out to approximately 7,000 beneficiaries (Lenders and Borrowers), this does not create a significant savings per beneficiary.

Based on the foregoing, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The SBA invites comments from the public on this certification.

List of Subjects

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses, Veterans.

13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 120 and 123 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

■ 2. Amend § 120.2 by revising paragraph (a)(1) to read as follows:

§ 120.2 Descriptions of the business loan programs.

(a) * * *

(1) SBA makes a guaranteed (deferred participation) loan by which SBA guarantees a portion of a loan made by a Lender to provide financing for general business purposes.

* * * * *

■ 3. Amend § 120.10 by revising the first sentence of the definition of ''Risk Rating'' to read as follows:

§ 120.10 Definitions.

* * * * *

Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders and Intermediaries that reflects the risk associated with the SBA Lender's or Intermediary's portfolio of SBA loans. * * *

* * * * *

§ 120.103 [Removed]

■ 4. Remove § 120.103.

■ 5. Amend § 120.110 by revising paragraph (h), removing and reserving paragraph (k), and revising paragraph (n).

The revisions read as follows:

§ 120.110 What businesses are ineligible for SBA business loans?

* * * * *

(h) Businesses engaged in any activity that is illegal under Federal, State, or local law;

* * * * *

(n) Businesses with an Associate who is incarcerated, on probation, on parole, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement;

* * * * *

§ 120.111 [Amended]

■ 6. Amend § 120.111 by removing the last sentence of the introductory text.

■ 7. Amend § 120.120 by revising paragraph (a)(1) to read as follows:

§ 120.120 What are eligible uses of proceeds?

* * * * *

(a) * * *

(1) Acquire land (by purchase or lease) that will be actively used in the applicant's business operations (except that a Borrower may lease a portion of the property in accordance with 13 CFR 120.131 and 120.870(b));

* * * * *

§ 120.173 [Removed and Reserved]

■ 8. Remove and reserve § 120.173.

§ 120.190 [Amended]

■ 9. Amend § 120.190 by:

■ a. Removing ''or immediate participation'' from paragraph (a);

■ b. Adding ''or'' at the end of paragraph (b);

■ c. Removing ''; or'' at the end of paragraph (c) and adding in its place a period; and

■ d. Removing paragraph (d).

§ 120.192 [Amended]

■ 10. Amend § 120.192 by removing the phrase ''CDC, Intermediary, or SBA,'' and adding in its place the phrase ''CDC or Intermediary,''.

§ 120.211 [Removed and Reserved]

■ 11. Remove and reserve § 120.211.

■ 12. Amend § 120.212 by revising paragraph (b) to read as follows:

§ 120.212 What limits are there on loan maturities?

* * * * *

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years. The term for a loan to finance equipment and/or leasehold improvements may include an additional reasonable period, not to exceed 12 months, when necessary to complete the installation of the equipment and/or complete the leasehold improvements.

* * * * *

■ 13. Revise § 120.213 to read as follows:

§ 120.213 What fixed interest rates may a Lender charge?

A guaranteed loan may have a reasonable fixed interest rate, but in no event may the rate exceed the maximum allowable rate periodically published by SBA in the **Federal Register**.

■ 14. Amend § 120.214 by:

■ a. Revising the introductory text, the first and second sentences of paragraph (c), and paragraph (d);

■ b. Removing paragraph (e); and

■ c. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 120.214 What conditions apply for variable interest rates?

A Lender may use a variable rate of interest for guaranteed loans under the following conditions:

* * * * *

(c) * * * The base rate will be one of the following: the prime rate or the Optional Peg Rate. The prime rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day. * * *

(d) *Maximum allowable variable interest rates.* The maximum allowable variable interest rates are set forth in this paragraph (d), with the initial maximum allowable rate for the loan determined as of the date SBA receives the loan application:

(1) For all 7(a) loans of $50,000 and less, the interest rate shall not exceed six and a half (6.5) percentage points over the base rate;

(2) For all 7(a) loans of more than $50,000 and up to and including $250,000, the maximum interest rate shall not exceed six (6.0) percentage points over the base rate;

(3) For all 7(a) loans of more than $250,000 and up to and including $350,000, the maximum interest rate shall not exceed four and a half (4.5) percentage points over the base rate; and

(4) For all 7(a) loans of more than $350,000, the maximum interest rate shall not exceed three (3.0) percentage points over the base rate.

* * * * *

§ 120.215 [Removed]

■ 15. Remove § 120.215.

■ 16. Amend § 120.220 by:

■ a. Removing the phrase ''In fiscal years when the 7(a) program is at zero subsidy,'' in paragraph (a)(3).

■ b. Removing the number ''90'' and add in its place the number ''45'' in paragraph (b); and

■ c. Adding a subject heading and revising the first sentence of paragraph (e).

The revision to read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(e) *Termination of guarantee for nonpayment of fee and other matters.* If the guarantee fee is not paid by the 75th calendar day after loan approval for a loan with a maturity in excess of twelve (12) months, or is not paid by the 10th business day after loan approval for a loan with a maturity of twelve (12) months or less, SBA will terminate the guarantee. * * *

* * * * *

§ 120.222 [Amended]

■ 17. Amend § 120.222 by removing the word ''in'' before the words ''any premium received''.

§ 120.310 [Amended]

■ 18. Amend § 120.310 in the introductory text by removing the phrase ''or make direct''.

§ 120.315 [Removed]

■ 19. Remove § 120.315.

§ 120.320 [Removed]

■ 20. Remove the undesignated center heading ''Businesses Owned by Low Income Individuals'' and § 120.320.

§ 120.330 [Amended]

■ 21. Amend § 120.330 by removing the phrase ''make or''.

■ 22. Revise § 120.350 to read as follows:

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a:

(a) Qualified employee trust (''ESOP'') to:

(1) Help finance the growth of its employer's small business; or

(2) Purchase ownership or voting control of the employer; and a

(b) Small business concern, if the proceeds from the loan are only used to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

■ 23. Revise § 120.352 to read as follows:

§ 120.352 Use of proceeds.

Loan proceeds may be used for:

(a) *Qualified employee trust.* A qualified employee trust may use loan proceeds for two purposes:

(1) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer

securities. The small business concern may use these funds for any general 7(a) purpose.

(2) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

(b) *Small business concern.* A small business concern may only use loan proceeds to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

§ § 120.360, 120.361 and 120.370 [Removed]

24. Remove the undesignated center heading ''Veterans Loan Program'', §§ 120.360 and 120.361, the undesignated center heading ''Pollution Control Program'', and § 120.370.

§ 120.375 [Amended]

■ 25. Amend § 120.375 by removing the phrase ''direct (unilaterally or together with Lenders) or''.

§ 120.376 [Amended]

■ 26. Amend § 120.376 by:
■ a. Removing paragraph (a);
■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b);
■ c. Removing the second sentence of newly redesignated paragraph (b); and
■ d. Removing paragraph (d).

§ § 120.380 through 120.383 [Removed]

■ 27. Remove the undesignated center heading ''Defense Economic Transition Assistance'' and §§ 120.380 through 120.383.

§ 120.420 [Amended]

■ 28. Amend § 120.420 by removing paragraph (b) and redesignating paragraphs (c) through (k) as paragraphs (b) through (j).
■ 29. Amend § 120.432 by adding a sentence at the end of paragraph (a) to read as follows:

§ 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

(a) * * * This paragraph (a) applies to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator, unless SBA agrees otherwise in writing.

* * * * *

§ 120.453 [Removed]

■ 30. Remove § 120.453.

§ 120.470 [Amended]

■ 31. Amend § 120.470 in paragraph (d)(1) by removing the number ''$1,000'' and adding the number ''$10,000'' in its place.

§ 120.532 [Removed]

■ 32. Remove § 120.532.

§ 120.540 [Amended]

■ 33. Amend § 120.540 in paragraph (g) by removing the term ''D/FA'' from the first sentence and adding in its place the phrase ''Director/Office of Financial Program Operations (D/OFPO)'' and by removing the term ''D/FA'' from the second and fourth sentences and adding in its place the term ''D/OFPO''.

§ 120.542 [Amended]

■ 34. Amend § 120.542 in paragraphs (d) and (e) by removing the term ''D/FA'' wherever it appears and adding in its place the term ''D/OFPO''.

§ 120.701 [Amended]

■ 35. Amend § 120.701 by removing the paragraph designations (a) through (h), leaving the definitions in alphabetical order, and removing the definition of ''Non-lending technical assistance provider''.

§ 120.706 [Amended]

■ 36. Amend § 120.706 in the last sentence of paragraph (a) by removing ''$5 million'' and adding in its place ''$6 million''.

§ 120.707 [Amended]

■ 37. Amend § 120.707 in the last sentence of paragraph (b) by removing the word ''six'' and adding in its place the word ''seven''.
■ 38. Amend § 120.712 by:
■ a. Revising paragraph (b)(1); and
■ b. Removing the number ''30'' and adding in its place the number ''50'' in paragraph (d).

The revision reads as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 50 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; provided, however, that no more than 5 percent of the grant funds may be used to market or advertise the products and services of the Microloan Intermediary directly related to the Microloan Program; and

* * * * *

§ § 120.714 and 120.715 [Removed]

■ 39. Remove and reserve §§ 120.714 and 120.715.

§ 120.800 [Removed]

■ 40. Remove § 120.800.
■ 41. Amend § 120.812 by revising paragraph (a)(2) and by adding a sentence at the end of paragraph (d) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

(a) * * *

(2) A one-year extension of probation. If a one-year extension of probation is granted, at the end of this extension period, the CDC must petition the Lead SBA Office for permanent CDC status or an additional one-year extension of probation.

* * * * *

(d) * * * If SBA declines the petition, the CDC will no longer have authority to participate in the 504 Loan Program and SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.
■ 42. Amend § 120.840 by revising paragraph (b) to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

* * * * *

(b) *Application.* A CDC must apply for ALP status by submitting an application in accordance with SBA's Standard Operating Procedure 50 10, available at *http://www.sba.gov.* A final decision will be made by the appropriate SBA official in accordance with Delegations of Authority.

* * * * *

§ 120.845 [Amended]

■ 43. Amend § 120.845 in paragraph (c)(1) by removing the phrase ''through (h)'' and adding in its place the phrase ''through (f)''.

§ 120.850 [Removed]

■ 44. Remove the undesignated center heading ''Associate Development Companies (ADCs)'' and § 120.850.
■ 45. Amend § 120.862 by:
■ a. Removing ''or'' at the end of paragraph (b)(9);
■ b. Removing the period at the end of paragraph (b)(10) and adding '';'' in its place; and
■ c. Adding paragraphs (b)(11) through (13).

The additions read as follows:

§ 120.862 Other economic development objectives.

* * * * *

(b) * * *

(11) Reduction of energy consumption by at least 10 percent;

(12) Increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact; or

(13) Plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings' or communities' consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers.

■ 46. Amend 120.1400 by:

■ a. Removing the date ''October 20, 2017'' in paragraphs (a)(1) and (2) and adding in their place the date ''January 1, 2018''; and

■ b. Adding two sentences to the end of paragraphs (a)(1) and (2).

The additions read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) * * *

(1) * * * The CDC's consent does not preclude the CDC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. A CDC's consent to receivership as a remedy does not require SBA to seek appointment of a receiver in any particular SBA enforcement action.

(2) * * * The SBA Supervised Lender's consent does not preclude such Lender from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. The SBA Supervised Lender's consent to receivership as a remedy does not require SBA to seek appointment of a receiver in any particular SBA enforcement action.

* * * * *

■ 47. Amend § 120.1500 by adding a sentence at the end of paragraph (c)(3), adding paragraphs (c)(3)(i) and (ii), and adding two sentences after the first sentence of paragraph (e)(3) to read as follows:

§ 120.1500 Types of enforcement actions—SBA Lenders.

* * * * *

(c) * * *

(3) * * * In deciding whether to seek the appointment of a receiver and in determining the scope of a receivership, SBA will consider the following factors, in its discretion:

(i) For NFRLs:

(A) The existence of fraud or false statements;

(B) The NFRL's refusal to cooperate with SBA enforcement action instructions or orders;

(C) The NFRL's insolvency (legal or equitable);

(D) The size of the NFRL's SBA loan portfolio(s) in relation to other activities of the NFRL;

(E) The dollar amount of any claims SBA may have against the NFRL;

(F) The NFRL's failure to comply materially with any requirement imposed by Loan Program Requirements; and/or

(G) The existence of other non-SBA enforcement actions against the NFRL;

(ii) For SBLCs:

(A) The existence of fraud or false statements;

(B) The SBLC's refusal to cooperate with SBA enforcement action instructions or orders;

(C) The SBLC's insolvency (legal or equitable);

(D) The dollar amount of any claims SBA may have against the SBLC; and/or

(E) The SBLC's failure to comply materially with any requirement imposed by Loan Program Requirements.

* * * * *

(e) * * *

(3) * * * SBA will limit the scope of the receivership to the CDC's assets related to the SBA loan program(s) except where the CDC's business is almost exclusively SBA-related. SBA will only seek a receivership if there is either the existence of fraud or false statements, or if the CDC has refused to cooperate with SBA enforcement action instructions or orders. * * *

PART 123—DISASTER LOAN PROGRAM

■ 48. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), and 657n.

§ 123.17 [Amended]

■ 49. Amend § 123.17 by removing the words ''lead-based paint,''.

Jovita Carranza,

Administrator.

[FR Doc. 2020–26446 Filed 12–11–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0883; Project Identifier 2019–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. Flight Display System Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) AD 2019–12–09, which applies to certain Rockwell Collins, Inc. (Rockwell Collins) FDSA–6500 flight display system applications installed on airplanes. AD 2019–12–09 imposes operating limitations on the traffic collision avoidance system (TCAS). AD 2019–12–09 was prompted by conflict between the TCAS display indications and aural alerts that may occur during a resolution advisory (RA) scenario. This proposed AD would retain the requirements of AD 2019–12–09 until a software upgrade is completed. 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 January 28, 2021.

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 Rockwell Collins at Collins Aviation Services, 400 Collins Road NE, M/S 164–100, Cedar Rapids, IA 52498–0001; phone: 319–295–9258; fax: 319–295–4351; email: *techmanuals@rockwellcollins.com;* website: *https://www.rockwellcollins.com/Services_and_Support/Publications.aspx.* You may view the service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0883; 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.

FOR FURTHER INFORMATION CONTACT: Nhien Hoang, Aviation Safety Engineer,

Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, Kansas 67209; phone: (316) 946–4157; fax: (316) 946–4107; email: *Nhien.Hoang@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0883; Project Identifier 2019–CE–034–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 the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency 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 Nhien Hoang, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, Kansas 67209; phone: (316) 946–4157; fax: (316) 946–4107; email: *Nhien.Hoang@faa.gov* or *Wichita-COS@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.

Background

The FAA issued a final rule; request for comment to add AD 2019–12–09, Amendment 39–19664 (84 FR 32260, dated July 8, 2019), (AD 2019–12–09) for certain part-numbered Rockwell Collins FDSA–6500 flight display system applications. These applications may be installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and C90GTi airplanes. AD 2019–12–09 resulted from a report that a conflict could occur between the TCAS primary cockpit display indications and the aural alerts during an RA scenario. During testing of a full flight simulator on a development program, the TCAS fly-to/avoidance cue indication on the primary cockpit displays conflicted with other TCAS system information, such as aural cues, during an RA scenario. While the aural alert will provide the pilot with accurate information to resolve the RA, that information is not accurately represented by the TCAS fly-to/avoidance cue display. Specifically, the TCAS fly-to/avoidance cue is displayed relative to the aircraft horizon line instead of the aircraft symbol. Rockwell Collins determined that the data from the TCAS is being translated incorrectly by the FDSA–6500 software prior to display of the RA pitch indications.

AD 2019–12–09 prohibited operation with the TCAS in TA/RA mode by requiring a revision to the Limitations section of the airplane flight manual (AFM) or AFM supplement (AFMS) and by fabricating and installing a placard on each aircraft primary flight display. The FAA issued AD 2019–12–09 to prevent the pilot from over-correcting or under-correcting for aircraft separation, which may result in a mid-air collision.

The FAA issued AD 2019–12–09 as interim action. This NPRM would retain the operating prohibition of AD 2019–12–09 and would require installing updated software on the flight data system applications within 12 months. Once the software is upgraded, this NPRM proposes to allow removal of the limitations and placard. Because these proposed requirements would have a longer compliance time, the FAA is providing the public an opportunity to comment.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rockwell Collins Service Information Letter FDSA–6500–19–1, Revision No. 2, dated June 12, 2019. This service information letter contains information regarding hardware and software compatibility for the FDSA–6500 flight display system and provides software download instructions. 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 in This NPRM

This proposed AD would retain the placard and operating requirements of AD 2019–12–09 and require updating the FDSA–6500 software. After this software update, this proposed AD would allow removal of the placard and operating limitations required by AD 2019–12–09.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 932 FDSA–6500 flight display system applications installed on 311 airplanes worldwide. The FAA has no way of knowing the number of FDSA–6500 applications installed on airplanes of U.S. Registry. The estimated cost on U.S. operators reflects the maximum possible cost based on worldwide applications.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the Limitations section of the AFM or AFMS.	.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50 (per airplane)	Up to $13,217.50.
Fabricate and install a placard ...	.5 work-hour × $85 per hour = $42.50.	Negligible	$42.50 (per primary flight display).	Up to $39,610.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
FDSA–6500 software upgrade ...	1 work-hour × $85 per hour = $85.	Not applicable	$85 (per primary flight display)	Up to $79,220.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected operators.

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) 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 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:

■ a. Removing Airworthiness Directive 2019–12–09, Amendment 39–19664 (84 FR 32260, dated July 8, 2019); and

■ b. Adding the following new airworthiness directive:

Rockwell Collins, Inc.: Docket No. FAA–2020–0883; Project Identifier 2019–CE–034–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 28, 2021.

(b) Affected ADs

This AD replaces AD 2019–12–09, Amendment 39–19664 (84 FR 32260, dated July 8, 2019) (AD 2019–12–09).

(c) Applicability

This AD applies to Rockwell Collins, Inc., (Rockwell Collins) Flight Display System Application FDSA–6500 part numbers (P/Ns) 810–0234–1H0001, 810–0234–1H0002, 810–0234–1H0003, 810–0234–2H0001, 810–0234–2C0001, 810–0234–2C0002, and 810–0234–4B0001. These applications are installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and C90GTi airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3400, NAVIGATION SYSTEM.

(e) Unsafe Condition

This AD was prompted by a conflict between the traffic collision avoidance system (TCAS) primary display indications and aural alerts during a resolution advisory (RA) scenario. The FAA is issuing this AD to prevent conflicting TCAS information, which could result in the pilot under-correcting or over-correcting and may lead to inadequate aircraft separation and a mid-air collision.

(f) Compliance

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

(g) Actions

(1) Within 30 days after July 23, 2019 (the effective date of AD 2019–12–09), do the following:

(i) Revise the airplane flight manual (AFM) or AFM supplement (AFMS) by adding the following text to the Limitations section: For TCAS II installations, during flight, do not operate TCAS in the ''TA/RA'' mode; TCAS may only be operated in ''TA Only'' mode.

(ii) Fabricate a placard for each aircraft primary flight display, using at least ⅛ inch letters, with the following text: TCAS Flight Ops—TA Only mode (TA/RA mode prohibited).

(iii) Install the placard on the bottom of each aircraft primary flight display bezel in the area depicted in figure 1 to paragraph (g)(1)(iii) of this AD.

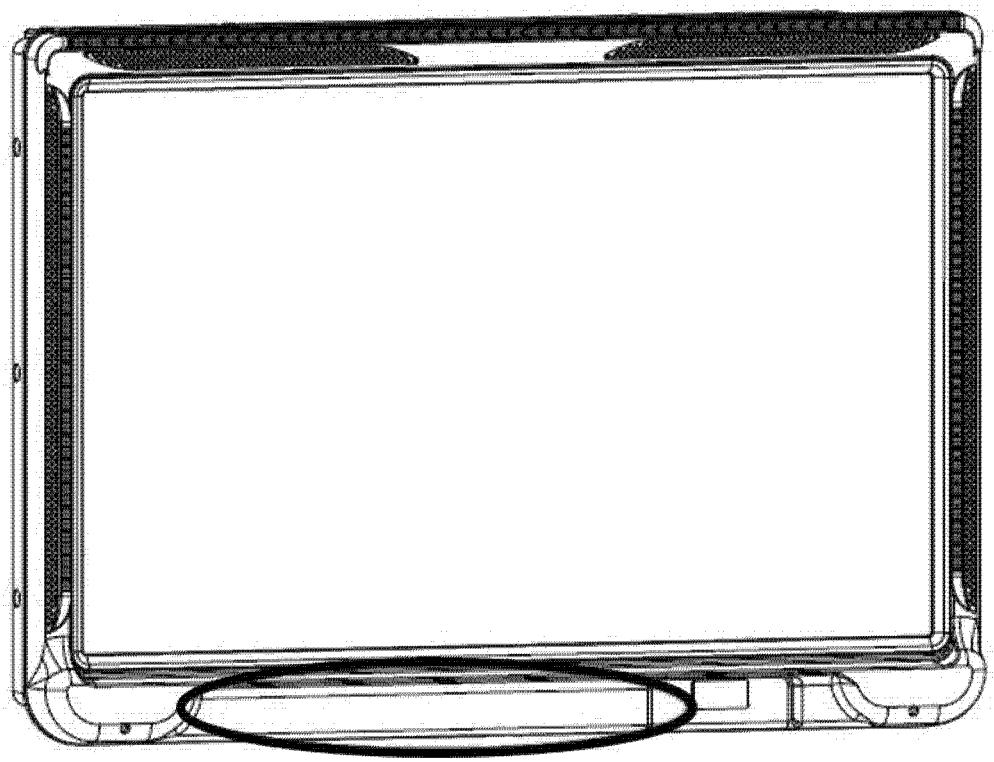

Figure 1 to paragraph (g)(1)(iii); placard location on bezel

Note 1 to paragraph (g)(1): In ''TA/RA'' mode, the TA stands for traffic advisory and RA stands for resolution advisory.

(2) In addition to the provisions of 14 CFR 43.3 and 43.7, the actions required by paragraphs (g)(1)(i) through (iii) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(3) Within 12 months after the effective date of this AD, upgrade the FDSA–6500 field loadable software for your airplane as listed in the table in Section C and by following the instructions in Section F of Rockwell Collins Service Information Letter FDSA–6500–19–1, Revision No. 2, dated June 12, 2019.

(4) The airplane flight manual revision and placards required by paragraph (g)(1) of this AD may be removed after completing the software upgrade required by paragraph (g)(3) of this AD.

(5) As of the effective date of this AD, do not install a Rockwell Collins Flight Display System Application FDSA–6500 P/N 810–0234–1H0001, 810–0234–1H0002, 810–0234–1H0003, 810–0234–2H0001, 810–0234–2C0001, 810–0234–2C0002, or 810–0234–4B0001 on any airplane.

(h) 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 Related Information.

(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.

(i) Related Information

(1) For more information about this AD, contact Nhien Hoang, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4157; fax: (316) 946–4107; email: *nhien.hoang@faa.gov* or *Wichita-COS@faa.gov.*

(2) For service information identified in this AD, contact Rockwell Collins, Inc. at Collins Aviation Services, 400 Collins Road NE, M/S 164–100, Cedar Rapids, IA 52498–0001; phone: (319) 295–9258; fax: (319) 295–4351; email: *techmanuals@rockwellcollins.com;* website: *https://www.rockwellcollins.com/Services_and_Support/Publications.aspx.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on December 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–27281 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1123; Project Identifier MCAI–2020–01294–R]

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) 2016–23–05, which applies to certain Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. AD 2016–23–05 requires repetitive checks of the oil level of the tail rotor gearbox and, if necessary, filling the oil to the

maximum level; and replacement of a certain control rod double bearing (bearing) with a new bearing. Since issuing AD 2016–23–05, the FAA has determined additional inspections, replacements, and modifications are necessary to address the unsafe condition. This proposed AD would retain the requirements of AD 2016–23–05 and would add helicopters to the applicability. This proposed AD would also require modifying the helicopter by replacing the tail gearbox (TGB) control shaft guide bushes; repetitive inspections of the TGB magnetic plug and corrective actions if necessary; repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB; 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 January 28, 2021.

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–2020–1123.

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–2020–1123; 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 20_2020–1123; Project Identifier MCAI–2020–01294–R'' 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 FAA issued AD 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016) (''AD 2016–23–05''), which applies to certain Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters. AD 2016–23–05 requires repetitive checks of the oil level of the tail rotor gearbox and, if necessary, filling the oil to the maximum level; and replacement of a certain bearing with a new part-numbered bearing. The FAA issued AD 2016–23–05 to address damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

Actions Since AD 2016–23–05 Was Issued

Since the FAA issued AD 2016–23–05, the FAA has determined additional repetitive inspections of the TGB magnetic plug for the presence of particles (and corrective actions if necessary), repetitive replacements of the bearing, and modifications (replacing TGB control shaft guide bushes and replacing the TGB) are necessary to address the unsafe condition.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0125, dated July 21, 2017 (''EASA AD 2017–0125'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Helicopters Model SA 365 N1, AS 365 N2, AS 365 N3, SA 366 G1, EC 155 B, and EC 155 B1 helicopters. EASA AD 2017–0125 supersedes EASA AD 2017–0007, dated January 13, 2017, which superseded EASA AD 2016–0097R1, dated May 25, 2016 (which corresponds to FAA AD 2016–23–05). EASA AD 2017–0125 adds helicopters to the

applicability, adds repetitive inspections of the magnetic plug after bearing replacement, requires the use of the revised Airbus Helicopters Alert Service Bulletin (ASB) instructions, and requires replacement of the TGB with a modified unit, which terminates the repetitive inspections.

This proposed AD was prompted by a determination that additional inspections, replacements, and modifications are necessary to address the unsafe condition. The FAA is proposing this AD to address damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter. See the MCAI for additional background information.

Comments on AD 2016–23–05

The FAA gave the public the opportunity to comment on AD 2016–23–05. The following presents the comments received on AD 2016–23–05 and the FAA's response to each comment.

Request To Revise the Applicability To Exclude Certain TGBs

A commenter requested that the FAA revise the applicability of AD 2016–23–05 to exclude TGBs that are post-Airbus Helicopters mod 07 65B63 having part number (P/N) 365A33–6005–09. The commenter stated that the referenced service information clarifies that only TGBs that are pre-Airbus Helicopters mod 07 65B63 are affected.

The FAA disagrees. In developing AD 2016–23–05, the FAA differed with EASA AD 2016–0097R1, dated May 25, 2016, and the referenced service information. The FAA determined that TGBs that are post-Airbus Helicopters mod 07 65B63 having P/N 365A33–6005–09 should not be excluded from the requirements of that AD. However, the FAA notes that the new MCAI addresses TGBs that are pre-Airbus Helicopters mod 07 65B63 and TGBs that are post-Airbus Helicopters mod 07 65B63 separately, as does this proposed AD.

Request To Revise the Applicability To Include All TGBs

A commenter requested that the FAA revise the applicability of AD 2016–23–05 to include all TGBs. The commenter stated the applicability for AD 2016–23–05 should be the same as AD 2007–25–08, Amendment 39–15290 (72 FR 69604, December 10, 2007), which included all bearings, regardless of the part number of the TGB.

The FAA disagrees. In developing AD 2016–23–05, the FAA determined the requirement to check the oil level is only necessary for helicopters with a TGB bearing having P/N 704A33–651–093 or P/N 704A33–651–104. However, the FAA notes that the new MCAI requires the oil level check for all TGBs, as does this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2017–0125 describes procedures for modifying the helicopter by replacing TGB control shaft guide bushes, repetitive inspections (checks) of the oil level of the tail rotor gearbox and, if necessary, filling the oil to the maximum level, repetitive inspections of the TGB magnetic plug for the presence of particles and corrective actions if necessary (corrective actions include removing the TGB, complying with certain work cards to address particles and other conditions such as abrasions, scales, flakes, and splinters, and replacing the bearing), repetitive replacements of the bearing; and modifying the helicopter by replacing the TGB.

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 retain the actions required by AD 2016–23–05 and would require accomplishing the actions specified in EASA AD 2017–0125 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.''

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 2017–0125 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2017–0125 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 2017–0125 that is required for compliance with EASA AD 2017–0125 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1123 after the FAA final rule is published.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2016–23–05, this proposed AD would retain certain requirements of AD 2016–23–05. Those requirements are referenced in paragraphs (2) and (5) of EASA AD 2017–0125, which, in turn, is referenced in paragraph (g) of this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD affects 52 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2016–23–05	17 work-hours × $85 per hour = $1,445	$1,125	$2,570	$133,640
New proposed actions	63 work-hours × 85 per hour = 5,355	1,395	6,750	351,000

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $680	$0	$680

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016), and adding the following new AD:

Airbus Helicopters: Docket No. FAA–2020–1123; Project Identifier MCAI–2020–01294–R.

(a) Comments Due Date

The FAA must receive comments by January 28, 2021.

(b) Affected Airworthiness Directives (ADs)

This AD replaces AD 2016–23–05, Amendment 39–18712 (81 FR 85126, November 25, 2016) (''AD 2016–23–05'').

(c) Applicability

This AD applies to Airbus Helicopters Model SA–365N1, AS–365N2, AS 365 N3, SA–366G1, EC 155B, and EC155B1 helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft System Component (JASC) Code 65, Tail Rotor.

(e) Reason

This AD was prompted by reports of occurrences of loss of yaw control due to failure of the tail gearbox (TGB) control rod double bearing (bearing). This AD was also prompted by the determination that additional inspections, replacements, and modifications are necessary to address the unsafe condition. The FAA is issuing this AD to address damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0125, dated July 21, 2017 (''EASA AD 2017–0125'').

(h) Exceptions to EASA AD 2017–0125

(1) Where EASA AD 2017–0125 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2017–0125 refers to June 4, 2011 (the effective date of EASA AD 2011–0105), this AD requires using the effective date of this AD.

(3) Where EASA AD 2017–0125 refers to May 25, 2016 (the effective date of EASA AD 2016–0197R1), this AD requires using the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2017–0125 does not apply to this AD.

(5) Where paragraph (2) of EASA AD 2017–0125 requires inspections (checks) to be done ''in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, those instructions are for reference only and are not required for the actions in paragraph (2) of EASA AD 2017–0125. The inspections (checks) required by paragraph (2) of EASA AD 2017–0125 may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in

accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(6) Where paragraph (5) of EASA AD 2017–0125 specifies to ''accomplish the applicable corrective action(s) in accordance with the instructions of Paragraph 3.B.1 of the applicable inspection ASB,'' for this AD, a qualified mechanic must add oil to the TGB to the ''max'' level if the oil level is not at maximum. The instructions are for reference only and are not required for the actions in paragraph (5) of EASA AD 2017–0125.

(7) Where EASA AD 2017–0125 refers to flight hours (FH), this AD requires using hours time-in-service.

(8) Where EASA AD 2017–0125 requires action after the last flight of the day or ''ALF,'' this AD requires those actions before the first flight of the day.

(9) Where the service information referred to in EASA AD 2017–0125 specifies to perform a metallurgical analysis and contact the manufacturer if collected particles are not clearly characterized, this AD does not require contacting the manufacturer to determine the characterization of the particles collected.

(10) Although service information referenced in EASA AD 2017–0125 specifies to scrap parts, this AD does not include that requirement.

(11) Although service information referenced in EASA AD 2017–0125 specifies reporting information to Airbus Helicopters and filling in a ''particle dectection'' follow-up sheet, this AD does not include those requirements.

(12) Although service information referenced in EASA AD 2017–0125 specifies returning certain parts to an approved workshop, this AD does not include that requirement.

(13) Where paragraph (6) of EASA AD 2017–0125 refers to ''any discrepancy,'' for this AD, discrepancies include the presence of particles and other conditions such as abrasions, scales, flakes, and splinters.

(i) 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 (j)(2) 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.

(j) Related Information

(1) For information about EASA AD 2017–0125, 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–2020–1123.

(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 December 8, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–27416 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0819; Project Identifier 2019–CE–027–AD]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 97–06–10, which applies to certain Raytheon Aircraft Company (type certificate now held by Textron Aviation Inc. (Textron)) Model 76 airplanes. AD 97–06–10 requires repetitively inspecting the main landing gear (MLG) ''A'' frame assemblies for cracks and replacing any cracked assembly. Since the FAA issued AD 97–06–10, the replacement parts have also experienced failure due to cracking. This proposed AD would require magnetic particle inspections of the MLG ''A'' frame assemblies for cracks and replacement of the affected parts if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 28, 2021.

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 Textron Aviation Customer Service, P.O. Box 7706, Wichita, Kansas 67277; phone: (316) 517–5800; email: *customercare@txtav.com*; website: *https://txtav.com*. 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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0819; 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.

FOR FURTHER INFORMATION CONTACT: Brian Adamson, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4193; fax: (316) 946–4107; email: *brian.adamson@faa.gov* or *Wichita-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0819; Project Identifier 2019–CE–027–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the

following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency 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 Brian Adamson, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Rd., Wichita, KS 67209; phone: (316) 946–4193; fax: (316) 946–4107; email: *brian.adamson@faa.gov* or *Wichita-COS@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.

Background

The FAA issued AD 97–06–10, Amendment 39–9967 (62 FR 12949, March 19, 1997) (AD 97–06–10), for Raytheon Aircraft Company (type certificate now held by Textron) Model 76 airplanes, serial numbers ME–1 through ME–437, that do not have both a part number (P/N) 105–810023–75 (left) and P/N 105–810023–76 (right) MLG ''A'' frame assembly installed. AD 97–06–10 requires repetitive visual and dye penetrant inspections of the MLG ''A'' frame assemblies for cracks and replacement of any assembly found cracked. AD 97–06–10 resulted from Raytheon developing improved design MLG ''A'' frame assemblies (P/N 105–810023–75 and P/N 105–810023–76), and the FAA's determination that Model 76 airplanes with these improved design assemblies installed on both the left and right MLG should be exempt from the AD requirements. The FAA issued AD 97–06–10 to prevent MLG failure because of a cracked ''A'' frame assembly, which could result in loss of control of the airplane during landing.

Actions Since AD 97–06–10 Was Issued

Since AD 97–06–10 was issued, the FAA received reports of P/N 105–810023–75 and P/N 105–810023–76 ''A'' frame assemblies cracking and failing, resulting in damage to the propeller and outboard wing area. Analysis of the cracked parts identified fatigue cracking as the cause of failure. In some cases, the failed parts had been subjected to visual and dye penetrant inspections within 100 hours before the failure. The FAA determined visual and dye penetrant inspections did not adequately detect cracks in the MLG ''A'' frame assemblies, and this proposed AD would require repetitive magnetic particle inspections. Magnetic particle provides quicker results (after testing setup) with improved accuracy.

Also, since AD 97–06–10 was issued, the type certificate for the Model 76 airplane was transferred from Raytheon to Textron and Textron designed new replacement parts, P/Ns 105–810023–0083 (left) and 105–810023–0084 (right), that would not be subject to the repetitive magnetic particle inspections proposed in this NPRM. However, the newly designed MLG assemblies are still subject to the repetitive inspections specified in the maintenance manual.

FAA's Determination

The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Beechcraft Mandatory Service Bulletin SB 32–4156, dated May 3, 2019. The service information specifies a repetitive magnetic particle inspection for fatigue cracks adjacent to the gussets for the torque arm of each MLG ''A'' frame and destroying the assembly if cracks are found. The service information also specifies procedures for installing a replacement assembly or re-installing an assembly when no cracks are found. 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 in This NPRM

This proposed AD would retain none of the requirements of AD 97–06–10. This proposed AD would require magnetic particle inspection of the MLG ''A'' frame assemblies and provides new designed assemblies for replacement, P/Ns 105–810023–0083 (left) and 105–810023–0084 (right).

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 437 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of MLG ''A'' frame assembly.	26 work-hours × $85 per hour = $2,210.	Not applicable	$2,210	$965,770

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of assembly (NOTE: No additional labor cost since re-installation labor is included with the inspection cost).	Not applicable	$7,864	$7,864

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 that the proposed regulation:

(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 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:

■ a. Removing Airworthiness Directive 97–06–10, Amendment 39–9967 (62 FR 12949, March 19, 1997); and

■ b. Adding the following new airworthiness directive:

Textron Aviation Inc.: Docket No. FAA–2020–0819; Project Identifier 2019–CE–027–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 28, 2021.

(b) Affected ADs

This AD replaces AD 97–06–10, Amendment 39–9967 (62 FR 12949, March 19, 1997) (AD 97–06–10).

(c) Applicability

This AD applies to Textron Aviation (type certificate previously held by Raytheon Aircraft Company, Hawker Beechcraft Corporation, and Beechcraft Corporation) Model 76 airplanes, serial numbers ME–1 through ME–437, certificated in any category, except airplanes with main landing gear (MLG) ''A'' frame assemblies part number (P/N) 105–810023–0083 (left) and P/N 105–810023–0084 (right) installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 3200; Landing Gear.

(e) Unsafe Condition

This AD was prompted by cracks found in MLG ''A'' frame assemblies. The FAA is issuing this AD to detect and correct cracks in the MLG assemblies, which, if not addressed, could result in failure of the MLG assemblies and lead to loss of control of the airplane during landing.

(f) Compliance

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

(g) Actions

Within 100 hours time-in-service (TIS) after the last dye penetrant inspection required by AD 97–06–10 or within 12 months after the effective date of this AD, whichever comes first, and thereafter at intervals to not exceed 100 hours TIS or 12 months, whichever occurs first, do a magnetic particle inspection for cracks on the left MLG ''A'' frame assembly P/N 105–810023–3, 105–810023–67, or 105–810023–75 and the right MLG ''A'' frame assembly P/N 105–810023–4, 105–810023–68, or 105–810023–76 and, before further flight, take all necessary corrective actions. Do all actions by following the Accomplishment Instructions, paragraphs 4 through 13, of Beechcraft Mandatory Service Bulletin SB 32–4156, dated May 3, 2019.

(h) 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 Related Information.

(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.

(i) Related Information

(1) For more information about this AD, contact Brian Adamson, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4193; fax: (316) 946–4107; email: *brian.adamson@faa.gov* or *Wichita-COS@faa.gov*.

(2) For service information identified in this AD, contact Textron Aviation Customer Service, P.O. Box 7706, Wichita, Kansas 67277; phone: (316) 517–5800; email: *customercare@txtav.com*; website: *https://txtav.com*. You may view this referenced 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.

Issued on December 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–27282 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0991; Project Identifier AD–2020–00478–Q]

RIN 2120–AA64

Airworthiness Directives; Garmin International GMN–00962 GTS Processor Units (GTS 825, GTS 855, GTS 8000)

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 Garmin International (Garmin) GMN–00962 GTS processor units (GTS 825, GTS 855, GTS 8000). This proposed AD was prompted by reports of GTS processor units issuing resolution advisories (RAs) when no risk of collision or loss of separation exists between the airplanes involved. This proposed AD would require updating the software version of the affected GTS Processor units. 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 January 28, 2021.

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 Garmin International, Garmin Aviation Support, 1200 E 151st Street, Olathe, KS 66062; phone: (866) 739–5687; website: *https://fly.garmin.com/fly-garmin/support/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust St., Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0991; 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.

FOR FURTHER INFORMATION CONTACT: Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: (316) 946–4107; email: *paul.rau@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0991; Project Identifier AD–2020–00478–Q'' 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 proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

In 2017, the FAA received seven reports of false RAs involving aircraft equipped with Garmin GMN–00962 GTS processor configured for traffic collision avoidance system II (TCAS II) (configuration marketed as GTS–8000 units). The Garmin GMN–00962 GTS processor units are marketed by Garmin as the GTS 825, GTS 855 or GTS 8000, with the marketing name representing the traffic system configuration.

A false RA occurs when there is no risk of collision or loss of separation of the airplanes. The FAA review of available air traffic data identified additional false RA incidents occurring at rates as frequent as once every 420 flight hours in congested airspace. These false RAs result from the GTS Processor software potentially calculating incorrect range rates. This results in traffic advisories or RAs being generated when targets are greater than 10 nautical miles (NM) away. A TCAS event involving three or more airplanes can result in mid-air collision by increasing the risk that the TCAS, in resolving the false RA with the initial airplane, will create an actual loss of separation with a third airplane.

This condition, if not addressed, could result in an RA being generated when no risk of loss of separation or risk of collision exists between the airplanes involved, which can lead to a mid-air collision with a third airplane.

The affected GTS processor units were installed on the airplanes listed below during production; however, the affected units may have been installed on other airplane models as a supplemental type certificate. Although the names found in parenthesis may not be listed on the type certificate, the manufacturer may use those names as marketing names for the airplanes.

- Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 525 (Cessna Citation M2), Model 525B (Cessna Citation CJ3+), Model Model 680 Sovereign, Model 680A Latitude, and Model 700 (Cessna Citation Longitude);
- Embraer S.A. Model EMB–500 (Phenom 100) and Model EMB–505 (Phenom 300); and
- Learjet Inc. Model 45 (Learjet 70) and Model 45 (Learjet 75).

FAA's Determination

The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop in other products of these same type design.

Related Service Information

The FAA reviewed Garmin Service Bulletin No. 2065, Revision A, dated May 7, 2020; and Garmin Service Bulletin No. 1948, Revision B, dated March 26, 2020. These service bulletins contain procedures for uploading the software update to the GMN–00962 GTS Processor units (GTS 825, GTS 855, GTS 8000).

Proposed AD Requirements in This NPRM

This proposed AD would require updating the GTS processor unit software within 12 months.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 700 appliances installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update GTS processor software	4 work-hours × $85 per hour = $340	$0	$340	$238,000

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 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) 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 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:

Garmin International: Docket No. FAA–2020–0991; Project Identifier AD–2020–00478–Q.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 28, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Garmin International GMN–00962 GTS processor units, part number 011–02571–0( ), with software version 3.13 or earlier, except software version 3.12.1. These units are marketed as the GTS 825, GTS 855, or GTS 8000.

(d) Subject

Joint Aircraft System Component (JASC) Code 3445, AIR COLLISION AVOIDANCE SYSTEM (TCAS).

(e) Unsafe Condition

This AD was prompted by the GTS processor unit issuing false resolution advisories (RAs) when no risk of collision or loss of separation exists between the airplanes involved. A traffic collision avoidance system (TCAS) event involving three or more airplanes can result in mid-air collision by increasing the risk that the TCAS, in resolving the false RA between the initial airplane, will create an actual loss of separation with a third airplane. The FAA is issuing this AD to prevent these false RAs, which can lead to a mid-air collision with a third airplane.

(f) Required Action and Compliance

Within 12 months after the effective date of this AD, update the GTS processor software to a version that is not 3.13 or earlier.

(g) 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 Related Information.

(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.

(h) Related Information

(1) For more information about this AD, contact Paul Rau, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4149; fax: 316–946–4107; email: *paul.rau@faa.gov* or *Wichita-COS@faa.gov*.

(2) For service information that is relevant to this AD, contact Garmin International, Garmin Aviation Support, 1200 E 151st Street, Olathe, KS 66062; phone: (866) 739–5687; website: *https://fly.garmin.com/fly-garmin/support/*.

Issued on December 7, 2020.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–27324 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 702

RIN 1240–AA13

Longshore and Harbor Workers' Compensation Act: Electronic Filing, Settlement, and Civil Money Penalty Procedures

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and its extensions. To improve program administration, OWCP proposes to amend its existing regulations to require parties to file documents electronically, unless otherwise provided by statute or allowed by OWCP, and to streamline the settlement process. Additionally, to promote accountability and ensure fairness, OWCP proposes new rules for imposing and reviewing civil money penalties prescribed by the Longshore Act. The new rules will set forth the procedures to contest OWCP's penalty determinations.

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by February 12, 2021.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA13, by any of the following methods. To facilitate the receipt and processing of comments, OWCP encourages interested parties to submit such comments electronically.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Regular Mail or Hand Delivery/Courier:* Submit comments on paper to the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue NW, Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Antonio Rios, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, (202)–693–0040, *rios.antonio@dol.gov.* TTY/TDD callers may dial toll free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 33 U.S.C. 901–50, establishes a comprehensive federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. *Metro. Stevedore Co.* v. *Rambo,* 515 U.S. 291, 294 (1995). The Act's provisions have been extended to (1) contractors working on military bases or U.S. government contracts outside the United States (Defense Base Act, 42 U.S.C. 1651–54); (2) employees of nonappropriated fund instrumentalities (Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171–73); (3) employees engaged in operations that extract natural resources from the outer continental shelf (Outer Continental Shelf Lands Act, 43 U.S.C. 1333(b)); and (4) private employees in the District of Columbia injured prior to July 26, 1982 (District of Columbia Workers' Compensation Act of May 17, 1928, Public Law 70–419 (formerly codified at 36 D.C. Code 501 *et seq.* (1973) (repealed 1979)). Consequently, the Act and its extensions cover a broad range of claims for injuries that occur throughout the United States and around the world.

OWCP's sound administration of these programs involves periodic reexamination of the procedures used for claims processing and related issues. OWCP has identified three areas where improvements can be made. The first is expanding electronic filing and requiring private parties to transmit all documents and information to OWCP electronically, except when the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. Receiving documents and information in electronic form speeds claims administration and simplifies recordkeeping requirements. The second is streamlining settlement procedures. This too should speed the settlement-approval process and lessen the parties' burdens to submit multiple documents to have a settlement considered. Finally, OWCP is updating its existing penalty regulations and filling a gap by proposing a procedural scheme for employers to challenge penalties assessed against them. These rules will better apprise employers of their obligations and give them a clear path to exercise their rights to challenge any penalty imposed by OWCP.

On April 28, 2020, OWCP hosted a public outreach webinar to solicit stakeholders' views on how OWCP could improve its processes in the three areas covered in this rulemaking. *See* E.O. 13563, sec. 2(c) (January 18, 2011) (requiring public consultation prior to issuing a proposed regulation). OWCP has considered the feedback received during that session in developing the proposed rules.

This rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

II. Direct Final Rulemaking

In addition to this Notice of Proposed Rulemaking (NPRM), OWCP is concurrently publishing a companion direct final rule (DFR) elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a DFR in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the DFR, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the DFR and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

By simultaneously publishing this NPRM with a DFR, notice-and-comment rulemaking will be expedited if OWCP receives significant adverse comment and withdraws the DFR. The proposed and direct final rules are substantively identical, and their respective comment

periods run concurrently. OWCP will treat comment received on the NPRM as comment regarding the companion DFR and vice versa. Thus, if OWCP receives significant adverse comment on either the NPRM or the DFR, OWCP will publish a **Federal Register** notice withdrawing the DFR and will proceed with this proposed rule.

For purposes of the DFR, a significant adverse comment is one that explains why the rule (1) is inappropriate, including challenges to the rule's underlying premise or approach; or (2) will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the DFR, OWCP will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the DFR would be ineffective without the addition.

OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts on the regulated community.

III. Overview of the Proposed Rule

A. Electronic Transmission of Documents and Information and Electronic Signatures

The Department's current regulations implementing the LHWCA at 20 CFR part 702 allow OWCP and private parties to exchange documents and information through certain electronic methods or in paper form, at the sender's option. 20 CFR 702.101. The Department added optional electronic transmission to the regulations in 2015. 80 FR 12917–33 (March 12, 2015). Since then, OWCP has continued to expand its use of electronic case files and is working towards a fully electronic case-file environment.

Electronic case files have many advantages, including allowing claims staff remote access to documents and information; efficient case file transmission to the Office of Administrative Law Judges, the Benefits Review Board, and other tribunals; elimination of possible mail-handling delays due to unforeseen weather or other events, safety restrictions, and the like; and cost savings in reduced copying, scanning, and storage of paper documents. Electronic filing methods are ubiquitous, and the public generally is very familiar with them. In addition to the substantial business conducted in a fully electronic environment, government agencies and court systems routinely use electronic transmission systems to receive documents and information. In fact, OWCP estimates that more than 80 percent of all documents it now receives in the Longshore program are transmitted electronically by the private parties.

For these reasons, the Department is now proposing a rule that would require all private parties transmitting documents and information to OWCP to do so electronically except when a district director allows a different filing method because the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. The exception is consistent with the E-Government Act of 2002's directive that agencies must ensure the continued availability of services for persons who do not have computers or internet access. Sec. 202(c), Public Law 107–347, 116 Stat. 2899, 2911 (44 U.S.C. 3501 note). OWCP envisions a simple process for requesting relief under the exception and will allow individuals to self-certify their inability to use electronic filing. OWCP is unaware of any law that would prohibit it from making electronic filing mandatory for all other parties.

In proposing this rule, OWCP has considered the principles underlying the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, and the Electronic Signatures in Global and National Commerce Act (E–SIGN), 15 U.S.C. 7001 *et seq.* GPEA requires agencies, when practicable, to store documents electronically and to allow individuals and entities to communicate with agencies electronically. The GPEA also provides that electronic documents and signatures will not be denied legal effect merely because of their electronic form. Similarly, E–SIGN generally provides that electronic documents have the same legal effect as their hard copy counterparts and allows electronic records to be used in place of hard copy documents with appropriate safeguards. 15 U.S.C. 7001. Under E–SIGN, federal agencies retain the authority to specify the means by which they receive documents, 15 U.S.C. 7004(a), and to modify the disclosures required by Section 101(c), 15 U.S.C. 7001(c), under appropriate circumstances.

Moreover, by 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); Delivering Government Solutions in the 21st Century at 22, 100–102 (June 21, 2018). Requiring electronic filings now will make more efficient OWCP's compliance with NARA's recordkeeping directives.

The proposed rules would also allow the use of electronically signed documents consistent with E–SIGN. In April 2020, the Longshore program began accepting documents signed using certain electronic methods. *See* Industry Notice No. 179 (April 20, 2020) *https://www.dol.gov/owcp/dlhwc/lsindustrynotices/industrynotice179.pdf.* This rule would codify that practice. Allowing the use of improvements in signature technology will facilitate an easier and faster exchange of documents between parties and OWCP. The use of electronic signatures is voluntary, and parties may continue to submit documents with ''wet'' ink signatures, so long as they are scanned and submitted electronically. At the same time, OWCP is conscious of the need to safeguard the integrity of electronic signatures and to ensure that each signature truthfully reflects the purported signatory's intent to sign. To that end, the proposed rule sets out criteria to be followed by parties submitting electronically-signed documents.

B. Streamlining the Settlement Process

Section 8(i) of the Act, 33 U.S.C. 908(i), allows parties to settle compensation cases. Parties may agree to settle amounts payable for disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator—a district director or an administrative law judge—must review each settlement application. Unless the settlement amount is inadequate or was procured by duress, the adjudicator must approve it. Section 8(i) also provides that when all parties are represented by counsel, a settlement application is deemed approved 30 days after its submission if the adjudicator does not disapprove it.

The settlement application process should be easy for the parties to follow and lead to prompt resolution of compensation cases. However, in some instances, the settlement application process has become overly complicated. To justify the settlement application, parties submit large amounts of documentation (*e.g.,* all of the employee's medical treatment records) that is well beyond what is necessary for full consideration of the application in most cases. In addition to the extra burdens placed on parties, this practice creates unnecessary administrative burdens for OWCP and the Office of Administrative Law Judges (OALJ).

The proposed revisions of the settlement regulations at §§ 702.241–702.243 would streamline the application process by focusing on the relevant information the parties must initially submit to properly adjudicate the settlement application. The adjudicator may then exercise his or her discretion and ask for additional documentation from the parties in those cases where necessary to determine whether the settlement is adequate in amount and procured without duress. The proposed rules also allow the adjudicator to defer to the parties' representations regarding the adequacy of the settlement amount and whether the settlement was procured by duress. The Department believes these changes will make both the application and approval process more efficient, lessening the burden on parties and adjudicators alike. The Department has also taken this opportunity to propose reorganizing, and in some cases simplifying, much of the information contained in the current settlement regulations.

C. Procedures for Civil Money Penalties

The proposed regulations contain new and amended provisions implementing the Act's civil money penalty provisions. The Act allows OWCP to impose a penalty when an employer or insurance carrier fails to timely report a work-related injury or death, 33 U.S.C. 930(e), or fails to timely report its final payment of compensation to a claimant, 33 U.S.C. 914(g). *See* 20 CFR 702.204, 702.236. An employer who discharges or discriminates against an employee because of that employee's attempt to claim compensation under the Act may also be penalized. 33 U.S.C. 948a; 20 CFR 702.271. The proposed rule would revise current § 702.204 to provide for graduated penalties for an entity's failure to file, or falsification of, the required report of an employee's work-related injury or death. *See* 33 U.S.C. 930(a); 20 CFR 702.201. The proposed rule provides that the penalty assessed will increase for each additional violation the employer has committed over the prior two years. The current regulation states only the maximum penalty allowable, without providing further guidance.

The proposed regulations also contain a new Subpart I setting out procedures for assessing and challenging penalties. These rules would allow an entity against whom a penalty is assessed the opportunity for a hearing before an administrative law judge, and to petition the Secretary of Labor (Secretary) for further review. After receiving notice from the district director that the assessment of a penalty is being considered and a subsequent decision assessing the penalty, the respondent may request a hearing before an administrative law judge. The ensuing decision will address whether the respondent violated the statutory or regulatory provision under which the penalty was assessed, and whether the amount of the penalty assessed is correct. Any party aggrieved by the decision may petition for the Secretary's review, which will be discretionary and based on the record. These additional levels of review are consistent with Recommendation 93–1 of the Administrative Conference of the United States, which recommends that formal adjudication under the Administrative Procedure Act be made available where a civil money penalty is at issue. The proposed procedures will fully protect employers' and insurance carriers' rights to challenge OWCP's action before any penalty becomes final and subject to collection, and ensure transparency and fairness in the enforcement proceedings. *See generally* Executive Order 13892, *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication* (October 9, 2019).

IV. Section-by-Section Analysis

A. Regulations Related to Electronic Transmission of Documents and Information and Electronic Signatures

Section 702.101 Exchange of Documents and Information; Electronic Signatures

Proposed § 702.101 revises several parts of the current regulation to require electronic submission of all documents and information to OWCP, permits the use of electronic signatures, and amends the title of the regulation to include electronic signatures. Proposed paragraph (a) begins by excepting from the mandatory electronic submission and exchange requirements those instances where the statute either allows filings by mail or mandates service by mail: Sections 702.203 (employer's report of injury or death, implementing 33 U.S.C. 930(d)), 702.215 (notice of injury or death, implementing 33 U.S.C. 912(c)), and 702.349 (service of compensation orders, implementing 33 U.S.C. 919(e)). Although parties are not required to submit reports and notices of injury or death to OWCP electronically, OWCP encourages them to do so.

Proposed paragraph (a) combines current paragraphs (a) and (b) and breaks the combined text into three subsections that address three categories of document and information exchanges. Paragraph (a)(1) provides that parties (and their representatives) sending documents and information to OWCP must submit them electronically through an OWCP-authorized system. OWCP's Secure Electronic Access Portal (SEAPortal) is an example of such a system. A district director may make an exception to this rule for parties who do not have computers or access to the internet, or who lack the ability to use the internet. When a district director authorizes a party to use an alternative submission method, the party may use any of the methods set forth in the current rule: Postal mail, commercial delivery service, hand delivery, or another method OWCP authorizes. In all instances, documents are considered filed when received by OWCP.

Proposed paragraph (a)(2) provides that OWCP may send documents and information to parties and their representatives by a reliable electronic method (*e.g.,* email), postal mail, commercial delivery service, hand delivery, or electronically through an OWCP-authorized system. These methods are the same as those in the current regulation with one exception. For documents and information OWCP sends via a reliable electronic method, the proposed rule eliminates the requirement that the party or representative must agree in writing to receive documents by that method. OWCP is now routinely obtaining electronic contact information, such as email addresses, from parties and representatives, and plans to increase its use of standard electronic business communication practices. Service of compensation orders, however, would still be governed by § 702.349 and thus be sent electronically only when a party or representative affirmatively waives their statutory right to registered or certified mail service.

Proposed paragraph (a)(3) governs exchange of documents and information between opposing parties and representatives. Like the current rule, the proposed provision allows the parties flexibility to choose the method of service they wish to use. They may use the same methods as OWCP, although parties must agree in writing to receive documents by a reliable electronic method. Requiring written confirmation from the recipient will continue to protect all parties and representatives from any misunderstandings about service.

Proposed paragraph 702.101(g) is a new provision that allows parties to submit electronically-signed documents to OWCP. The rule is intended to permit the widest possible use of electronic

technology. Electronic signatures would be accepted on all submissions to OWCP that require a signature, not merely those non-exhaustive examples listed in the text of the proposed rule.

Proposed paragraph (g)(1) explains how key terms are used in the remainder of the paragraph. A ''document'' includes both paper and electronic writings. The documents listed in this definition—applications, claim forms, notices of payment, and reports of injury—are meant to serve as examples of the types of documents parties could electronically sign and submit to OWCP, but are not meant to be an exhaustive list. Electronic signatures on other types of documents not listed here would also be accepted by OWCP.

An ''electronic signature'' is a mark created by electronic means that shows an intent to sign the document. An electronic signature is binding on a business entity only if the signatory has appropriate legal authority to bind the entity.

''Electronic signature devices'' are tools parties may use to create electronic signatures. As with documents, the examples of electronic signature devices provided in this paragraph are not an exhaustive list. Parties could utilize other types of electronic signature devices, as long as the device is uniquely usable by the signatory at the time the signature is made. The purpose of this limitation is to ensure the signature's trustworthiness. The definition of ''electronic signature programs'' is designed to permit the submission of documents electronically signed with third-party software programs such as—but not limited to—AdobeSign, DocuSign, and E-Sign.

The definition of ''signatory'' is limited to individual, human persons; a corporation or business cannot be a signatory, though a signatory can sign on behalf of a corporation or business. This definition is designed to ensure that if the validity of a signature is challenged, it will be possible for all parties involved to verify who created it.

Proposed paragraph (g)(2) lists the allowable methods for creating and affixing electronic signatures and adds the proviso that OWCP can approve other methods.

Proposed paragraph (g)(3) clarifies that all electronic signatures made on the same document need not be created by the same method; a document could, for example, contain a ''/s'' signature from a claimant (as specified in paragraph (g)(2)(iii)) and a separate signature from an employer's agent made by drawing a mark with a stylus on a touch-screen (as specified in paragraph (g)(2)(iv)). OWCP recognizes that some of the methods described in paragraph (g)(2) may overlap. For example, an electronic signature program may involve a signatory first logging in through the use of an electronic signature device such as a PIN number, and then typing their name following a ''/s'' mark. A signature that incorporates multiple acceptable methods is still an acceptable electronic signature. These provisions are designed to be as inclusive as possible while militating against the possibility of abuse or fraud.

Finally, proposed paragraph (g)(4) would impose obligations on parties that submit electronically-signed documents. This subparagraph is designed to mitigate the possibility of a legal challenge to the integrity of a signature or the identity of the signatory. Paragraph (g)(4)(i) is designed to prevent the use of signatures that leave the actual identity of the signatory ambiguous; examples of such signatures might be those that indicate only a PIN, ambiguous username, or email address that is shared by multiple members of a business or other organization. Paragraphs (g)(4)(ii)–(iii) impose record-keeping obligations on parties. By requiring parties to keep information about how and when an electronic signature was created, OWCP ensures that some means of authenticating the signature exists if the document's validity is ever disputed.

The remaining proposed revisions to § 702.101 are technical in nature. Existing paragraphs (c)–(f) are renumbered to (b)–(e), and cross-references to other paragraphs throughout the section have been updated. In addition, because proposed paragraph (a)(2) would not require parties and representatives to consent in writing to receive documents and information from OWCP via reliable electronic methods, proposed paragraph (c) removes the words ''OWCP'' and ''as appropriate'' from current paragraph (d). Even though much of § 702.101 remains unchanged, the Department has chosen to re-publish the section in full for the public's convenience.

Section 702.203 Employer's Report; How Given

Section 30 of the Longshore Act, 33 U.S.C. 930, governs how and when employers must report employee injuries and deaths. In general, employers must send reports within 10 days of the injury or death, or knowledge of an injury or death. The Act explicitly allows an employer to comply with the reporting requirement by ''mailing'' the report ''in a stamped envelope, within the time prescribed.'' 33 U.S.C. 930(d). Current § 702.203(b), which implements section 30(d), acknowledges this mailing provision and provides that employers may send the reports to OWCP by U.S. Postal mail, commercial delivery service, or electronically. To encourage electronic filing yet preserve the statutory mail provision, proposed § 702.203(b) eliminates commercial delivery service as a submission option but retains the mailing provisions. If an employer chooses to mail the report, the rule places the burden on the employer to preserve evidence of the date the report is mailed to OWCP. This could easily be accomplished by using certified mail. Finally, to clarify electronic submission procedures, the proposed rule requires submission via an OWCP-authorized system and includes a cross-reference to proposed § 702.101(a)(1). This revision eliminates the use of other electronic transmission methods and the need to specify when filing is complete under those methods.

Section 702.215 Notice; How Given

Section 12 of the Longshore Act, 33 U.S.C. 912, governs how and when employees and survivors give notices of injury or death to employers and OWCP. The Act requires that such notices be given to the district director ''by delivering it to him or sending it by mail addressed to his office.'' 33 U.S.C. 912(c). Without amendment of current § 702.215, the proposed revisions to § 702.101 would effectively eliminate this statutory mailing option. Section 702.215 provides that ''[n]otice may be given to the district director by submitting a copy of the form supplied by OWCP to the district director, or orally in person or by telephone.'' The ''submitting'' language brings to bear the transmission methods specified in § 702.101. *See* 20 CFR 702.101(e); 48 CFR 12921 (March 12, 2015). Since proposed § 702.101(a) would require electronic filing of these notices, OWCP proposes to amend § 702.215 to preserve the option of filing by mail in compliance with the Act. The proposed rule makes clear that employees and survivors may also file these notices electronically through an OWCP-authorized system.

B. Regulations Pertaining to Settlements

Section 702.241 Settlements: Definitions; General Information

Proposed § 702.241 contains basic information about settlements under section 8(i) of the Longshore Act, 33 U.S.C. 908(i). Proposed paragraph (a) retains the current definition of the term

''Adjudicator,'' adds a definition for ''Compensation case,'' and includes the definition for ''Counsel'' located in current § 702.241(h). Paragraph (b) sets out several basic concepts: That an adjudicator must approve all settlements; the types of compensation, fees, and costs that a settlement may include; the ''inadequate'' and ''procured by duress'' standard applied in reviewing settlements; and, where all parties are represented by counsel, that the settlement is deemed approved 30 days after receipt of a completed application unless an adjudicator requests additional information or disapproves the application within that time period.

Proposed paragraph (c) specifies when a settlement application is considered received by an adjudicator or higher tribunal. The proposed rule eliminates the provision in current § 702.241(c) allowing settlement applications filed with an administrative law judge to be considered received ''five days before the date on which the formal hearing is scheduled to be held.'' In OWCP's experience, judges act quickly on settlement applications when received. Removing this provision will help eliminate any confusion parties may have over when a judge will consider their settlement proposal and promote prompt resolution. Paragraph (d) retains the provision in current § 702.241(f) regarding days that count towards the 30-day settlement period. And paragraph (e) retains the provision in current § 702.241(g) that limits settlements to claims in existence at the time of the settlement and provides that settlements for the injured employee do not affect survivors' claims for death benefits.

Additional note: Current § 702.241(b) has been moved to proposed § 702.242(e) and revised. Current § 701.241(d) has been moved to proposed § 702.243(f) and revised. Current § 701.241(e) has been moved to proposed § 702.243(i) and revised.

Section 702.242 Settlement Application; Contents and Submission

Proposed § 702.242 sets out the information parties must include in a settlement application and how parties must submit the application. Paragraph (a) simplifies the requirements in current § 702.242(a) by requiring that the parties use an application form prescribed by OWCP. The form will be a self-sufficient document that requires all information necessary for a complete application and signatures necessary to indicate agreement to the settlement. The form will also apprise claimants of the effect of the settlement (*e.g.,* waiver of rights to further compensation). Using a form should simplify the application process for the parties, who will no longer have to create their own documents. A form also has the advantage of allowing OWCP to adopt technology that will allow full online completion and submission of the settlement application.

Proposed paragraph (a) also lists the components that must be included in the settlement application. In large part, this list reflects the requirements set forth in current § 702.242(a) and (b). Parties are required to include basic facts about the case, amounts to be paid under the settlement, the signatures of the parties agreeing to the settlement and attesting that the settlement is adequate and not procured by duress, and a statement regarding severability of the parts of the settlement, where appropriate.

Proposed paragraph (b) provides that the adjudicator can request any additional information he or she deems necessary to decide whether the settlement is adequate or was procured by duress. This allows the adjudicator to tailor a request for additional information (*e.g.,* a medical report, projections of future medical treatment expenses) to the facts of the particular case. Paragraph (c) limits the adjudicator's consideration to the information in the application, any specific information the adjudicator requests from the parties, and information in the case record when the settlement application is filed.

Proposed paragraphs (d) and (e) prescribe how parties submit completed settlement applications. These provisions require parties to submit applications to the district director except when the case is pending before the OALJ. In that instance, parties may either ask OALJ to remand the case to the district director and then submit the application to the district director after remand or submit the application to OALJ for consideration. Parties who submit settlement applications while a case is pending before a higher tribunal—the Benefits Review Board or a court—must submit them to the district director and ask the tribunal to return the case to the district director, who is an adjudicator with the authority to consider the application. These procedures reflect current practice.

Section 702.243 Settlement Approval and Disapproval

Proposed § 702.243 governs how settlement applications are reviewed and the consequences of that review. Proposed paragraph (a) requires adjudicators to review the settlement application within 30 days of receipt. During that time period, the adjudicator must notify the parties if the application is incomplete and ask for any additional information as allowed under proposed § 702.242(b). The notice must also inform the parties that the 30-day period in proposed § 702.241(b) will not begin to run until the adjudicator receives the completed application and additional information. This formulation is consistent with current § 702.243(a), which states that an incomplete application tolls the 30-day time period for deeming the application approved.

Proposed paragraph (b) combines two requirements in current § 702.243(b) and (c) regarding adjudicating a settlement. The adjudicator must issue a compensation order approving or disapproving the settlement application. If the application is disapproved in any part, the adjudicator must include a statement of the reasons for finding the settlement (or part thereof) inadequate or procured by duress. This provision also requires the adjudicator to file and serve the compensation order under the procedures set forth in § 702.349. Although OWCP already follows these procedures, adding a reference to § 702.349 will ensure that parties will be able to choose to receive orders on settlements via electronic means rather than by registered or certified mail.

Proposed paragraph (c) instructs adjudicators to consider the information in the settlement application, any additional information the adjudicator requested under proposed § 702.242(b), and the parties' attestations in the application in determining whether the proposed settlement is adequate and was procured without duress. The rule also allows the adjudicator to defer to the parties' attestations regarding adequacy and duress. This provision replaces current § 702.243(f)'s more detailed standard for determining whether the settlement amount is adequate, allowing the adjudicator to consider only that information important to the particular case.

Like current § 702.243(e), proposed paragraph (d) continues to provide that disapproval of any part of a settlement applies to the entire settlement unless the parties state in the application that they agree to settle various parts independently. OWCP will incorporate this question into the settlement application.

Proposed paragraph (e) sets out the actions parties may take after an adjudicator disapproves a settlement application. When disapproved by a district director, the parties may submit an amended settlement application to

the district director or request an administrative law judge hearing on the disapproval. Any party may also ask for an administrative law judge hearing on the merits of the case. Similarly, when disapproved by an administrative law judge, the parties may submit an amended settlement application to the judge, appeal to the Benefits Review Board, or proceed with a hearing on the merits.

Proposed paragraph (f) sets out the circumstances when a settlement is deemed approved. Consistent with section 8(i)(1), 33 U.S.C. 908(i)(1), this regulation applies only when all parties are represented by counsel. If the adjudicator neither approves nor disapproves the settlement application within 30 days after an adjudicator receives a complete application and any additional information the adjudicator requests under proposed § 702.242(b), the settlement will be deemed approved.

Proposed paragraph (g) retains the provision in current § 702.243(b) that an employer's and insurance carrier's liability for a compensation case is not discharged until the settlement application is approved. This includes both approvals issued by an adjudicator and those settlements deemed approved under the provisions of this section.

Proposed paragraph (h) addresses the effect of settling attorney fees. The rule retains the thrust of the provision in current § 702.241(e): Approval of a settlement application that includes attorney fees constitutes approval of fees for all purposes. Paragraph (h) adds that fees in a settlement application may include fees for services rendered before a different adjudicator or tribunal. This will allow one adjudicator to resolve all fee maters, eliminating any need for the parties to seek fee resolutions from any other adjudicator or tribunal.

Proposed paragraph (i) revises current § 702.243(g) regarding how adjudicators consider settlements in cases being paid under a final compensation order. The current regulation requires adjudicators to disapprove any settlement amount that falls below the present value of compensation payments commuted (as prescribed in the regulation) unless the parties show that the amount is adequate. Proposed paragraph (i) expands the adjudicator's discretion by making the comparison between the settlement and commuted amounts permissible rather than mandatory. This will allow the adjudicator more flexibility to ratify the parties' agreement as to the settlement amount. OWCP also proposes to remove from current § 702.243(g) the reference to the U.S. Life Table developed by the Department of Health and Human Services. This table is insufficient because it does not provide life expectancies for people in foreign countries that could be covered by the Longshore Act or its extensions, particularly the Defense Base Act. Proposed paragraph (i) instead allows OWCP to specify the life expectancy tables or calculators to be used under this provision.

C. Regulations Related to Civil Money Penalties

Section 702.204 Employer's Report; Penalty for Failure To Furnish or for Falsifying

Proposed § 702.204 revises the current regulation in several ways. First, paragraph (a)(1) defines a knowing or willful violation sufficient to impose a penalty. Paragraph (c) provides that the number of penalties assessed in the prior two years against an entity—including its parent company, subsidiaries, or related entities—will be considered in assessing further penalties. Paragraph (c) also lists the penalty amounts that will be imposed, beginning at two percent of the maximum penalty amount for a first violation, with the penalty doubling for each subsequent violation through the sixth violation. The seventh violation will result in the maximum penalty. OWCP has proposed a percentage scheme because the maximum penalty amount will be adjusted every year under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701.

Section 702.233 Additional Compensation for Failure To Pay Without An Award

OWCP proposes to substitute the phrase ''additional compensation'' for the word ''penalty'' in § 702.233's current title (*i.e.,* ''Penalty for failure to pay an award''). Section 702.233 implements section 14(e) of the Act, 33 U.S.C. 914(e), which provides that claimants are entitled to an additional 10 percent of any compensation payable without an award when not paid within 14 days of when it is due. The Board has held that payments under section 14(e) are ''compensation'' and not ''penalties.'' *Robirds* v. *ICTSI Oregon, Inc.,* 52 BRBS 79 (2019)(en banc); *appeal docketed* Ninth Cir. No. 19–1634. In reaching its conclusion, the Board relied on the Federal Circuit's decision in *Ingalls Shipbuilding, Inc.* v. *Dalton,* 119 F.3d 972, 979 (Fed. Cir. 1997), which held that payments under section 14(e) are compensation. The majority of courts have also construed the similar language in section 14(f) of the Act, 33 U.S.C. 914(f) (requiring payment of additional 20 percent for late payments under terms of an award), as payments of ''compensation'' rather than a penalty. *See Newport News Shipbuilding and Dry Dock Co.* v. *Brown,* 376 F.3d 245, 251 (4th Cir. 2004) (''[I]t is plain that an award for late payment under [section] 14(f) is compensation.''); *Tahara* v. *Matson Terminals, Inc.,* 511 F.3d 950, 953–54 (9th Cir. 2007) (same); *but see Burgo* v. *General Dynamics Corp.,* 122 F.3d 140, 145–46 (2d Cir. 1997). Using ''additional compensation'' in the title of § 702.233 promotes accuracy and clarifies the instances in which the new penalty procedures apply.

Section 702.236 Penalty for Failure To Report Termination of Payments

Proposed § 702.236 revises the current rule to incorporate the penalty procedural rules proposed in new Subpart I.

Section 702.271 Discrimination Against Employees Who Bring Proceedings; Prohibition

Proposed § 702.271 revises the current rule by dividing paragraph (a) into paragraphs (a) and (b), and renumbering the subdivisions of paragraph (a), for clarity. Current paragraph (a)(2) is deleted and replaced by proposed § 702.273, which sets forth the range of penalties to be assessed and incorporates the penalty procedural rules proposed in new Subpart I. Given this change, the words ''and penalty'' are deleted from the section's title and the punctuation has been altered. Current paragraphs (b), (c), and (d) are redesignated (c), (d), and (e).

Section 702.273 Penalty for Discrimination

Proposed § 702.273 replaces and revises current § 702.271(a)(2). It sets forth the range of penalties for discharge or discrimination, and incorporates the penalty procedural rules proposed in new Subpart I. The proposed rule also stays proceedings on any penalty assessed by the district director prior to a hearing until the Administrative Law Judge or higher tribunal resolves the underlying discrimination complaint.

Section 702.901 Scope of This Part

Proposed § 702.901 provides that the procedures set forth in Subpart I apply when the district director imposes civil monetary penalties under §§ 702.204, 702.236, or 702.273, and that any

penalties collected are to be deposited into the special fund described in 33 U.S.C. 944.

Section 702.902 Definitions

Proposed § 702.902 defines ''respondent'' as the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a penalty.

Section 702.903 Notice of Penalty; Response; Consequences of No Response

Proposed § 702.903 is a new provision governing OWCP's notice of any penalty assessed and the respondent's response. Paragraph (a) requires OWCP to serve a written notice on the respondent by a method that verifies the delivery date because date of receipt triggers the respondent's response period. Paragraph (b) prescribes the contents of the notice, which include the consequences of not responding to the notice or supplying an inadequate response. Paragraph (c) gives the respondent 30 days to respond with documentation regarding any facts relevant to the reason for the penalty, as well as any documentation that may lead to mitigation of the penalty amount under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236. Paragraph (d) provides that, if there are further proceedings before an administrative law judge, that judge may consider only the evidence submitted to the district director, unless exceptional circumstances prevented the respondent from submitting it to the district director. OWCP has proposed this restriction so that OWCP can evaluate all evidence the respondent wishes to introduce in assessing the penalty. Finally, paragraph (e) provides that if the respondent does not respond within 30 days, the assessment of the penalty and its amount becomes final and collection may begin under § 702.912.

Section 702.904 Decision on Penalty After Timely Response; Request for Hearing

Proposed § 702.904 addresses the district director's decision and any appeal to an administrative law judge. Paragraph (a) provides that the district director's decision must state the reasons for the assessment of the penalty and its amount, and set forth the consequences of a respondent's failure to timely respond. Paragraph (b) provides that the respondent may request a hearing before an administrative law judge within 15 days of receiving the decision by filing a request with the district director, and sets forth the requirements the request must meet. Paragraph (c) provides that a timely hearing request will stay the collection of a penalty until final resolution of the penalty by the administrative law judge or the Secretary. Paragraph (d) provides that, if the respondent does not request a hearing within 15 days, the assessment and penalty become final, and collection of the penalty may be instituted under § 702.912.

Section 702.905 Referral to the Office of Administrative Law Judges

Proposed § 702.905 addresses referral of an assessment and penalty for a hearing before an administrative law judge. Paragraph (a) provides that, when the district director receives a request for hearing, the district director will immediately notify the Chief Administrative Law Judge, who will assign the case to an administrative law judge. The district director will also forward the administrative record, which consists of the district director's decision, the documentation the district director relied on in making the decision, all written responses and documentation filed by the respondent with the district director, and a statement of the issues referred for hearing. Paragraph (b) provides that the rules set forth in 29 CFR part 18 will apply to any hearing before an administrative law judge.

Section 702.906 Decision and Order of Administrative Law Judge

Proposed § 702.906 governs the contents, issuance, service, and finality of the administrative law judge's decision. Paragraph (a) provides that the administrative law judge may consider only the issues referred for hearing by the district director. Paragraph (b) limits the administrative law judge's determinations on those issues to whether the respondent has violated the provision under which the penalty was assessed, and whether the penalty is appropriate under the standards set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2). Limiting the judge's consideration to these issues will help streamline the hearing and decision process. Paragraph (c) requires the administrative law judge's decision to include a statement of findings and conclusions on each issue referred, with the reasons and bases for those findings and conclusions. Paragraph (d) requires the administrative law judge to serve both the respondent and the district director with the decision on the day it is issued through a trackable delivery method. Paragraph (e) provides that any party may move for reconsideration of the decision within 30 days of its issuance, and that any such motion will suspend the running of time to file a petition for review under § 702.908. Paragraph (f) provides that, absent a timely request for reconsideration or petition for review, the administrative law judge's decision will be deemed final, and recovery of the penalty may be instituted under § 702.912.

Section 702.908 Review by the Secretary

Proposed § 702.908 allows any party aggrieved by an administrative law judge's decision to petition the Secretary for review. Paragraph (a) requires that any petition be filed within 30 days. Under paragraph (b), a timely motion for reconsideration filed with the administrative law judge tolls the time for filing a petition with the Secretary; the 30-day period will not begin to run until the judge issues a decision on reconsideration. Paragraph (c) sets out the requirements for the petition for review. And paragraph (d) provides the mailing address for sending the petition but allows the Secretary to designate alternative filing methods, such as an electronic filing system. Documents are not considered filed until actually received by the Secretary.

Section 702.909 Discretionary Review

Proposed § 702.909(a) provides that the Secretary's review of a timely petition is discretionary. Paragraph (a)(1) provides that, if the Secretary declines review, the administrative law judge's decision will be considered the final agency decision. Under paragraph (b)(2), if the Secretary chooses to review the decision, the Secretary will notify the parties of the issues to be reviewed and set a schedule for the parties to submit written arguments. Paragraph (b) requires the district director to forward the administrative record to the Secretary if the Secretary decides to review the administrative law judge's decision.

Section 702.910 Final Decision of the Secretary

Proposed § 702.910 limits the Secretary's review to the hearing record. The Secretary will review findings of fact under a substantial evidence standard and conclusions of law de novo. The Secretary may affirm, reverse, modify, or vacate the decision, and may remand to the Office of Administrative Law Judges for further review. The Secretary's decision must be served on all parties and the Chief Administrative Law Judge.

Section 702.911 Settlement of Penalty

Proposed § 702.911 provides that the respondent and the district director may enter into a settlement at any time during proceedings before the administrative law judge or the Secretary. This provision is meant to allow flexibility and forestall further litigation if the district director and the respondent reach agreement at any point during the proceedings.

Section 702.912 Collection and Recovery of a Penalty

Paragraph (a) of proposed § 702.912 provides that, when a penalty becomes final under §§ 702.903(e), 702.904(d), or 702.906(f), the penalty is immediately due and payable to the Department on behalf of the special fund described in 33 U.S.C. 944. Paragraph (b) provides that, if payment is not received within 30 days after it becomes due and payable, it may be recovered by a civil action brought by the Secretary.

V. Legal Basis for the Proposed Rule

Section 39(a) of the LHWCA, 33 U.S.C. 939(a)(1), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration of the Act. The LHWCA also grants the Secretary authority to determine by regulation how certain statutory notice and filing requirements are met. *See* 33 U.S.C. 907(j)(1) (the Secretary is authorized to ''make rules and regulations and to establish procedures'' regarding debarment of physicians and health care providers under 33 U.S.C. 907(c)); 33 U.S.C. 912(c) (employer must notify employees of the official designated to receive notices of injury ''in a manner prescribed by the Secretary in regulations''); 33 U.S.C. 919(a) (claim for compensation may be filed ''in accordance with regulations prescribed by the Secretary''); 33 U.S.C. 919(b) (notice of claim to be made ''in accordance with regulations prescribed by the Secretary''); 33 U.S.C. 935 (''the Secretary shall by regulation provide for the discharge, by the carrier,'' of the employer's liabilities under the Act). This rule falls well within these statutory grants of authority.

VI. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. 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 the Office of Management and Budget (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.

If the proposed rule is adopted in final, all forms and documents currently approved by OMB are subject to electronic submission except when a party obtains permission from OWCP to use a different submission method or otherwise provided by statute. The Department has submitted an Information Collection Request (ICR) for all of these forms under the procedures for review and clearance contained in 5 CFR 1320.13. The Exchange of Documents and Information; Electronic Signatures Rule (*see* proposed § 702.101) does not materially change any other ICR with regard to the information collected, but does change the manner in which forms that collect information may be submitted. The Department will require private parties to use an electronic method for the transmission of information to OWCP.

The collection of information requirements are contained within ICRs assigned the following OMB control numbers: 1240–0003, 1240–0004, 1240–0005, 1240–0008, 1240–0012, 1240–0014, 1240–0025, 1240–0026, 1240–0029, 1240–0036, 1240–0040, 1240–0041, 1240–0042, 1240–0045, 1240–0053, and 1240–0058. The regulatory sections specifying the submission procedures are found in the following sections: 20 CFR 702.111, 702.121, 702.132, 702.162, 702.174, 702.175, 702.201, 702.202, 702.221, 702.234, 702.235, 702.236, 702.242, 702.243, 702.251, 702.285, 702.317, 702.321, 702.349, 702.407, 702.419, 703.116, 703.203, 703.204, 703.205, 703.209, 703.210, 703.212, 703.303, and 703.310. *See also* 42 U.S.C. 1652.

Although the rule does not eliminate current methods of submission for these collections by mail where consistent with statute, the parties will have to submit more documents electronically. OWCP anticipates electronic submission will lead to cost savings in hours and mailing costs (envelopes and postage) for the parties. Given the response rate for each of the existing collections, current combined mailing costs are estimated at $118,657. Once the rule becomes final, the Department anticipates a 97 percent rate of electronic submission, an accompanying reduction in postal mail submission, and a resulting cost savings of $115,097. The Department has submitted a request to OMB for a non-substantive change for each existing ICR cited above to obtain approval for the changed cost estimate resulting from electronic submission.

The proposed rule imposes two new information collections. First, proposed § 702.201(a)(1)(i) generally requires parties and their representatives to submit documents and information electronically to OWCP. But the rule allows an OWCP district director to allow an alternative filing method for individuals who do not have a computer, access to the internet, or the ability to use the internet. OWCP plans to use a new form that will allow individuals to self-certify that they qualify for this exception. For this form, OWCP estimates 3,048 respondents with an annual time burden of 254 hours. Because this form will only be used when other documents are being submitted, there is no additional cost burden. Second, proposed § 702.242 requires parties to apply for approval of a settlement using an application form prescribed by OWCP. As explained in the section-by-section analysis above, OWCP believes use of a comprehensive form will lessen the burdens on the parties and the adjudicators who must review the settlements. Although OWCP already has an approved settlement application form (*see* OMB control number 1240–0058, Form LS–8), the new form will collect some additional information in a substantially revised format. For this form, OWCP estimates 5,400 respondents with an annual time burden of 1,782 hours and other costs burden of $289.17. The Department has submitted a request to OMB for approval of both new information collections.

The submitted ICRs for the new collections imposed by this rule will be available for public inspection for at least 30 days under the ''Currently Under Review'' portion of the Information Collection Review section on the *reginfo.gov* website, available at: *http://www.reginfo.gov/public/do/PRAMain.* Currently approved information collections are available for public inspection under the ''Current Inventory'' portion of the same website.

Request for Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department 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. 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. Comments on the information collection requirements may be submitted to the Department in the same manner as for any other portion of this rule.

In addition to having an opportunity to file comments with the agency, the PRA provides that an interested party may file comments on the information collection requirements in a proposed rule directly with the Office of Management and Budget, at Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the general addressee for this rulemaking. The OMB will consider all written comments it receives within 30 days of publication of this NPRM in the **Federal Register**. To help ensure appropriate consideration, comments should mention at least one of the OMB control numbers noted in this section.

The OMB and the Department are particularly interested in comments that address the following:

- 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, through the use of appropriate automated, electronic, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collections in this rule may be summarized as follows:

1. *Title of Collection:* Employer's First Report of Injury or Occupational Disease, Employer's Supplementary Report of Accident or Occupational Illness.
OMB Control Number: 1240–0003.
Total Estimated Number of Responses: 24,631.
Total Estimated Annual Time Burden: 6,158 hours.
Total Estimated Annual Other Costs Burden: $232.76.

2. *Title of Collection:* Carrier's Report of Issuance of Policy.
OMB Control Number: 1240–0004.
Total Estimated Number of Responses: 1,500.
Estimated Annual Time Burden: 25 hours.
Total Estimated Annual Other Costs Burden: $0.47.

3. *Title of Collection:* Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions.
OMB Control Number: 1240–0005.
Total Estimated Number of Responses: 695.
Estimated Annual Time Burden: 869 hours.
Total Estimated Annual Other Costs Burden: $12.08.

4. *Title of Collection*: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.
OMB Control Number: 1240–0014.
Total Estimated Number of Responses: 90.759.
Estimated Annual Time Burden: 32,971 hours.
Estimated Annual Other Costs Burden: $786.09.

5. *Title of Collection:* Request for Earnings Information.
OMB Control Number: 1240–0025.
Total Estimated Number of Responses: 100.
Estimated Annual Time Burden: 25 hours.
Estimated Annual Other Costs Burden: $0.95.

6. *Title of Collection:* Application for Continuation of Death Benefit for Student.
OMB Control Number: 1240–0026.
Total Estimated Number of Responses: 20.
Total Estimated Annual Time Burden: 10 hours.
Total Estimated Annual Other Costs Burden: $0.19.

7. *Title of Collection:* Request for Examination and/or Treatment.
OMB Control Number: 1240–0029.
Total Estimated Number of Responses: 90,000.
Estimated Annual Time Burden: 48,750 hours.
Total Estimated Annual Other Costs Burden: $2,532,816.

8. *Title of Collection:* Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement.
OMB Control Number: 1240–0036.
Total Est. Number of Responses: 3,513.
Estimated Annual Time Burden: 586 hours.
Total Estimated Annual Other Costs Burden: $61.13.

9. *Title of Collection:* Certification of Funeral Expenses.
OMB Control Number: 1240–0040.
Total Estimated Number of Responses: 75.
Total Estimated Annual Time Burden: 19 hours.
Total Estimated Annual Other Costs Burden: $0.71.

10. *Title of Collection:* Notice of Final Payment or Suspension of Compensation Benefits.
OMB Control Number: 1240–0041.
Total Estimated Number of Responses: 37,800.
Total Estimated Annual Time Burden: 6,300 hours.
Total Estimated Annual Other Costs Burden: $357.21.

11. *Title of Collection:* Notice of Controversion of Right to Compensation.
OMB Control Number: 1240–0042.
Total Estimated Number of Responses: 18,000.
Total Estimated Annual Time Burden: 4,500 hours.
Total Estimated Annual Other Costs Burden: $295.97.

12. *Title of Collection:* Request for Electronic Service of Orders—Waiver of Certified Mail Requirement.
OMB Control Number: 1240–0053.
Total Estimated Number of Responses: 14,000.
Estimated Annual Time Burden: 770 hours.
Estimated Annual Other Costs Burden: $0.00.

13. *Title of Collection:* Request for Intervention, Longshore and Harbor Workers' Compensation Act.
OMB Control Number: 1240–0058.
Total Estimated Number of Responses: 12,414.
Total Estimated Annual Time Burden: 3,189 hours.
Total Estimated Annual Other Costs Burden: $342.91.

14. *Title of Collection:* Rehabilitation Plan and Award.
OMB Control Number: 1240–0045.
Total Estimated Number of Responses: 3,913.
Estimated Annual Time Burden: 1957 hours.
Estimated Annual Other Costs Burden: $0.00.

15. *Title of Collection:* Rehabilitation Maintenance Certificate.
OMB Control Number: 1240–0012.
Total Estimated Number of Responses: 3,452.

Estimated Annual Time Burden: 575 hours.

Estimated Annual Other Costs Burden: $0.00.

16. *Title of Collection:* Rehabilitation Action Report.

OMB Control Number: 1240–0008.

Total Estimated Number of Responses: 4,066.

Estimated Annual Time Burden: 678 hours.

Estimated Annual Other Costs Burden: $0.00.

VII. Executive Orders 12866 and 13563 (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 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Department has considered this proposed rule with these principles in mind and has concluded that the regulated community would benefit from this regulation for several reasons.

Requiring most parties and representatives to submit documents electronically to OWCP will speed claims processing and allow OWCP to be more responsive to requests for assistance. Currently, OWCP must scan paper submissions into digital format and add them to the electronic case file before claims staff can take any action on them. When coupled with the time to deliver paper submissions to OWCP, this can delay responding to a request by several days. In contrast, electronic submissions are immediately associated with the case file and available to claims staff. Codifying the use of digital signatures in the regulations will also simplify electronic and even paper submissions (when allowed).

Similarly, streamlining the settlement process by limiting the amount of information the parties must submit with every application will reduce administrative burdens on both the parties and OWCP. All of these changes will result in more expeditious resolution of disputes, thus furthering the ''certain, prompt recovery for employees'' the Act guarantees. *Roberts* v. *Sea-Land Servs., Inc.,* 556 U.S. 93, 97; 132 S.Ct. 1350, 1354 (2012).

The Department does not believe parties would incur additional costs as a result of the revisions to the electronic submission of documents and information regulation and may see a small financial benefit. As noted, more than 80 percent of documents currently sent to OWCP are submitted electronically. For these parties and representatives, no change in their current practices would be needed. Although the parties and representatives who currently submit paper documents would have to alter their practice, these alterations may result in cost savings by reducing paper copying charges and mailing or delivery expenses. Even if parties and representatives incurred minimal additional costs, they would be outweighed by the benefits reaped—primarily more expeditious claims processing and delivery of compensation.

The Department also believes that promulgating procedural rules related to civil money penalties would benefit employers (and their insurance carriers) against whom OWCP may assess penalties. Currently, the regulations contain no set procedures for employers to challenge penalties, which can lead to procedural decisions being made on a case-by-case basis. The proposed rules would establish a transparent and consistent pathway for assessment and adjudication of penalties: Clear notice of the penalty and an opportunity to contest it before imposed by OWCP; hearing by an administrative law judge upon request; discretionary review by the Secretary; and a stay of payment for the penalty assessed until review is complete and the decision becomes final. These procedures would clearly protect an employer's rights to be fully heard before having to pay a penalty.

Finally, because this is not a ''significant regulatory action'' within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to 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.'' This rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000.

IX. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) (RFA), requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have ''a significant economic impact on a substantial number of small entities'' or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many longshore employers and a handful of insurance carriers may be small entities within the meaning of the RFA, *see generally* 77 FR 19471–72 (March 30, 2012), this rule, if adopted in final, will not have a significant economic impact on them. Most employers and insurance carriers already submit documents and information to OWCP electronically, and electronic filing is usually associated with slightly lower costs than traditional paper filings. Thus, mandating electronic submission will have little to no impact on these parties. Similarly, streamlining the settlement-application submission process will have no negative economic impact and a potentially small positive impact on employers and carriers. Finally, the regulations related to penalties generally set procedures with no economic impact. To the extent the proposed rules affect the penalty amount assessed by OWCP, the rules explicitly take into account small entities by incorporating the mitigation provisions in section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), where appropriate. *See* proposed § 702.903(c)(2).

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department, however, invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small longshore employers or insurers. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

X. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with

Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The proposed 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,'' if promulgated as a final rule.

XI. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Longshore and harbor workers, Maximum compensation rates, Minimum compensation rates, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 702 as follows:

PART 702—ADMINISTRATION AND PROCEDURE

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Revise § 702.101 to read as follows:

§ 702.101 Exchange of documents and information; electronic signatures.

(a) Except as otherwise provided by §§ 702.203, 702.215 and 702.349, all documents and information under this subchapter—

(1) Sent to OWCP—

(i) Must be submitted electronically through an OWCP-authorized system unless a district director permits an alternative submission method for individuals who do not have a computer, lack access to the internet, or lack the ability to utilize the internet. Documents and information submitted through an OWCP-authorized electronic system are considered filed when received.

(ii) When authorized to use an alternative method, submission may be made by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), hand delivery, or another method authorized by OWCP. Documents and information submitted using an alternative method are considered filed when received by OWCP.

(2) Sent by OWCP to parties and their representatives must be sent—

(i) Electronically by a reliable electronic method;

(ii) In hard copy by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), or hand delivery; or

(iii) Electronically through an OWCP–authorized system that delivers documents to the parties and their representatives or notifies them when documents have been added to the case file.

(3) Sent by any party or representative to another party or representative must be sent by any method allowed under paragraphs (a)(2)(i) through (iii) of this section, except that when sent by a reliable electronic method, the receiving party or representative must agree in writing to receive documents and information by that method.

(b) For purposes of paragraph (a) of this section, reliable electronic methods for delivering documents include, but are not limited to, email, facsimile and web portal.

(c) Any party or representative may revoke his or her agreement to receive documents and information electronically by giving written notice to the party or the representative with whom he or she had agreed to receive documents and information electronically.

(d) The provisions in paragraphs (a) through (c) of this section apply when parties are directed by the regulations in this subchapter to advise; apply; approve; authorize; demand; file; forward; furnish; give; give notice; inform; issue; make; notice, notify; provide; publish; receive; recommend; refer; release; report; request; respond; return; send; serve; service; submit; or transmit.

(e) Any reference in this subchapter to an application, copy, filing, form, letter, written notice, or written request includes both hard-copy and electronic documents.

(f) Any requirement in this subchapter that a document or information be submitted in writing, or that it be signed, executed, or certified does not preclude its submission or exchange electronically.

(g) Any requirement in this subchapter that a document be signed may be satisfied by an electronic signature.

(1) Definitions. For purposes of this paragraph—

Document means any form of writing submitted to OWCP, including applications, claim forms, notices of payments, and reports of injury.

Electronic signature means a mark on a document, created by electronic means, that indicates the signatory's endorsement of or assent to the terms of a document. An electronic signature may serve as the binding signature for a business or other corporate or collective entity if the signatory has the legal authority to bind the entity.

Electronic signature device means a code, password, or other mechanism that is used by a signatory to create or input electronic signatures on a document or to log in to an electronic signature program. The code, password, or mechanism must be unique to the signatory at the time the signature is created and the signatory must be uniquely entitled to use it. The device is compromised if the code or mechanism is available for use by any other person. Examples of such devices include a unique username and password, a PIN number or other numeric code, biometrics, cryptographic controls such as asymmetric or symmetric cryptography, and software that takes a scan of a user's ID.

Electronic signature program means a software application that allows a signatory to log in using an electronic signature device and electronically sign a document.

Signatory means any person who, on behalf of themselves or an entity for whom they are authorized to sign, places an electronic signature on a document.

(2) Acceptable methods of creating an electronic signature include—

(i) The use of an electronic signature device;

(ii) The use of an electronic signature program, provided that such program includes the use of an electronic signature device;

(iii) The signatory typing their name onto an electronic document following a ''/s'' mark;

(iv) The signatory using a mouse, touchpad, stylus, or other equivalent device to physically draw their signature on a display screen;

(v) Other methods allowed by OWCP.

(3) A document containing multiple electronic signatures may utilize the same method or methods of signing with respect to each signature, or may utilize different methods, provided the methods are acceptable methods pursuant to paragraph (g)(2) of this section.

(4) Entities submitting electronically-signed documents must—

(i) Ensure that all signatures allow OWCP to clearly identify the signatory. Any signature made on behalf of a business or other collective entity should identify the individual person signing.

(ii) Keep a record of how the electronic signature was obtained, including any electronic signature programs and/or electronic signature devices used, and be able to provide this information at OWCP's request.

(iii) Keep a record of the date the signature was created and be able to provide this information at OWCP's request.

(h) Any reference in this subchapter to transmitting information to an entity's address may include that entity's electronic address or electronic portal.

(i) Subject to paragraph (a) of this section, any requirement in this subchapter that a document or information—

(1) Be sent to a specific district director means that the document or information should be sent to the electronic (or physical when permitted) address provided by OWCP for that district director; and

(2) Be filed by a district director in his or her office means that the document or information may be filed in an electronic (or physical when permitted) location specified by OWCP for that district director.

■ 3. Revise § 702.203(b) to read as follows:

§ 702.203 Employer's report; how given.

(a) * * *

(b) Employers may send a report of injury to the district director electronically through an OWCP-authorized system (*see* § 702.101(a)(1)). If the employer sends its report of injury by U.S. postal mail, the report will be considered filed on the date that the employer mails the document. If the report is filed by mail, the employer must retain documentation demonstrating when the report was mailed.

■ 4. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

(a) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed $24,441 for each such failure, refusal, false statement, or misrepresentation for which penalties are assessed after January 15, 2020.

(1) For purposes of failing or refusing to send a report required by § 702.201, an employer, insurance carrier, or self-insured employer—

(i) Acts knowingly if it has actual knowledge of the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required; or if it had reason to know about the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required.

(ii) Acts willfully if it intentionally disregards the reporting requirement or is indifferent to the reporting requirement.

(2) Proof of either a false statement or misrepresentation made knowingly and willfully in a report required by § 702.201 is sufficient to warrant imposition of a penalty under this section.

(b) The district director has the authority and responsibility for assessing the penalty described in paragraph (a) of this section using the procedures set forth at subpart I of this part.

(c) In determining the penalty amount under paragraph (a) of this section, the district director will consider how many penalties, if any, have been assessed against the employer, insurance carrier, or self-insured employer in the two years preceding the most recent reporting violation. In determining the number of prior penalties assessed, the district direct will include penalties assessed against an entity's parent company, subsidiaries, and related entities. The district director will assess a penalty in an amount equaling the following percentages of the maximum penalty, rounded up to the next dollar:

TABLE 1 TO PARAGRAPH (c)

Number of violations	Percentage of maximum penalty assessed
First late/falsified report:	2
Second late/falsified report:	4
Third late/falsified report:	8
Fourth late/falsified report:	16
Fifth late/falsified report:	32
Sixth late/falsified report:	64
Seventh (and above) late/falsified report:	100

■ 5. Revise § 702.215 to read as follows:

§ 702.215 Notice; how given.

Notice must be effected by delivering it to the individual designated to receive such notices at the physical or electronic address designated by the employer. Notice may be given to the district director by submitting a copy of the form supplied by OWCP to the district director electronically through an OWCP-authorized system, by mail, or orally in person or by telephone.

■ 6. Revise the section heading of § 702.233 to read as follows:

§ 702.233 Additional compensation for failure to pay without an award.

* * * * *

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of $297 for any violation for which penalties are assessed after January 15, 2020. The district director has the authority and responsibility for assessing this penalty using the procedures set forth at Subpart I of this part.

■ 8. Revise § 702.241 to read as follows:

§ 702.241 Settlements: Definitions; general information.

(a) As used in §§ 702.241 through 702.243, the term—

Adjudicator means district director or administrative law judge (ALJ).

Compensation case means a claim for compensation or other statement indicating potential entitlement to compensation or benefits.

Counsel means any attorney admitted to the bar of any state, territory, or the District of Columbia.

(b) Parties may settle a compensation case only with an adjudicator's approval. The settlement may include disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator must approve the settlement unless it is inadequate or was procured by duress. If all parties to the settlement are represented by counsel, completed applications will be deemed approved unless specifically disapproved by an adjudicator within 30 days of receipt of the application unless the adjudicator requests additional information under § 702.243(a).

(c) Receipt of a settlement application occurs—

(1) For submissions to a district director, on the day OWCP receives a complete application.

(2) For submissions to an ALJ, when the application is considered filed under the OALJ's rules of practice and procedure (29 CFR part 18).

(3) For compensation cases pending before a higher tribunal, the date the tribunal takes action indicating the

adjudicator should consider the settlement (*e.g.,* enters an order remanding the case, dismisses the appeal).

(d) The 30-day period for consideration of a settlement begins the day after the adjudicator's receipt of a complete application. If the 30th day is a Saturday, Sunday, or legal holiday, the next business day will be considered the 30th day.

(e) An agreement by the parties to settle a compensation case is limited to the rights of the parties and to claims then in existence. Settlement of disability compensation or medical benefits for the injured employee will not affect, in any way, the right of the employee's survivor(s) to claim death benefits.

■ 9. Revise § 702.242 to read as follows:

§ 702.242 Settlement application; contents and submission

(a) A settlement application must be made on a form prescribed by OWCP. The settlement application must include all information required by the form, including—

(1) A brief summary of the facts of the case, including a description of the incident; a description of the nature of the injury; the degree of impairment or disability; the claimant's average weekly wage; and a summary of compensation paid;

(2) The amounts to be paid under the settlement for compensation, medical benefits, death benefits, attorney's fees and costs, as appropriate;

(3) The signatures of all parties agreeing to the settlement as stated in the application and attesting that the settlement is adequate and was not procured by duress; and

(4) If the settlement application includes the parties' agreement on more than one form of compensation or benefits, a statement whether the parties agree to settle the parts independently if the adjudicator does not approve the settlement in its entirety.

(b) The adjudicator may request additional information from the parties if he or she believes, under the particular circumstances of the case, that such information is necessary to determine whether the settlement is adequate or has been procured by duress.

(c) The adjudicator will not consider any information a party submits other than the settlement application required by paragraph (a) of this section, additional information requested by the adjudicator under paragraph (b) of this section, or information in the case record before the settlement application is filed.

(d) To submit a completed settlement application—

(1) The parties must submit the application to a district director in all cases unless the case is pending before the OALJ. Submission must be made under the procedures set forth at § 702.101(a) except that if a hard copy is submitted under that provision, the application must be sent by certified mail with return receipt requested or by a commercial delivery service with tracking capability that provides reliable proof of delivery to the district director.

(2) In cases pending before the OALJ, the parties may either—

(i) Request that the case be remanded to the district director for consideration of the application and, after remand, file the application with a district director under paragraph (d)(1) of this section; or

(ii) Submit the application to OALJ under the procedures set forth in the OALJ's rules of practice and procedures (29 CFR part 18) for consideration.

(e) If the parties submit a settlement application to a district director while the compensation case is pending at the Benefits Review Board or a court, the parties must notify the Board or the court and request that the case be remanded or otherwise returned to the district director for consideration of the application.

■ 10. Revise § 702.243 to read as follows:

§ 702.243 Settlement approval and disapproval.

(a) Within 30 days of receipt, the adjudicator must evaluate the settlement application and notify the parties in writing if the application is incomplete or if the adjudicator requests additional information. If all parties are represented by counsel, any such notice must also state that the 30-day period in § 702.241(b) will not commence until the adjudicator receives the completed application and the additional information.

(b) The adjudicator must issue a compensation order approving or disapproving the settlement application, and file and serve it on the parties in accordance with § 702.349 unless the settlement has already been deemed approved under paragraph (f) of this section. If the adjudicator disapproves the settlement application in any part, the order must include the adjudicator's reasons for finding the settlement inadequate or procured by duress.

(c) In determining whether the settlement is adequate and procured without duress, the adjudicator must consider all of the information required by § 702.242(a), any additional information requested under § 702.242(b), and the parties' attestations in the settlement application, to which the adjudicator may defer.

(d) If the adjudicator disapproves any part of a settlement application, the entire application is disapproved unless the parties have stated in the application that they agree to settle the parts independently.

(e) After a settlement application is disapproved by—

(1) A district director, the parties may submit an amended application to the district director or request a hearing before an ALJ on either the settlement disapproval or the merits of the case under sections 8 and 19 of the Act, 33 U.S.C. 908 and 919.

(2) An ALJ, the parties may submit an amended application to the ALJ, file an appeal with the Benefits Review Board under section 21 of Act, 33 U.S.C. 921, or proceed with a hearing on the merits of the case.

(f) If all parties to the settlement are represented by counsel and the adjudicator does not formally approve or disapprove the application within 30 days after receipt of a complete settlement application and any additional requested information (*see* § 702.242(b)), the application will be deemed approved. A settlement application that is deemed approved under this paragraph will be considered filed in the office of the district director on the last day of the 30-day period as calculated under § 702.241(d).

(g) The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator or deemed approved under § 702.241(b) and paragraph (f) of this section.

(h) Attorney's fees in a settlement application may include fees for work performed before other adjudicators and tribunals. If the settlement is approved, the attorney's fees will be considered approved within the meaning of § 702.132.

(i) When parties settle cases being paid under a final compensation order where no substantive issues are in dispute, the adjudicator, in determining whether the proposed settlement amount is adequate, may compare the amount to the present value of future compensation payments commuted, computed by:

(1) Determining the probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation according to a current life expectancy table or calculator specified by OWCP; and

(2) Applying the discount rate specified at 28 U.S.C. 1961.

■ 11. In § 702.271:

■ a. Revise the section heading and paragraph (a);

■ b. Redesignate paragraphs (b) through (d) as (c) through (e); and

■ c. Add new paragraph (b).

The revisions and addition read as follows:

§ 702.271 Discrimination against employees who bring proceedings; prohibition.

(a) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his or her employment because that employee:

(1) Has claimed or attempted to claim compensation under the Act; or

(2) Has testified or is about to testify in a proceeding under the Act.

(b) To discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of paragraph (a) of this section.

* * * * *

■ 12. Revise § 702.273 to read as follows:

§ 702.273 Penalty for discrimination.

Any employer who violates § 702.271(a) will be subject to a civil penalty of not less than $2,444 or more than $12,219 when assessed after January 15, 2020 to be paid by the employer alone (and not by a carrier). The district director has the authority and responsibility for assessing this penalty using the procedures set forth at subpart I of this part. Any penalty assessed by the district director prior to a hearing on the discrimination complaint will be stayed pending final resolution of the complaint by the Administrative Law Judge or higher tribunal.

■ 13. Add subpart I to read as follows:

Subpart I—Procedures for Civil Money Penalties

Sec.

702.901 Scope of this part.
702.902 Definitions.
702.903 Notice of penalty; response; consequences of no response.
702.904 Decision on penalty after timely response; request for hearing.
702.905 Referral to the Office of Administrative Law Judges.
702.906 Decision and order of Administrative Law Judge.
702.907 [Reserved]
702.908 Review by the Secretary.
702.909 Discretionary review.
702.910 Final decision of the Secretary.
702.911 Settlement of penalty.
702.912 Collection and recovery of penalty.

Subpart I—Procedures for Civil Money Penalties

§ 702.901 Scope of this part.

(a) These procedures apply when the district director imposes the civil money penalties prescribed by § 702.204, § 702.236, or § 702.273.

(b) The district director will deposit all penalties collected into the special fund described in section 44 of the Act, 33 U.S.C. 944.

§ 702.902 Definitions.

In addition to the definitions provided in §§ 701.301 and 701.302, the following definition applies to this subpart:

Respondent means the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a civil penalty.

§ 702.903 Notice of penalty; response; consequences of no response.

(a) The district director will serve a written notice through an electronic method authorized by OWCP or by trackable delivery method on each respondent against whom he or she is considering assessing a penalty. Where service is not accepted by a respondent, the notice will be deemed received by the respondent on the attempted date of delivery.

(b) The notice must set forth the—

(1) Facts giving rise to the penalty;

(2) Statutory and regulatory basis for the penalty;

(3) Amount of the proposed penalty, including an explanation for the amount set;

(4) Consequences of not submitting all documentation to the district director as set forth in paragraph (d) of this section; and

(5) Consequences of failing to timely respond to the notice as set forth in paragraph (e) of this section.

(c) The respondent must respond within 30 days of receipt of the notice. The response may include—

(1) Documentation regarding any facts relevant to the reason for the penalty; and

(2) Documentation supporting a request for mitigation of the penalty amount under Section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236.

(d) Documentation not presented to the district director may not be admitted in any further proceedings before an Administrative Law Judge or other tribunal unless the respondent demonstrates exceptional circumstances prevented submission to the district director.

(e) If the respondent does not respond within 30 days of receipt of the notice, the assessment and amount of the penalty set forth in the notice will be deemed final, and collection and recovery of the penalty may be instituted under § 702.911.

§ 702.904 Decision on penalty after timely response; request for hearing.

(a) If the respondent files a timely response to the notice described in § 702.903, the district director will review the facts and any argument presented and issue a decision on the penalty. The decision must—

(1) Include a statement of the reasons for the assessment and the amount of the penalty;

(2) Set forth the respondent's right to request a hearing on the district director's decision and the method for doing so; and

(3) Set forth the consequences of failing to timely respond to the decision as set forth in paragraph (d) of this section.

(b) The respondent has 15 days from receipt of the decision to request a hearing before an Administrative Law Judge by filing a request for hearing with the district director. The request must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the district director's decision with which the respondent disagrees;

(4) Be signed by the respondent making the request or by the respondent's authorized representative;

(5) State both the physical mailing address and electronic mailing address for the respondent and the authorized representative for receipt of further communications.

(c) A timely hearing request will operate to stay collection of the penalty until final resolution of the penalty is reached by the Administrative Law Judge or the Secretary, as appropriate.

(d) If the respondent does not request a hearing within 15 days of receipt of the notice, the assessment and amount of the penalty set forth in the district director's decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

§ 702.905 Referral to the Office of Administrative Law Judges.

(a) When the district director receives a request for hearing in response to a decision issued under § 702.904, the district director will immediately notify

the Chief Administrative Law Judge, who will assign an Administrative Law Judge to the case. The district director will also forward to the Office of Administrative Law Judges the following documentation, which will be considered the administrative record:

(1) The district director's notice and decision issued under §§ 702.903 and 702.904;

(2) The documentation upon which the district director relied in making his or her decision;

(3) All written responses and documentation filed by the respondent with the district director;

(4) A statement of the issues referred by the district director for hearing.

(b) Except as otherwise provided in this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR part 18 will apply to hearings under this subpart.

§ 702.906 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge must consider only those issues referred by the district director for hearing.

(b) On issues properly before him or her, the Administrative Law Judge must limit his or her determinations to:

(1) Whether the respondent has violated the sections of the Act and regulations under which the penalty was assessed;

(2) The correctness of the penalty assessed by the district director as set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2).

(c) The decision of the Administrative Law Judge must include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue referred.

(d) On the date of issuance, the Administrative Law Judge must serve a copy of the decision and order on the district director and the respondent by a trackable delivery method.

(e) Any party may ask the Administrative Law Judge to reconsider his or her decision by filing a motion within 30 days of the date of issuance of the decision. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review under § 702.908.

(f) If no party files a motion for reconsideration or petition for review within 30 days of the issuance of the Administrative Law Judge's decision, the decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

(g) At the conclusion of all hearing proceedings, the Administrative Law Judge will forward the complete hearing record to the district director who referred the matter for hearing, who will retain custody of the record.

§ 702.907 [Reserved]

§ 702.908 Review by the Secretary.

(a) Any party aggrieved by the decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Copies of the petition must be served on all parties and on the Chief Administrative Law Judge.

(b) If any party files a timely motion for reconsideration under § 702.906(e), any petition for review, whether filed prior to or subsequent to the filing of a timely motion for reconsideration, will be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party will begin upon issuance of a decision on reconsideration.

(c) The petition for review must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the Administrative Law Judge's decision with which the party disagrees;

(4) Be signed by the party or the party's authorized representative; and

(5) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge that would assist the Secretary in determining whether review is warranted.

(d) All documents submitted to the Secretary, including a petition for review, must be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210 or alternative method required by the Secretary. Documents are not considered filed with the Secretary until actually received.

§ 702.909 Discretionary review.

(a) Following receipt of a timely petition for review, the Secretary will determine whether the Administrative Law Judge's decision warrants review. This determination is solely within the Secretary's discretion.

(1) If the Secretary does not notify the parties within 30 days of the petition for review's filing that he or she will review the decision, the Administrative Law Judge's decision will be considered the final decision of the agency at the expiration of that 30 days.

(2) If the Secretary decides to review the decision, the Secretary will notify the parties within 30 days of the petition for review's filing of the issue or issues to be reviewed and set a schedule for the parties to submit written argument in whatever form the Secretary deems appropriate.

(b) If the Secretary decides to review the decision, the district director must forward the administrative record compiled before the Administrative Law Judge to the Secretary.

§ 702.910 Final decision of the Secretary.

The Secretary's review will be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law will be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision must be served upon all parties and the Chief Administrative Law Judge.

§ 702.911 Settlement of penalty.

At any time during proceedings under this subpart, the district director and the respondent may enter into a settlement of the penalty.

§ 702.912 Collection and recovery of penalty.

(a) When the determination of the amount of the penalty becomes final (*see* §§ 903(e), 904(d), 906(f), 909(a)(1), 910), the penalty is immediately due and payable to the U.S. Department of Labor on behalf of the special fund described in section 44 of the Act, 33 U.S.C. 944. The respondent will promptly remit the final penalty imposed to the Secretary of Labor.

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 233

[EPA–HQ–OW–2020–0517; FRL–10017–98–OW]

RIN 2040–AG09

Criminal Negligence Standard for State Clean Water Act 402 and 404 Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is requesting comment on proposed Clean Water Act (CWA or the Act) regulations to clarify that state or tribal programs approved pursuant to CWA Sections 402 and 404 are not required to include the same criminal intent standard that is applicable to the EPA under Section 309 of the CWA. The proposed regulations will provide clarity to states, tribes, regulated entities, and the public.

DATES: Comments must be received on or before January 13, 2021.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OW–2020–0517, through the Federal eRulemaking Portal at: *https://www.regulations.gov/.* Follow the online instructions for submitting comments. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19.Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at: *https://www.epa.gov/dockets.*

EPA is offering one virtual public hearing so that interested parties may also provide oral comments on the proposed rulemaking. For more information on the virtual public hearing and to register to attend, please visit: *https://www.epa.gov/npdes/.* Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Nizanna Bathersfield, Office of Wastewater Management, Water Permits Division (Mail Code 4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2258; email address: *Bathersfield.Nizanna@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. General Information
A. Does this action apply to me?
B. What action is the Agency taking?
C. What are the incremental costs and benefits of this action?
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A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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J. National Technology Transfer and Advancement Act
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include States, U.S. territories, and Indian Tribes that are authorized and/or seek authorization to administer the Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program or the CWA Section 404 dredged or fill permitting program. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to affect. If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section.

TABLE I–1—ENTITIES POTENTIALLY AFFECTED BY THIS ACTION

Category	Examples of potentially affected entities
Federal Government	EPA when conducting oversight of programs authorized under CWA Sections 402 and 404 in states, tribes, and U.S. territories.
State, Territorial, and Indian Tribal Governments.	States, Tribes, and U.S. Territories [1] that are authorized or that seek authorization to administer the CWA Section 402 NPDES permitting program and/or the CWA Section 404 dredged and fill permitting program.

B. What action is the Agency taking?

EPA proposes to amend its requirements in 40 CFR 123.27 and 233.41 for criminal enforcement authorities to clarify that states and tribes that are authorized to or that seek authorization to administer the CWA Section 402 NPDES permitting program and/or the CWA Section 404 dredged and fill permitting program are not required to establish the same negligence standard that the CWA establishes for Federal criminal enforcement actions. Rather, EPA may approve state or tribal programs that allow for prosecution based on any negligence standard, including gross negligence or recklessness, as opposed to requiring that a state or tribe be able to establish criminal violations based on

[1] The phrase, ''State(s) and Tribe(s)'' will be used in this document hereafter.

simple or ordinary negligence. EPA interprets its current regulations to allow for this approach and proposes to modify its regulations to make its interpretation of the statute clearer. Because the relevant CWA Section 402 regulatory provisions are similar [2] to those in CWA Section 404 and raise the same issues, EPA proposes to make similar changes to the CWA Sections 402 and 404 permitting program regulations. Refer to the BACKGROUND section below for a more detailed description of the context and purpose for this action.

C. What are the incremental costs and benefits of this action?

The proposed amendment clarifies EPA's interpretation of the CWA enforcement requirements applicable to authorized state and tribal programs under CWA Section 402 and CWA Section 404. This action does not establish new requirements but instead provides clarity for states and tribes that have been approved to administer or are interested in obtaining EPA approval to administer their own NPDES or dredged and fill permitting program under the CWA. Therefore, the proposed rulemaking would impose no incremental change to current requirements that EPA measures as compliance costs or monetized benefits.

EPA anticipates that states that already administer these CWA programs will not need to make any changes to their legal authority to conform with this regulatory change. Instead, these regulatory clarifications will provide assurance to approved states that their current criminal intent standards comport with EPA's interpretation of the CWA criminal intent standard applicable to authorized state and tribal CWA Sections 402 and 404 programs. Additionally, this clarification will provide those states and tribes interested in seeking approval to administer the CWA Sections 402 and 404 programs, respectively, with clarity regarding the legal authorities required for approval by EPA.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0517, at *https://www.regulations.gov/.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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

B. Virtual Public Hearing

EPA intends to hold a virtual public hearing on the proposed rulemaking. EPA is deviating from its typical approach to public hearings because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/npdes/* or contact Cortney Itle at *cortney.itle@erg.com.* EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have three minutes to provide oral testimony. Note that the testimony time may be adjusted depending on the number of registered speakers. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) by emailing it to Cortney Itle. EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing is posted online at *https://www.epa.gov/npdes/.* While EPA expects the hearing to go forward as set forth above, please monitor our website or contact Cortney Itle at *cortney.itle@erg.com* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates. If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing with Cortney Itle and describe your needs at least two weeks prior to the announced public hearing date. EPA may not be able to arrange accommodations without advanced notice.

III. Background

The CWA provides that states and tribes seeking approval for a permitting program under CWA Section 402 and CWA Section 404 must have adequate authority ''[t]o abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.'' 33 U.S.C. 1342(b)(7) and 1344(h)(1)(G). These provisions do not establish specific mens rea standards or penalties for state and tribal programs and thus do not provide specific criteria on which basis EPA could disapprove a program for lack of authority to impose criminal sanctions. In contrast, CWA Section 309(c) specifically provides EPA with enforcement authority to establish misdemeanor criminal liability in Subsection (c)(1) and a range of penalties for ''[n]egligent violations'' of specified provisions, as well as felony liability and a higher range of penalties for ''knowing violations'' of the CWA in Subsection (c)(2). Beginning in 1999, three circuit courts of appeal determined that criminal negligence under CWA Section 309(c)(1) is ''ordinary negligence'' rather than gross negligence or any other negligence standard. *U.S.* v. *Hanousek,* 176 F.3d 1116, 1121 (9th Cir. 1999); *U.S.* v. *Ortiz,* 427 F.3d 1278, 1282 (10th Cir. 2005); *U.S.* v. *Pruett,* 681 F.3d 232, 242 (5th Cir. 2012). Though courts have interpreted EPA's enforcement authority under CWA 309(c)(1) to encompass violations committed with ordinary negligence, these courts did not address

[2] The regulation at 40 CFR 123.27 includes a note that is absent from 40 CFR 233.41. This note provides: ''[s]tates which provide the criminal remedies based on ''criminal negligence,'' ''gross negligence'' or strict liability satisfy the requirement of paragraph (a)(3)(ii) of this section.'' *See* 40 CFR 123.27(a)(ii).

whether this provision implicates state or tribal programs implementing CWA Sections 402 or 404.

EPA's regulations currently provide that a state or tribal agency administering a program under CWA Section 402 must provide for criminal fines to be levied ''against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement.'' 40 CFR 123.27(a)(3)(ii). Similarly, EPA's regulations currently provide that any state or tribal agency administering a program under Section 404 of the CWA shall have authority to seek criminal fines against any person who ''willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under section 404 . . .'' 40 CFR 233.41(a)(3)(ii). The regulations implementing both statutory programs also provide that the ''burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Act.'' 40 CFR 123.27(b)(2); 40 CFR 233.41(b)(2). Additionally, the implementing regulations for CWA Section 402 include a note, not present in the CWA Section 404 implementing regulations, that states, ''[f]or example, this requirement is not met if State law includes mental state as an element of proof for civil violations'' 40 CFR 123.27(b)(2).

On September 10, 2020, the Ninth Circuit Court of Appeals issued an unpublished decision that granted in part and denied in part the Idaho Conservation League's petition for review of EPA's approval of Idaho's NPDES permitting program. *Idaho Conservation League* v. *US EPA,* no. 18–72684 (September 10, 2020). Relying on the Ninth Circuit case law cited above, which holds that EPA enforcement actions are subject to a simple negligence standard, the court determined that EPA abused its discretion in approving a mens rea standard of gross negligence because it is ' ''greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action . . .' 40 CFR 123.27(b)(2).'' The court recognized that ''a state program need not mirror the burden of proof and degree of knowledge or intent EPA must meet to bring an enforcement action,'' citing EPA's Consolidated Permit Regulations, 45 FR. 33290, 33382 (May 19, 1980), but held that EPA's current regulations at 40 CFR 123.27(b)(2) require a state plan to employ a standard ''no greater than'' simple negligence, such as strict liability or simple negligence. *Slip op.* at 3. Because the decision is unpublished, it is not precedential except for as the law of the case. See Ninth Cir. Rule 36–4.

Overview of This Proposal

The CWA and its implementing regulations require that in order to avoid EPA disapproval, States and tribes must have certain legal authorities in place pertaining to permit issuance, and compliance and enforcement, including criminal enforcement. EPA does not interpret the CWA to require that states and tribes establish the same negligence standard that the CWA establishes for Federal enforcement actions. The current regulations describing the criminal intent standard applicable to state and tribal programs at 40 CFR 233.41(a)(3)(ii) and 40 CFR 123.27(a)(3)(ii) do not clearly articulate EPA's interpretation of the statute that it may approve state or tribal programs that allow for prosecution based on any negligence standard, including those negligence standards with a gross negligence mens rea requirement. This proposal sets forth regulatory revisions that are consistent with this interpretation.

Statutory and Regulatory Framework for EPA's Interpretation

While EPA's own enforcement authority under CWA Section 309(c)(1), 33 U.S.C. 1319(c)(1), as interpreted by the courts, requires only proof of ordinary negligence, that provision does not apply to state or tribal programs. As noted above, the CWA requires that EPA ''shall approve'' a state's application if it determines that the state has the authority to ''abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.'' 33 U.S.C. 1342(b)(7); 1344(h)(1)(G). EPA has consistently maintained that nothing in the text of CWA Sections 402 or 404 requires identical enforcement authority between states or tribes and EPA. *See NRDC* v. *U.S. EPA,* 859 F.2d 156, 175, 181 (D.C. Cir. 1988) (upholding EPA's decision not to require state or tribal programs to incorporate the maximum penalty amounts in CWA Section 309 as a ''reasonable accommodation'' of ''the competing objectives of regulatory uniformity and state autonomy'') (citing *Chevron U.S.A.* v. *NRDC,* 467 U.S. 837, 865 (1984).

In addressing the enforcement requirements for state programs, Congress did not use the words ''all applicable,'' ''same,'' or any phrase specific to any mens rea standard, let alone the Federal standard, as it did in other parts of CWA Sections 404(h) or 402(b). See 33 U.S.C. 1344(h), 1342(b). Indeed, when ''Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Sebelius* v. *Cloer,* 569 U.S. 369, 378 (2013) (internal quotations omitted). In contrast to the broad authority that CWA Sections 404(h)(1)(G) and 402(b)(7) provide to determine whether states and tribes have demonstrated adequate authority to abate violations, other aspects of state and tribal programs are explicitly required to have authority that is equivalent to or more stringent than EPA's authority. For example, states must have the authority ''[t]o inspect, monitor, enter, and require reports to *at least the same extent* as required in section 1318 of this chapter,'' 33 U.S.C. 1344(h)(1)(B); 1342(b)(2)(B) (emphasis added). Similarly, CWA Section 404(h)(1)(B) requires state-issued permits to ''apply, and assure compliance with, *any applicable requirements of this section,* including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 1317 and 1343 of this title . . .'' 33 U.S.C. 1344(h)(1)(A)(i) (emphasis added); and CWA Section 402(b)(1)(A) requires states to issue permits in compliance with ''sections 1311, 1312, 1316, 1317, and 1343 of this title.'' 33 U.S.C. 1342(b)(1)(A). The more general language used to address required state and tribe authorities to abate violations, and the absence of any citation to CWA Section 309, indicates that Congress allowed for variability between state or tribal approaches to certain aspects of enforcement. *See* 33 U.S.C. 1342 (b)(7).

EPA interprets the Agency's implementing regulations for CWA Sections 402 and 404 to allow for approved state and tribal programs to have different approaches to criminal enforcement than the Federal government's approach. As noted above, EPA's interpretation is consistent with the D.C. Circuit's decision in *NRDC,* 859 F.2d at 180–81. There, the petitioner challenged the validity of 40 CFR 123.27(a)(3) on the theory that it did not require states to have the same maximum criminal penalties as the federal program. *NRDC,* 859 F.2d at 180. The court reasoned that the petitioner's argument involved a ''logical infirmity''

because it ''presume[d] an unexpressed congressional intent that state requirements must mirror the federal ones,'' which is ''inconsistent with the elements of the statutory scheme limiting operation of the provisions to enforcement efforts at the national level and explicitly empowering the Administrator to set the prerequisites for state plans.'' *Id.* at 180 (discussing 33 U.S.C. 1314(i)(2)(C)). The D.C. Circuit recognized EPA's ''broad[ ] discretion to respect state autonomy in the criminal sector'' and that the regulations ''reflect the balancing of uniformity and state autonomy contemplated by the Act.'' *Id.* at 180–81. The court therefore declined ''to divest the Administrator of this authority'' in the face of congressional silence. *Id.*

EPA's interpretation is also consistent with the Ninth Circuit's decision in *Akiak Native Community* v. *EPA,* in which the Ninth Circuit declined to require that states have authority to impose administrative penalties identical to federal authority. S*ee Akiak Native Community,* 625 F.3d 1162, 1171–72 (9th Cir. 2010). In that case, the petitioner argued that the State of Alaska did not have adequate authority to abate violations because Alaska had to initiate a legal proceeding to assess civil penalties, whereas EPA could do so administratively. *Id.* at 1171. The Court held that because ''[t]here is no requirement in the CWA . . . that state officials have the authority to impose an administrative penalty'' and ''[t]he language of the statute says nothing about administrative penalties,'' ''there is no reason to conclude that Alaska lacks adequate enforcement authorities.'' *Id.* 1171–72.

Finally, EPA's longstanding interpretation that CWA Sections 402 and 404 do not require states and tribes to have identical authorities to EPA's under CWA Section 309 is consistent with the Ninth Circuit's acknowledgement in *Idaho Conservation League* v. *EPA* that ''a state program need not mirror the burden of proof and degree of knowledge or intent EPA must meet to bring an enforcement action.'' *Slip op.* at 3, *citing* Consolidated Permit Regulations, 45 FR at 33382 (May 19, 1980). While EPA does not agree with the Ninth Circuit's unpublished interpretation of the Agency's regulations, this proposed rulemaking would clarify the criminal intent standards for existing and prospective state and tribal enforcement programs under CWA Sections 402 and 404.

As discussed above, this proposed rulemaking would codify the interpretation of state and tribal criminal intent requirements that EPA presented to the Ninth Circuit in the *Idaho Conservation League* v. *EPA,* which is itself consistent with EPA's longstanding interpretation that state and tribal programs are not required to have the identical enforcement authority to EPA's under CWA Section 309. To the extent this interpretation is viewed as different from any earlier interpretations of CWA Sections 402 and 404 and implementing regulations, EPA has ample authority to change its interpretation of ambiguous statutory language. An ''initial agency interpretation is not instantly carved in stone.'' *Chevron,* 467 U.S. at 863; *see also Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2125 (2016) (''[A]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change.'') (citations omitted). Rather, a revised rulemaking based on a change in interpretation of statutory authorities is well within federal agencies' discretion. *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 (D.C. Cir. 2012) (*citing FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009)). The agency must simply explain why ''the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better,'' *Fox Television Stations,* 566 U.S. at 515. This preamble meets this standard, providing a reasoned explanation for EPA's proposal and its consistency with the CWA.

Though under this proposal EPA is not requiring states or tribes to have the same criminal enforcement authority that courts have interpreted EPA to have, the state or tribal standard would still be based on the term ''negligence'' in the text of CWA Section 309. Allowing states or tribes flexibility in the degree of negligence for which they are authorized to bring criminal cases balances the CWA's priorities of allowing for state and tribal autonomy with adherence to the purposes of the Act. As noted above, neither CWA Section 402(b)(7) nor CWA Section 404(h)(1)(G) requires states to abate violations in the same manner as required under CWA Section 309. The absence of any citation to CWA Section 309 in CWA Sections 402(b) and 404(h) indicates that variability may be permitted between Federal and state or tribal approaches to enforcement.

The proposed regulatory clarification reflects EPA's experience in approving and overseeing CWA state programs for over thirty years. Many states administering or seeking to administer the programs do not currently have a simple negligence standard, and indeed, may have statutory or constitutional barriers to such standards. The absence of simple negligence standards has not served as a bar to effective state enforcement programs, but the requirement to have such a standard could dissuade states and tribes from seeking to administer these programs in the future. Clarifying that states and tribes do not need a simple negligence standard in their criminal enforcement programs therefore advances the purposes of CWA Sections 402(b) and 404(g) to balance the need for uniformity with state autonomy. *See NRDC,* 859 F.2d at 181 (D.C. Cir. 1988).

This proposal does not change the standard applicable to EPA's criminal enforcement of the CWA. Under CWA Section 309, EPA retains its civil and criminal enforcement authority notwithstanding the authorization status of a state or tribal permit program.

Consistent with the CWA's requirement that states and tribes administering CWA Sections 402 or 404 permitting programs have the authority to abate civil and criminal violations, EPA is proposing to include language to clarify in 40 CFR 123.27(a) and 233.41(a)(3) that states and tribes must have the authority to ''establish violations.'' This new language simply confirms EPA's longstanding interpretation of the effect of its regulations. EPA also proposes to remove the term ''appropriate'' from the current references to the degree of knowledge or intent necessary to provide when bringing an action under the ''appropriate Act'' from the CWA Sections 402 and 404 implementing regulations, as these regulations only refer to actions under the CWA and no other statute. Therefore, the term ''appropriate'' is unnecessary. Finally, in 40 CFR 233.41(a)(3), which currently requires states and tribes to have the authority ''[t]o establish the following violations and to assess or sue to recover civil penalties and to seek criminal remedies,'' EPA proposes to replace the word ''remedies'' with ''penalties,'' as ''penalties'' is a more precise description of the type of relief sought in criminal enforcement actions. None of the proposed changes listed in this paragraph are intended to change the substantive effect of the regulations, but simply to clarify existing requirements.

IV. Request for Comment

EPA is proposing regulations at 40 CFR 123.27 and 233.41 to clarify that authorized state and tribal programs under CWA Sections 402(b) and 404(g) are not required to establish the same negligence standard for criminal enforcement actions that the CWA

establishes for Federal enforcement actions. The Agency solicits comments on the proposed rulemaking. Refer to Section II.A of this preamble for instructions on submitting written comments. Comments are most helpful when accompanied by specific examples and supporting data.

V. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This proposal would provide regulatory clarity for approved state and tribal CWA Sections 402 and 404 programs as well as for states and tribes that seek approval for their own CWA Sections 402 or 404 programs. This proposal does not create new information collection activities.

D. Regulatory Flexibility Act (RFA)

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not impose new requirements on any entities but instead provides clarity for states and tribes that have been approved to administer or seek approval for their own CWA Sections 402 or 404 programs.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action may be of significant interest to states that administer CWA Sections 402 and 404 programs as well as for states seeking approval to administer CWA Sections 402 or 404 programs because it clarifies the appropriate criminal intent standard states must have to enforce these programs.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does have tribal implications as specified in Executive Order 13175. Although there are no federally recognized tribes that, at this time, have been approved to administer the CWA programs under either section 402 or section 404, this rulemaking will assist tribes in better understanding the applicable criminal intent standard for nearby approved state programs. This could assist tribes as they participate in state permitting processes. Additionally, this rulemaking will also inform tribes about the applicable criminal negligence intent standard as they consider whether to pursue approval for the NPDES permitting program and/or assumption of the dredged and fill permitting program.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe that there are environmental health or safety risks addressed by this action that present a disproportionate risk to children. This proposal does not change the programmatic requirements of the CWA Sections 402 and 404 programs and has no direct impacts on the environment.

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

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The proposed action does not change existing programmatic CWA Sections 402 and 404 requirements. Instead this proposed rulemaking clarifies the current requirements for the criminal intent standard that is applicable to state and tribal programs.

List of Subjects

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indian—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Endangered and threatened species.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 123 and 233 as follows:

PART 123—STATE PROGRAM REQUIREMENTS

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart B—State Program Submissions

■ 2. Section 123.27 is amended by:
■ a. Revising paragraphs (a) introductory text, (a)(3) introductory text, and (a)(3)(ii);
■ b. Removing the note that appears after paragraph (a)(3)(ii); and
■ c. Revising paragraph (b)(2).

The revisions read as follows:

§ 123.27 Requirements for enforcement authority.

(a) Any State agency administering a program shall have the authority to establish the following violations and have available the following remedies and penalties for such violations of State program requirements:

* * * * *

(3) To assess or sue to recover in court civil penalties and to seek criminal penalties as follows:

* * * * *

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

* * * * *

(b) * * *

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Act, except that a State may establish criminal violations based on any form or type of negligence.

* * * * *

PART 233—404 STATE PROGRAM REGULATIONS

■ 3. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 4. Section 233.41 is amended by revising paragraphs (a)(3) introductory text, (a)(3)(ii), and (b)(2) to read as follows:

§ 233.41 Requirements for enforcement authority.

(a) * * *

(3) To establish the following violations and to assess or sue to recover civil penalties and to seek criminal penalties, as follows:

* * * * *

(ii) To seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without required permits or violates any permit condition issued under section 404 in the amount of at least $10,000 per day of such violation.

* * * * *

(b) * * *

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Act, except that a State may establish criminal violations based on any form or type of negligence.

* * * * *

[FR Doc. 2020–26777 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2020–0107; FRL–10015–46–OLEM; 10018–00–OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the comment period on the advance notice of proposed rulemaking for legacy coal combustion residuals (CCR) surface impoundments. The original advance notice of proposed rulemaking was published on October 14, 2020, and the public comment period was originally scheduled to end on December 14, 2020. With this document, EPA is extending the public comment period an additional 60 days, through February 12, 2021.

DATES: The comment period for the proposed rule published October 14, 2020 at 85 FR 65015 is extended. The EPA must receive comments on or before February 12, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2020–0107. Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 14, 2020 (85 FR 65015). Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michelle Long, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 347–8953; email address: *long.michelle@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION: On April 17, 2015, EPA promulgated national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments at 40 CFR part 257, subpart D. On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in the case of *Utility Solid Waste Activities Group (USWAG), et al.* v. *EPA, 901 F.3d 414 (D.C. Cir. 2018),* which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR regulations. As a first step to implement this part of the court decision, EPA is seeking comments in an advance notice of proposed rulemaking (ANPRM) and data on inactive surface impoundments at inactive facilities to assist in the development of future regulations for these CCR units.

The original notice for the legacy CCR surface impoundment ANPRM was published on October 14, 2020, and the comment period was scheduled to end on December 14, 2020. See 85 FR 65015. Since publication of the notice, on November 6, 2020, USWAG requested an additional 60 days to review the ANPRM, develop and submit comments. This request is available in the docket at EPA–HQ–OLEM–2020–0107. USWAG said given the complexity of the information being requested in the ANPRM, and the fact that USWAG members are currently focused on the development of submissions for the Part A (85 FR 53516, August 28, 2020) and Part B (85 FR 72506, October 14, 2020), an extension will result in the Agency receiving a more comprehensive data submission from USWAG. After receiving the request from USWAG, EPA has decided to extend the comment period to address the concerns that were

raised. The comment period is extended until February 12, 2021.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2020–27360 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2020–0038]

RIN 1660–AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing a rule to substantively revise the ''Estimated cost of the assistance'' disaster declaration factor that FEMA uses to review a Governor's request for a major disaster under the Public Assistance Program. FEMA proposes revisions to this factor to more accurately assess the disaster response capabilities of the 50 States, the District of Columbia, and the U.S. territories (States), and to respond to the direction of Congress in the Disaster Recovery Reform Act of 2018, which requires FEMA to review its disaster declaration factors and update them via rulemaking, as appropriate.

DATES: All comments must be submitted by February 12, 2021.

ADDRESSES: You may submit comments on this proposed rule, identified by Docket ID FEMA–2020–0038, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Comments on the proposed information collections included in this proposed rule should be submitted both to FEMA, as indicated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be identified by the appropriate OMB Control Number(s), addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Director of Public Assistance, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, 202–646–3936, *fema-recovery-pa-policy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *http://www.regulations.gov.*

Viewing comments and documents: For access to the docket to read supporting documents and comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street SW, Washington, DC 20472–3100.

II. Executive Summary

Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance (PA) program.[1] FEMA proposes to amend the factor in 44 CFR 206.48(a)(1) for ''estimated cost of the assistance,'' to raise the per capita indicator and the minimum threshold.[2]

Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at $1 in 1986) as an indicator that a disaster may warrant Federal assistance. The per capita indicator remained at $1 until 1999, when the Agency began adjusting the indicator for inflation in 1999 and annually thereafter.[3] Also in 1999, FEMA established a $1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least $1 million in damages resulting from the disaster and within the proposed area for Public Assistance. At the time, FEMA believed $1 million was a level of damage from which even the least populous States could recover with their own resources. FEMA has never increased the $1 million threshold. Additionally, FEMA also considers impacts at the local level and recent disasters in the 12 months prior to a declaration request to evaluate the impact to the State or locality.

In the Disaster Recovery Reform Act of 2018 (DRRA), Congress directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors when evaluating a request for a major disaster.[4] Congress also directed FEMA to generally review the factors it considers when considering a request for a major disaster, specifically the estimated cost of assistance factor, and to update the factors through rulemaking, as appropriate.[5]

The lack of increases to the per capita indicator from 1986 to 1999 has undercut the value of this factor as an indicator of State capacity given the 51 percent reduction in purchasing power during that time.[6] In addition, a State

[1] Under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170), the President may declare that a major disaster exists after finding, upon request by a State governor, that such disaster is beyond the capabilities of the State and affected local governments, and that Federal assistance is needed. FEMA receives the governor's request and makes a recommendation to the President whether such a declaration is warranted. *See* 44 CFR 206.37.

[2] *See* 44 CFR 206.48(a). Other factors include: Insurance coverage in force, hazard mitigation, and other Federal assistance programs. *Id.*

[3] At the time of drafting this proposed rule, the indicator was $1.50 in fiscal year 2019. *See* FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, 83 FR 53279 (Oct. 22, 2018).

[4] Sec. 1232 of Public Law 115–254, 132 Stat. 3460 (Oct. 5, 2018). However, as discussed below, FEMA does not propose to substantively amend 44 CFR 206.48(a)(2) because that factor is already sufficiently flexible to address the requirements of section 1232 of the DRRA.

[5] Sec. 1239 of Public Law 115–254, 132 Stat. 3466 (Oct. 5, 2018).

[6] April 1986 CPI–U was 108.6 and January 1999 CPI–U was 164.3. (164.3 − 108.6)/108.6 = 51.29%. *See* Bureau of Labor Statistics, U.S. Department of Labor, ''Consumer Price Index, Archived Consumer Price Index Supplemental Files'': Historical CPI–U, November 2019, (available for download at *https://*

Continued

fiscal capacity factor pegged to $1 per person in 1986 does not capture more sophisticated measurements of fiscal capacity available through consideration of a State's total taxable resources. Accordingly, the current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters.

With respect to the minimum threshold, while FEMA determined in 1999 that every State could handle at least $1 million in damages with their own resources, that figure has also not increased with inflation or rising State budgets and expenditures.[7] As a result, FEMA may recommend that the President declare major disaster declarations for incidents that, with more accurate assessment, would be found to be well within a State's financial capabilities to respond to on its own. FEMA proposes to adjust these factors so that it may more closely adhere to the law which authorizes Federal disaster assistance only when an event ''is beyond the capabilities'' of the State and affected local governments.[8]

FEMA proposes to increase the per capita indicator to account for increases in inflation from 1986 to 1999, and to adjust the individual States' indicators by their total taxable resources (TTR). These changes will allow FEMA to more accurately gauge a State's fiscal capacity by accounting for taxable resources other than the State's population, such as business income, undistributed corporate profits, and out-of-state residents. FEMA also proposes to increase the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter.

FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) instead of the decennial census population data produced every 10 years, which FEMA currently uses to calculate each State's Cost of Assistance (COA) Indicator. By increasing the per capita indicator and the minimum threshold, and using more current population data, FEMA's recommendation to the President will be a better informed and more accurate assessment of whether an incident exceeds State capabilities. The resulting reduction in disaster declarations for smaller incidents will allow FEMA to better focus its efforts and resources on larger disasters without the complications of reallocating resources from multiple smaller-scale commitments. Collectively, these changes would provide a better distribution of responsibilities between the States and the Federal Government, and will incentivize States to invest more in response, recovery, and mitigation capabilities, and lead to a more resilient and prepared Nation.

With respect to the recent multiple disasters and localized impacts factors, FEMA proposes not to substantively amend 44 CFR 206.48(a)(2) and (5). As is discussed below, these factors are already sufficiently flexible to address the requirements of section 1232 of the DRRA. FEMA also does not propose at this time to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance'') because they already provide adequate consideration of important information for FEMA's assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States.

Importantly, this proposed rule will not affect FEMA's recommendations on direct requests for a major disaster declaration received from Tribal governments. For direct requests from Tribal governments, FEMA relies on the Tribal Declarations Pilot Guidance and criteria in that guidance instead of 44 CFR 206.48.[9]

FEMA also proposes minor technical and corresponding grammatical changes to 44 CFR 206.48 to ensure consistent language between the Public Assistance declaration factors in 44 CFR 206.48(a) and the Individual Assistance factors in 44 CFR 206.48(b).

III. Background

The Disaster Relief Act of 1974,[10] which was amended and renamed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) in 1988,[11] formally established the foundation of the current disaster assistance system. Generally, FEMA coordinates the Federal Government's response to major disasters and provides various forms of financial and direct assistance. One of the primary types of financial assistance FEMA provides is through the PA program.[12] FEMA provides financial assistance to States, Tribes, Territories, and local governments and certain private non-profit entities for debris removal,[13] emergency protective measures,[14] and the repair, restoration, and replacement of infrastructure damaged or destroyed by a disaster event.[15] Repair and replacement assistance, known as ''permanent work,'' helps jurisdictions to repair or replace a wide variety of infrastructure including buildings, roads, bridges, and sewer and water systems.

Before an affected jurisdiction can receive funding through the PA program, the President of the United States must authorize it through a declaration of a major disaster or emergency.[16] To obtain a declaration, the Governor must make a request through FEMA.[17] Upon receipt, FEMA is responsible for evaluating the Governor's request and providing a recommendation to the President regarding its disposition.[18]

When considering a jurisdiction's request for a major disaster declaration authorizing the PA program, FEMA considers all relevant information including, but not limited to, six specific factors.[19] These specific factors are:

1. Estimated cost of the assistance;[20]
2. localized impacts;[21]

www.bls.gov/cpi/tables/supplemental-files/home.htm).

[7] *See* Government Accountability Office (GAO), Federal Disaster Assistance: Improved Criteria Needed to Assess Eligibility and a Jurisdiction's Capability to Respond and Recover On Its Own, GAO–12–838 (2012); Department of Homeland Security (DHS), Office of Inspector General (OIG), Opportunities to Improve FEMA's Public Assistance Preliminary Damage Assessment Process, OIG–12–79 (2012).

[8] *See* section 401 of the Stafford Act (42 U.S.C. 5170).

[9] See FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017).

[10] Disaster Relief Act of 1974, Public Law 93–288 (1974).

[11] Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707 (1988); Public Law 93–288 (1974), as amended; 42 U.S.C. 5121 *et seq.*

[12] *See* 42 U.S.C. 5172.

[13] *See* 44 CFR 206.224.

[14] *See* 44 CFR 206.225.

[15] *See* 44 CFR 206.226.

[16] *See* 42 U.S.C. 5170b, 5192; *see also* 44 CFR 206.38 and 206.40.

[17] 42 U.S.C. 5170 & 5191. The Chief Executive of an Indian Tribal government may also request a major disaster declaration from the President under the Tribal Declarations Pilot Guidance. FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017). The factors FEMA considers when reviewing a request submitted under the Tribal Declarations Pilot Guidance are not a part of the factors FEMA considers under 44 CFR 206.48(a) and are outside the scope of this proposed rulemaking.

[18] *See* 44 CFR 206.37(c).

[19] *See* 44 CFR 206.48(a).

[20] *Id.* at § 206.48(a)(1).

[21] *Id.* at § 206.48(a)(2).

3. insurance coverage in force;[22]
4. hazard mitigation;[23]
5. recent multiple disasters;[24] and
6. programs of other Federal assistance.[25]

FEMA evaluates every request with regard to each of these delineated factors, to the extent applicable. However, there is a strong correlation between the first factor, the estimated cost of the assistance, and the likelihood that FEMA will recommend that the President issue a major disaster declaration.

On October 5, 2018, the President signed the Disaster Recovery Reform Act (DRRA).[26] Section 1239 of the DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. Further, Section 1232 of the DRRA directs the FEMA Administrator to give ''greater consideration'' to the localized impacts and recent multiple disasters factors and to make corresponding adjustments to FEMA policies and regulations. FEMA now proposes to amend 44 CFR 206.48(a) to make changes to the estimated cost of assistance factor. With respect to the recent multiple disasters and localized impacts factors, FEMA evaluated the provision of the DRRA as well as the current factors in regulation and determined that the regulation is sufficiently flexible to address the DRRA requirements. On May 1, 2019, FEMA issued guidance to Regional Administrators directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters.[27] As is discussed below, FEMA requests comment on whether revisions to the recent multiple disasters factor are necessary.

A. Cost of Assistance Estimates

1. Creation of the Per Capita Indicator

Pursuant to 44 CFR 206.48(a)(1), FEMA evaluates the estimated cost of Federal and non-Federal public assistance resulting from an incident to inform its recommendation to the President of whether an incident is of such severity and magnitude that it is beyond the capabilities of the State and warrants Federal assistance under a major disaster declaration. To make this estimation, FEMA calculates the estimated cost of assistance, generally determined from joint FEMA-State Preliminary Damage Assessments, against the statewide population and if the estimated per capita dollar amount exceeds $1.50 (fiscal year (FY) 2019 per capita indicator),[28] FEMA considers this an indicator that the incident is of such a size and magnitude that it may warrant Federal assistance for the State under a major disaster declaration. In other words, FEMA relies on the per capita indicator to assess the financial impact of an incident on a State and as an indicator of whether the State is overwhelmed and unable to effectively respond to an event on its own.

FEMA publishes the updated per capita indicator in the **Federal Register** each year.[29] FEMA multiplies the indicator by the impacted State's most recent decennial population to determine the amount of damage that a State is expected to be able to independently manage without the need for supplemental Federal assistance (the State Cost of Assistance (COA) Indicator). For example, if an event occurred in FY2019 in a State with a 2010 decennial census population of 1,500,000, FEMA would multiply that population by the $1.50 indicator and arrive at a State COA indicator of $2,250,000.[30] If the estimated cost of assistance exceeds $2,250,000, FEMA would consider this a strong indicator that the State is overwhelmed and in need of supplemental Federal assistance.

Although FEMA considers every request for a Presidential major disaster declaration in light of each applicable regulatory factor, the probability of an incident being declared a major disaster and that incident having exceeded the State COA indicator in disaster damage between 2005 and 2014 was over 80 percent (494 of 589 declared major disasters).[31] In other words, whether damage assessments find an amount of damage that meets or exceeds the State COA indicator is highly correlated to whether that State will ultimately receive supplemental Federal assistance for that incident.

FEMA began informally using the per capita indicator in 1986 and set it at $1, based on the 1983 nationwide per capita personal income (PCPI), as $1 was determined to be a reasonable portion of PCPI for a State to contribute towards the cost of a disaster. This amount also correlated closely to about 0.1 percent of established General Fund expenditures by States. With the passage of time, however, the indicator lost its relation to both metrics upon which FEMA first calculated it. When FEMA began using a per capita indicator of $1 in 1986, the most recent PCPI data available was 1983 PCPI, which was $11,687.[32] By 1999, PCPI had risen 145 percent to $28,675.[33] Similarly, the per capita indicator also fell short of keeping pace with State general fund expenditures. Between 1986 and 1999, the national average increase in State general fund expenditures was 146 percent.[34] Despite these increases in PCPI and State general fund expenditures, FEMA did not increase the per capita indicator until 1999.

2. Changes to the Per Capita Indicator and Establishment of the Minimum Threshold

In 1999, FEMA issued a rule to codify the per capita indicator at $1 and establish, beginning in 1999, that FEMA would annually adjust the per capita indicator for inflation based on the Consumer Price Index for All Urban Consumers (CPI–U).[35] This rule, along with the failure to increase the indicator over the years, removed any remaining association the indicator had in the past

[22] *Id.* at § 206.48(a)(3).

[23] *Id.* at § 206.48(a)(4).

[24] *See* 44 CFR 206.48(a)(5).

[25] *Id.* at § 206.48(a)(6).

[26] Public Law 115–254, 132 Stat. 3438 (Oct. 5, 2018).

[27] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[28] Since the drafting of this proposed rule, FEMA has published the FY 2020 per capita indicator of $1.53. However, for the purposes of this proposed rule and analysis, FEMA will continue to discuss the FY 2019 per capita of $1.50. *See* FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, 83 FR 53279 (Oct. 22, 2018).

[29] *See, e.g.,* 84 FR 55324 (Oct. 16, 2019).

[30] Per Capita Impact Indicator and Project Thresholds are published on FEMA's website, available at *https://www.fema.gov/public-assistance-indicator-and-project-thresholds.*

[31] 82 FR 4064, 4067 (Jan. 12, 2017).

[32] Disaster Assistance; Subpart C, the Declaration Process and State Commitments, 51 FR 13333, Apr. 18, 1986, found at *http://cdn.loc.gov/service/ll/fedreg/fr051/fr051075/fr051075.pdf.* Revisions were made to the BEA 1983 PCPI after publication of the proposed 1986 rule. FEMA used the PCPI of $11,687 to maintain consistency with the data used at the time of establishing the per capita indicator.

[33] Per Capita Personal Income (PCPI) is calculated annually by the United States Department of Commerce's Bureau of Economic Analysis. PCPI data is available for download at *https://apps.bea.gov/regional/downloadzip.cfm:* Download ''Annual Personal Income by State'' under ''State Personal Income Accounts.'' Historical PCPI data pulled from Excel sheet titled ''SAINC1_ALL_AREAS_1929_2018.''

[34] *Compare* National Association of State Budget Officers (NASBO), 1988 State Expenditure Report, *with* NASBO, 2000 State Expenditure Report (available for download at: *https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives*). Actual fiscal total US expenditures were $880,252 million in 1999 (found page 6 of the 2000 report) and $358,277 million in 1986 (found page 5 of the 1988 report). Calculation: (($880,252 – $358,277)/$358,277) * 100 = 145.69 percent (146 percent rounded).

[35] 64 FR 47697 (Sept. 1, 1999).

with PCPI or State general fund expenditures.

In setting the per capita indicator in 1999, FEMA chose not to retroactively account for inflation from 1986–1999.[36] Accordingly, FEMA did not, and to this date has not, accounted for the 51 percent increase in the CPI–U between April of 1986 (when the per capita indicator was first set at $1) and January of 1999 (when FEMA proposed to adjust the per capita indicator for inflation).[37] Consequently, since 1999, the per capita indicator has risen to its FY 2019 value of $1.50, rather than $2.32, which would be the value of the per capita indicator had FEMA accounted for inflation between 1986 and 1999.[38]

Also, in 1999, FEMA established, through regulation, a $1 million minimum threshold for any PA major disaster, regardless of the calculated State COA indicator.[39] FEMA set the threshold at $1 million because it believed that even the lowest population States could reasonably be expected to cover this level of public assistance damage.[40] Importantly, FEMA did not subject the $1 million floor to adjustments for inflation. FEMA has never raised the $1 million threshold.

3. Criticism of the Current Cost of Assistance Estimates Factor

In recent years, the Government Accountability Office (GAO),[41] the Department of Homeland Security Office of Inspector General (DHS OIG),[42] and Congress,[43] have criticized and called for changes to the way FEMA considers the estimated cost of assistance for a disaster. For example, the GAO found that the PA per capita indicator is artificially low because it does not reflect the rise in PCPI since 1986, or 13 years of inflation from 1986 to 1999, resulting in recommendations to the President that do not comprehensively assess a jurisdiction's capability to respond to and recover from a disaster on its own.[44] Similarly, the DHS OIG found that roughly one-third of FEMA-State Preliminary Damage Assessments used to estimate the damage of a given event would not have exceeded the States' COA indicators if the per capita indicator had been indexed to the Consumer Price Index since 1983.[45] Both GAO and the DHS OIG recommended that FEMA develop and implement a methodology that provides a better reflection of current economic conditions and a more comprehensive assessment of a jurisdiction's capability to respond and recover from a disaster without Federal assistance in order to decrease the frequency of disaster declarations and transfer some costs back to State and local jurisdictions.[46] Additionally, GAO and the DHS OIG recommended that FEMA supplement the per capita indicator with more complete data on a jurisdiction's financial resources (*i.e.,* its tax base), such as TTR, in order to obtain a more comprehensive assessment of the jurisdiction's ability to respond to a disaster on its own.[47]

More recently, in section 1239 of the DRRA, Congress directed FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors.[48]

4. Problems With the Current Cost of Assistance Estimates Factor

a. The Current Cost of Assistance Estimates Factor No Longer Provides an Accurate Measure of States' Capabilities To Respond to Disasters and Is No Longer Reflective of Current Economic Conditions

The lack of increases to the per capita indicator from 1986 to 1999 undercut the value of this factor as an indicator of State capacity given the reduction in purchasing power during that time. Similarly, on the minimum threshold, the lack of an increase since 1999 has prevented this factor from keeping pace with inflation, and rising State budgets and resources. For context, the lowest State budget for FY 2018 (Delaware) was just over $4 billion,[49] while its State COA indicator for FY 2018 was just over $1.31 million, or 0.032 percent of the State's budget. For comparison, in FY 1987, Delaware's budget was just under $1 billion,[50] while its State COA indicator was just under $595,000, or 0.063 percent of Delaware's FY 1987 State budget. Similarly, the lowest TTR amongst the States for FY 2016 (Vermont) was $36.1 billion,[51] while that State in FY 2016 was subject to the $1 million minimum threshold, or 0.0028 percent of the State's TTR. Because its State COA indicator was less than $1 million, Vermont would have been subject to the $1 million threshold in FY 2016. For comparison, Vermont's TTR in 1997 was $17.3 billion, while it was subject to the $1 million minimum threshold, or 0.0058 percent of its 1997 TTR. As shown from these figures, the ratio of the per capita indicator and the minimum threshold as a percentage of State budgets and TTR has decreased since FEMA began using the per capita indicator and minimum threshold. Moreover, as discussed in the Regulatory Impact Analysis (RIA) found in the docket of this rulemaking, since 1999, State gross domestic product (GDP), total State expenditures, and State TTR have increased, on a nationwide average, by approximately 113 percent, 131 percent, and 130

[36] In 1998, FEMA considered adjusting the per capita indicator to $1.51 to account for inflation since 1986, but because of input from state emergency management officials, FEMA decided not to do so. *See* GAO, GAO 12–838.

[37] *See* Historical CPI–U, April 2019 (available for download at *https://www.bls.gov/cpi/tables/supplemental-files/home.htm*). CPI–U in April 1986 was 108.6, CPI–U in January 1999 was 164.3. (164.3 − 108.6)/108.6 = 51.23%.

[38] FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, gave notice that the statewide per capita impact indicator increased to $1.50 for all disasters declared on or after October 1, 2018. 83 FR 53279 (Oct. 22, 2018). FEMA calculated inflation from between 1986 and 1999 by using the CPI–U from April 1986 to August 2018. Calculation: ((August 2018 CPI–U (252.146)—April 1986 CPI–U (108.6))/April 1986 CPI–U (108.6)) + $1 = $2.32 (rounded). FEMA uses the latest available month of CPI–U data to adjust the minimum threshold and per capita indicator each fiscal year, which is generally August CPI–U data. August 2018 CPI–U data was the latest available data when FEMA established the FY2019 per capita indicator and is used in this analysis to maintain consistency with FEMA practice.

[39] 44 CFR 206.48(a)(1).

[40] FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 47697 (Sept. 1, 1999).

[41] *See, e.g.,* GAO, Disaster Assistance: Improvements Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures, GAO 01–837 (2001); See also, GAO, GAO–12–838 at 29.

[42] *See* DHS OIG, OIG–12–79 at 3.

[43] *See, e.g.,* S.1960, Fairness in Federal Disaster Declarations Act of 2014, 113th Cong.; H.R. 3925, Fairness in Federal Disaster Declarations Act of 2014, 113th Cong. (establishing criteria for FEMA to incorporate in rulemaking with specific weighted factors); H.R. 1859, Disaster Declaration Improvement Act of 2013, 113th Cong. (requiring new regulations concerning major disaster declarations).

[44] GAO, GAO–12–838 at 48.

[45] DHS OIG, OIG–12–79 at 7.

[46] GAO, GAO 12–838 at 48–49; *See also* DHS OIG, OIG–12–79 at 7–8.

[47] GAO, GAO 12–838 at 48–49; *See also* DHS OIG, OIG–12–79 at 7–9.

[48] *See* Public Law 115–254, 132 Stat. 3466 (Oct. 5, 2018).

[49] Delaware General Assembly, Section 1, House Substitute No. 1 for House Bill No. 275 of 2017. p. 60. Retrieved 11 June 2018 (available for download at: *http://delcode.delaware.gov/sessionlaws/ga149/chp058.pdf*).

[50] NASBO, The State Expenditure Report, at 59 (July 1987) (available for download at: *https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives*).

[51] U.S. Dept. of Treasury, 2018 Total Taxable Resources Estimates (Sept. 2018), (available for download at: *https://home.treasury.gov/system/files/226/TTR-tables-2018.pdf*) (last accessed Feb. 19, 2019). 2016 is the most recently reported year for TTR because there is a two-year lag in reporting.

percent, respectively.[52] In comparison, since 1999, the per capita indicator and the minimum threshold have risen 50 percent and 0 percent, respectively.

Consequently, FEMA is relying upon per capita indicator and minimum threshold factors that are no longer adequate measures of a State's capability to respond to and recover from a disaster. The result is a greater likelihood that FEMA recommends major disaster declarations for relatively small incidents that a more accurate assessment would find is within a State's financial capabilities to respond to on its own. This result is counter to the intent of the Stafford Act that Federal assistance be supplemental, and only necessary for disasters that exceed a State's capabilities. In light of the rise in the costs to respond to and recover from a disaster (construction costs in particular), the lack of increases to the per capita indicator has led to outcomes, especially in less populous States, where minor, concentrated infrastructural damage (*e.g.,* a dirt road washout or damage to a single building) would result in costs sufficient to meet the per capita indicator and potentially result in a disaster declaration. While such incidents can certainly be disruptive and expensive, it is questionable whether such minor, concentrated damage really overwhelms a State and warrants a Presidential major disaster declaration.

In sum, the per capita indicator and minimum threshold are not reflective of the change in economic conditions since 1986 and 1999, respectively, and are no longer adequate measures of the States' capabilities to respond to, and recover from, incidents on their own. The increases in State resources and expenditures, and costs, generally, without corresponding increases to the per capita indicator and minimum threshold, has created a situation where Federal assistance is being provided for incidents which are more appropriately addressed by the States. This is counter to the intent of the Stafford Act that Federal assistance be provided only where State and local capabilities are overwhelmed.

b. The Current Cost of Assistance Estimates Factor Undermines FEMA's Mission to Better Prepare the Nation for Disasters by Disincentivizing States From Investing in Disaster Mitigation and Preparedness

The current per capita indicator and minimum threshold act as disincentives for States to invest in disaster response and recovery capabilities for incidents that should be within their capability to respond. Emergency management is a shared responsibility that is most effective when disaster operations are federally supported, State managed, and locally executed, where Federal support supplements, rather than supplants, State and local efforts.[53] In order to build a more prepared and resilient nation, it is essential that State, local, Tribal, and Territorial governments continually mitigate risk to hazards posed by natural disasters, and build their response and recovery capabilities for future incidents, including the creation of dedicated financial reserves to respond to incidents.

While State and local governments respond on their own to countless small incidents that do not reach the level of their current State COA indicator, there is little incentive for States to build their response and recovery capabilities beyond their current State COA indicator, since Federal assistance will be provided at that point, even though FEMA believes all States have financial capabilities beyond their current State COA indicator. For example, in a 2015 study of 10 States, the GAO found that some States reported that they could cover disaster costs without dedicated disaster reserves because they generally relied on the Federal Government to fund most of the costs associated with disaster response and recovery.[54] GAO ultimately concluded, in part, that given the fiscal challenges facing all levels of government, there may be increased pressure to consider whether the current State and Federal approach for providing disaster assistance balances responsibilities appropriately.[55]

The current situation is contrary to two of FEMA's primary objectives when FEMA first formally established the declaration factors in regulation in 1999: To encourage States to establish their own funded disaster assistance programs and to incentivize States to mitigate hazards and obtain insurance coverage, where possible.[56] Moreover, the status quo undermines FEMA's mission to build a more prepared and resilient nation by encouraging States to rely on Federal assistance when they are capable of being better prepared and more resilient on their own.

c. The Current Cost of Assistance Estimates Factor Undermines FEMA's Mission To Prepare for and Respond to the Worst Disasters Without Delay

FEMA's response and recovery operations for numerous and cumulative small disasters weaken its ability to quickly respond to and aid recovery efforts for larger, or concurrent catastrophic disasters. FEMA's incident workforce is historically over-committed to smaller disasters, leaving a fraction of the Agency's capacity to prepare for, respond to, and recover from complex catastrophes and national security emergencies.[57]

The constraints imposed by numerous and cumulative smaller disasters affect the Agency's readiness to support disaster recovery operations without unacceptable delays by consuming FEMA staff time and resources that would be better used for larger disasters. For example, FEMA began the 2017 disaster season with nearly 30 percent of its workforce deployed on numerous smaller disasters across the country, which then required extraordinary and disruptive measures to reallocate and redistribute employees to meet the evolving requirements for hurricanes Harvey, Irma, Maria, and the California Wildfires.[58] When Hurricane Harvey made landfall in Texas, FEMA already had 692 open disaster and emergency declarations.[59] Of that total, it had staff deployed to 32 disasters across 19 field offices.[60] Additionally, in anticipation of concurrent impacts from Hurricane Irma, FEMA transitioned 9 active field offices supporting 13 disasters to regional offices prior to their anticipated closure date. The respective FEMA regional offices assumed responsibility for supporting these operations once the field offices transitioned, requiring FEMA regional staff to aid recovery efforts for these disasters in addition to those disasters already overseen by the Regional offices, as well as the daily operations of the Regional offices.[61] Of the 298 staff that were demobilized from the 9 field offices, FEMA redeployed 182 personnel to Hurricanes Harvey, Irma, and Maria within 15 days, 223

[52] *See* Regulatory Impact Analysis (RIA) at 47. The RIA is available in the public docket for this proposed rule on *regulations.gov.*

[53] FEMA, 2018–2022 Strategic Plan at 8 (2018).

[54] GAO, Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States, GAO–15–424, at 17 (March 2015).

[55] *Id.* at 21.

[56] *See* FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 47697 (Sept. 1, 1999). *See also,* FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 3910, 3911 (Apr. 26, 1999).

[57] FEMA, 2017 Hurricane Season FEMA After-Action Report, at 23 (July 12, 2018).

[58] *Id.*

[59] This total includes emergency, major, and fire management assistance declarations.

[60] FEMA, 2017 Hurricane Season FEMA After-Action Report, at 14.

[61] *Id.* at 18.

personnel within 30 days, and 242 personnel within 90 days.[62]

FEMA's responsibilities require it to have the capacity to respond in the shortest possible time, under all conditions, and to provide adequate staffing and resources for long-term recovery efforts for FEMA to successfully accomplish its mission. FEMA needs immediate operational availability because complex, no-notice or concurrent catastrophes do not provide time to maximize readiness by amassing a workforce and extracting response resources from multiple smaller-scale commitments. Moreover, FEMA needs proper staffing, resources, and focus for the long-term recovery operations for large disasters so that affected communities can be repaired and rebuilt and return to normal day-to-day life as soon as possible. FEMA is unable to properly meet these demands when such a large portion of FEMA's staffing and focus are committed to numerous and cumulative smaller disasters that are actually, or should be, within the States' capabilities to handle on their own.

As noted in FEMA's After-Action Report for the 2017 Hurricane Season, for FEMA to be better positioned for future challenges, State and territorial governments should be able to respond to and recover from smaller incidents within their capabilities either organically or through collaboration with neighboring states and territories. Strengthened States and territories, in turn, allow FEMA to preserve sufficient capacity to promptly respond to and recover from large, complex, or concurrent catastrophes and national security emergencies.[63] However, as noted above, the current per capita indicator and minimum threshold disincentivize States from building their capabilities to respond to smaller incidents on their own, which undermines FEMA's ability to respond to and recover from large, complex, or concurrent large disasters, and weakens the preparedness and resilience of the Nation. FEMA could be faster and more effective in planning for, responding to, and recovering from large catastrophic disasters if more of its workforce was able to focus on such large disasters, rather than being dispersed to numerous smaller incidents more appropriately handled by the States.

d. FEMA's Use of the Decennial Census as a Data Source for Population

FEMA has exclusively relied upon the U.S. Census Bureau's decennial census reports on population to calculate State COA indicators since the inception of the per capita indicator.[64] The decennial census is a major governmental undertaking that involves canvasing the nation and is considered the most-accurate account of the United States population at the time it is conducted.[65] However, the decennial survey is only conducted every 10 years. Meanwhile, populations constantly fluctuate due to changing circumstances, such as economic growth and downturn, relocations driven by disaster, and other factors. In many cases these fluctuations are rather de minimis, but occasionally they are not. In such instances, as more time elapses after the most recently completed decennial census survey, the data from that decennial survey census becomes a less and less accurate measure of the current populations. Therefore, the Census Bureau uses the Population Estimates Program (PEP) to update the populations since the decennial Census was collected.

Illustrative of how drastically the decennial census data can diverge from the PEP estimates are the cases of Nevada in 2000 and Puerto Rico in 2010, showing the greatest increase and greatest decrease in population in those periods, respectively. The 2000 decennial census reported the population of Nevada to be 1,998,257.[66] The 2001 PEP estimate for Nevada was 2,098,399. By 2009, the PEP estimate had risen to 2,684,665.[67] The 2010 decennial census reported Nevada's population at 2,700,551. Nevada's population grew by 35 percent between 2000 and 2010. Consequently, by 2010, the 2000 decennial census data showed a population for Nevada that was 35 percent lower than its 2010 population. Comparatively, the 2009 Nevada PEP estimate was off by only 0.6 percent from the actual population reported in the 2010 decennial survey. Similarly, the 2010 decennial census reported the population of Puerto Rico to be 3,725,789.[68] However, by July of 2018, the PEP estimate for Puerto Rico fell to 3,195,153, a 14 percent decrease.[69]

Despite the increasing divergence of past decennial data from current populations in out years, FEMA continues to utilize solely decennial data for purposes of calculating the State COA indicators. Under this approach, FEMA essentially locks-in the population of each State until the new decennial census data is collected, analyzed, and reported. In monetary terms, FEMA's choice to rely solely on decennial population values can impact the State COA indicator for a State whose population is quickly changing.

Nevada and Puerto Rico again provide illustrative examples of this effect. In 2009, the PA per capita indicator was $1.31.[70] Based on the 2000 decennial population that FEMA was still utilizing in 2009, Nevada's State COA indicator in 2009 was $2,617,717.[71] Even if FEMA made no changes to the underlying State COA indicator formula other than substituting the 2009 PEP population estimate for the 2000 decennial census population estimate, Nevada's State COA indicator would have risen to $3,516,911.[72] That results in a difference of $899,194. Thus, continuing to utilize the static 2000 decennial census figures in 2009 undervalues Nevada's State COA indicator by 34 percent. With respect to Puerto Rico, based on the 2010 decennial census data that FEMA currently utilizes, Puerto Rico's FY 2019 State COA indicator is $5,588,684.[73] Assuming no changes to the underlying per capita indicator

[62] *Id.*

[63] *Id.* at 23.

[64] The Census Bureau's Population Estimates Program (PEP) produces annual estimates for years after the last published decennial census 2010, as well as for past decades. Existing data series such as births, deaths, Federal tax returns, Medicare enrollment, and immigration, are used to update the decennial census base counts. PEP estimates are used in Federal funding allocations, in setting the levels of national surveys, and in monitoring recent demographic changes. U.S. Census Bureau, Population and Housing Units Estimates: Frequently Asked Questions (available at: *https://www.census.gov/programs-surveys/popest/about/faq.html*) (last accessed April 26, 2019).

[65] Also known as the Population and Housing Census, the Decennial U.S. Census counts every resident in the United States. It is mandated by Article I, Section 2 of the Constitution and takes place every 10 years. The data collected by the decennial census determine the number of seats each state has in the U.S. House of Representatives and is also used to distribute billions in Federal funds to local communities. U.S. Census Bureau, Our Surveys & Programs: Our Censuses (available at *https://www.census.gov/programs-surveys/censuses.html*) (last accessed June 26, 2019).

[66] U.S. Census Bureau, Report No. DP–1, Profiles of General Demographic Characteristics 2000: Census of Population and Housing: Nevada (May 2001) (available for download at: *https://www2.census.gov/library/publications/2001/dec/2kh32.pdf?#*) (last accessed April 26, 2019).

[67] *See* U.S. Census Bureau, Intercensal Estimates of the Resident Population by Sex, Race and Hispanic Origin for States and the United States: April 1, 2000 to July 1, 2010 (available for download at: *https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html*) (last accessed April 26, 2019).

[68] *Id.*

[69] U.S. Census Bureau, Puerto Rico Commonwealth Population Totals and Components of change: 2010–2018: Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 2010 to July 2018 (available for download at: *https//www.census.gov/data/tables/time-series/demo/popest/2010s-total-puerto-rico.html*) (last accessed May 2, 2019).

[70] 73 FR 60303 (Oct. 10, 2008).

[71] Calculation: 1,998,257 × $1.31 = $2,617,717.

[72] Calculation: 2,684,665 × $1.31 = $3,516,911.

[73] Calculation: 3,725,789 × $1.50 = $5,588,684.

formula other than substituting 2018 PEP population estimate for the 2010 decennial census population estimate, Puerto Rico's State COA indicator would be $4,792,730,[74] or a difference of $795,954. Thus, continuing to utilize the 2010 decennial census figures in 2019 overvalues Puerto Rico's State COA indicator by 14 percent.

As shown above, FEMA's reliance on population data from the most recent decennial survey can lead to an imprecise assessment of a State's population. Using PEP estimates will provide more up-to-date population information and allow for more accurate analysis.

B. Localized Impacts and Multiple Disasters

In addition to estimating the cost of assistance for a disaster, pursuant to 44 CFR 206.48(a)(1), FEMA also considers a variety of other factors when reviewing a request for a major disaster declaration authorizing PA. While the cost of assistance estimates factor is often the greatest indicator of whether FEMA will recommend that the President issue a major disaster declaration, that factor alone does not automatically mean a denial if the State does not meet it, nor does it guarantee a declaration if the State does meet it.[75] Rather, FEMA considers each factor to better evaluate the unique circumstances or needs created by each incident.[76]

Two of the factors that FEMA considers in reviewing a Governor's request are the recent disasters in an area, and the localized impacts of a disaster.[77] With respect to recent disasters, FEMA considers the disaster history within the last 12-month period to better evaluate the overall impact on the State or locality. FEMA considers declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds. With respect to localized impacts, FEMA considers the impact of the incident at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might overwhelm State capabilities even if the State COA indicator is not met, especially where critical facilities are involved or where localized per capita impacts might be extremely high. For example, at times localized damage may be in the tens or even hundreds of dollars per capita, though the statewide per capita impact was low.

In recent years, some members of Congress have expressed concern that the President has denied declarations that were warranted because of other recent disasters in the area and localized impacts, particularly where the impact is limited to the rural or sparsely populated areas of a high population State and the estimated costs of the incident do not exceed the State COA indicator. Section 1232 of the DRRA requires the Administrator of FEMA to give greater consideration to recent multiple disasters or severe localized impacts when making disaster declaration recommendations to the President, and to make corresponding adjustments to FEMA's policies and regulations regarding such consideration.

The existing recent multiple disasters provision in FEMA's regulations is broad with respect to how much consideration the Administrator gives to disasters in the previous 12 months. Consistent with that provision and with FEMA's May 1 guidance to Regional Administrators, directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters,[78] FEMA is giving greater consideration to these factors when making disaster declaration recommendations. Accordingly, FEMA does not propose to substantively amend 44 CFR 206.48(a)(5), but requests comment on whether the 12-month time limit currently in place is sufficient to address this factor as required by the DRRA. Similarly, FEMA proposes not to substantively amend the current regulatory text for the localized impacts factor in § 206.48(a)(2). FEMA believes that the current regulatory text enables FEMA to provide adequate consideration of local impacts while ensuring that FEMA does not over step the statutory requirement that an event be beyond State capability. FEMA also does not propose at this time to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance''). The current regulatory text for these factors already provides for adequate consideration of important information for FEMA assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States. However, FEMA is proposing minor technical and grammatical changes to all of § 206.48(a).

IV. Discussion of the Proposed Rule

FEMA proposes to revise the ''Estimated cost of the assistance'' factor in 44 CFR 206.48(a)(1) by increasing the per capita indicator to account for inflation from 1986 to 1999 and adjusting the individual States' indicators by their total taxable resources (TTR),[79] and by increasing the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter. These changes would provide FEMA with a better informed and more accurate assessment of whether an incident has exceeded State capabilities when it makes its recommendations to the President; incentivize States to invest more in response, recovery, and mitigation capabilities, which would provide a better distribution of responsibilities between the States and the Federal Government and better overall national preparedness for disasters; and the associated reductions in declarations of small incidents would allow FEMA to better focus its efforts and resources on large disasters without the complications of reallocating resources from multiple smaller-scale commitments.

Additionally, FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) instead of the decennial census population data. Using the U.S. Census Bureau's annual PEP data instead of the decennial census data would ensure a more accurate assessment of an individual State's population, which would better enable FEMA to achieve its readiness and preparedness missions by allowing FEMA to expend more attention and resources on incidents that actually exceed the States' capabilities.

Importantly, this proposed rule does not affect disaster declaration requests received directly from Tribal governments under the Tribal

[74] Calculation: 3,195,153 × $1.50 = $4,792,730.

[75] 64 FR 47697. *See also* 64 FR 3911.

[76] 64 FR 47697. *See also* 64 FR 3911.

[77] 44 CFR 206.48(a)(2) & (5).

[78] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[79] As discussed more below, FEMA will not adjust the District of Columbia's per capita indicator for TTR because of the unique tax and Federal funding circumstances in the District, as well as Congress' control over the ability of the District to manipulate its own revenues. Additionally, FEMA will not adjust the territories' per capita indicators for TTR because Treasury does not report TTR for the territories.

Declarations Pilot Guidance, or any of the criteria contained in that guidance.[80]

FEMA also proposes minor technical and corresponding grammatical changes to the introductory paragraph of § 206.48 and all of paragraph (a) to ensure consistent language throughout this section.

A. 44 CFR 206.48(a)(1)—Adjusting the Per Capita Indicator

1. Increasing the Per Capita Indicator To Account for Inflation Between 1986 and 1999

FEMA proposes to increase the per capita indicator from a FY 2019 value of $1.50,[81] to $2.32 (rounded), to account for increases to the Consumer Price Index for All Urban Consumers (CPI–U) between 1986 and 1999.[82] FEMA would continue to adjust the per capita indicator annually to reflect changes in the CPI–U, as is current practice. This would establish the baseline per capita indicator which FEMA would further adjust for each State, as described below.

The CPI–U is calculated and published by the U.S. Department of Labor, Bureau of Labor Statistics,[83] and uses the period of 1982 to 1984 as the base level where the CPI–U = 100. Current FEMA practice is to update the per capita indicator each fiscal year using the latest available month of CPI–U data. Since the per capita indicator is reported for the fiscal year and is published each October, the latest available CPI–U data is August data published in September each year. To maintain consistency with how FEMA updates the per capita indicator, FEMA calculated the inflation adjustment by comparing the April CPI–U for the base year 1986 (108.60) with the August CPI–U for 2018 (252.146). At the time of this analysis, August 2018 CPI–U data was the most recently available August CPI–U data available. This resulted in an inflation adjustment factor of 2.322.[84] FEMA then multiplied the inflation adjustment factor of 2.322 by the original per capita indicator of $1.00 to find a base per capita indicator of $2.32 (rounded).

Moving forward, once FEMA increases the indicator for the 1986–1999 inflationary adjustments, the continued practice of adjusting the indicator to account for changes in the CPI–U would continue to ensure that the indicator keeps pace with inflation. This would lead to reductions in the number and frequency of future major disaster declarations, and decreases in Federal costs of disaster assistance, by having States take responsibility for costs that are within their capability to manage.

Much like FEMA's decision in 1999 to set the per capita indicator at $1 and begin adjusting for inflation, rather than PCPI,[85] the current proposed change (to increase the per capita indicator for inflation between 1986 and 1999) provides a simple, clear, consistent, and long standing means of evaluating the size of a disaster relative to the size of the State, while also decreasing the number and frequency of disaster declarations, and decreasing Federal disaster costs. Moreover, increasing the per capita indicator to account for inflation from 1986 to 1999 would be more reflective of current dollar values, and would better enable FEMA to achieve its readiness and preparedness missions because FEMA would be able to apply more attention and resources to large catastrophic incidents as less FEMA focus and resources would be needed for smaller incidents actually within the States' capabilities.

2. Adjusting the Increased Per Capita Indicator for Total Taxable Resources

In addition to increasing the per capita indicator to account for inflation from 1986 to 1999, FEMA proposes to adjust the increased, baseline per capita indicator for a State's TTR to set an indicator that better recognizes a State's actual fiscal capability.

The TTR of the State is a publicly available annual estimate of the relative fiscal capacity of a State, calculated by the U.S. Department of Treasury (Treasury).[86] Treasury defines TTR as the unduplicated sum of the income flows produced within a State and the income flows, received by its residents, which a State could potentially tax.[87] TTR includes much of the business income that does not become part of the income flow to jurisdiction residents, as well as undistributed corporate profits, and rents and interest payments made by businesses to out-of-jurisdiction real estate owners and lenders.[88] TTR does not consider the actual fiscal choices made by the States, but rather, it reflects their potential resources and is an indicator of a State's broader economy.[89] In summary, TTR is a flow concept, meaning it is a comprehensive measure of all the income flows a State can potentially tax.[90] Treasury bases its calculation of the TTR on the Gross State Product (GSP) and State personal income,[91] accounting for the earnings of State residents who work outside the State borders, dividend and monetary interest income earned from sources outside of the State, select transfers from the Federal Government, and net realized capital gains. The following components of GSP were not available to States to tax and hence subtracted from GSP: Federal indirect business taxes, employer and employee contributions to social insurance, and Federal civilian enterprises surplus/deficit.[92]

Consideration of TTR as an indicator of State fiscal capacity is also consistent with FEMA's recent rulemaking revising the factors considered when evaluating requests for Individual Assistance (IA). The revised regulations for evaluating requests for IA (44 CFR 206.48(b)) use TTR as the main indicator of a State's fiscal capacity to provide IA.[93]

FEMA considered other potential alternatives for adjusting the per capita indicator to better measure a State's financial capabilities, including State GDP (*i.e.,* the total value of the goods and services produced within the State in a particular year); State Total Actual Revenues (TAR) (*i.e.,* the amount of revenue a particular State actually raises in a typical year); and a composite index of per capita TTR, per capita surplus/deficit, per capita reserve funding, and the State's bond rating. State GDP and TAR are strongly correlated with TTR;

[80] FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017).

[81] The FY2019 per capita indicator was the most current per capita indicator at the time that this proposed rule was written.

[82] Using August 1986 and 1999 CPI–U historical data.

[83] BLS Archived Consumer Price Index Supplemental Files (available for download at: *https://www.bls.gov/CPI-U/tables/supplemental-files/home.htm*). Data was taken from the Historical CPI–U, February 2019 publication.

[84] Calculation: $1 + (252.146–108.60)/108.60 = $2.322 (rounded).

[85] *See* 64 FR 47697 (Sept. 1, 1999).

[86] Treasury updates TTR data annually with a 2-year lag in the data, available at *https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources.*

[87] Dep't of Treasury, Office of Economic Policy, Treasury Methodology for Estimating Total Taxable Resources, at 2 (Revised Nov. 2002) (available for download at: *https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf*).

[88] *See Id.* at 1–4.

[89] *See Id.* at 2.

[90] *Id.*

[91] *Id.* at 2–3.

[92] *See Id.* at 1–4.

[93] FEMA, Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster, 84 FR 10632 (March 21, 2019). The revised IA regulations also allow States to submit information regarding State GDP and local per capita personal income, as well as other limiting factors, which FEMA may use as an alternative or supplemental evaluation method to TTR from which to measure a State's fiscal capacity to provide IA in response to a disaster. *See* 44 CFR 206.48(b)(1)(i)(A)–(C).

however, TTR, as a measure of potential, does not suffer from complications of political choice in TAR or GDP that result from differences between States in State tax obligations and the services for which tax dollars are allocated. Accordingly, given the correlation between the three, and the policy-neutrality of TTR, FEMA believes that TTR is the best measure of a State's financial capabilities by which to adjust the baseline per capita indicator.

Under the composite index approach, FEMA would average the four fiscal capacity indices and use the final figure to adjust each State's per capita indicator. This type of analysis was previously considered for use in FEMA's Establishing a Deductible for FEMA's Public Assistance Program Supplemental Advance Notice of Proposed Rulemaking (Deductible ANPRM).[94] The Deductible ANPRM was an earlier attempt to address the issue of underestimating States' fiscal capacity when recommending disaster declarations, and the four-part composite index analysis was part of the reason the deductible was eventually rejected. Public comments received on the Deductible ANPRM made clear that State and local stakeholders were uncomfortable with the complexity of the four-factor analysis; although it is more in-depth and could potentially produce more accurate assessments of States' fiscal capacities, the analysis is also a substantially more complicated framework for States and PA sub-recipients to adapt to and plan around. FEMA decided against using it here for these same reasons. FEMA believes adjusting the per capita indicator only by TTR strikes an appropriate balance between improving the fiscal capacity analysis by considering more than simply a State's population, and not burdening States with an overly complicated formula that slows implementation of the new framework.

Based on the above, FEMA believes that adjusting the baseline per capita indicator for TTR would result in a more realistic estimate of a State's financial capability. As previously discussed, adjusting the per capita indicator to adjust for inflation using the CPI–U between 1986 and 1999 would provide a more accurate measurement of the current costs of response and recovery, as well as changing present value of the dollar. Adjusting the indicator based on a State's TTR would provide additional accuracy in gauging a State's fiscal capacity by accounting for taxable resources other than the State's population, such as business income, undistributed corporate profits, and resident earnings from out-of-state employment. This approach also aligns with the recommendations of DHS OIG and GAO, Congress' direction in section 1239 of the DRRA, as well as the Stafford Act and FEMA's Strategic Plan, by ensuring that Federal assistance supplements State and local efforts when State and local capabilities have been exceeded, rather than supplanting resources that a State is financially capable of providing on its own.

Treasury reports TTR in three formats: billions of dollars, dollars per capita, and the per capita index. To adjust for TTR, FEMA would use 1/100th of the TTR per capita index, which is calculated relative to the national average TTR for a given year, where a TTR per capita index of 100 represents the national average. For example, if a State had a TTR per capita index of 101, FEMA would multiply the baseline indicator by 1.01 to adjust (*e.g.,* $2.32 × 1.01 = $2.34). FEMA would use the most recent TTR data available. Using 2018 published data, the minimum per capita indicator adjusted for TTR would be $1.52 (Mississippi, $2.32 × .655 = $1.52) and the maximum per capita indicator adjusted for TTR would be $3.17 (Connecticut, $2.32 × 1.368 = $3.17).[95]

FEMA believes that this method is the clearest and simplest method of utilizing the reported formats of TTR.[96] If FEMA were to use one of the other reported formats of TTR, FEMA would need to set a percentage of State total TTR in billions of dollars or State TTR per capita that would be appropriate for measuring a State's fiscal capability for responding to an incident, or FEMA would need to devise a formula by which to obtain a number that would adjust the baseline per capita indicator. FEMA believes that such changes could be difficult to implement on an annual basis, would be overly complex, and could result in confusion for stakeholders.[97] In contrast, much like the adjustment to the baseline per capita indicator, FEMA believes that the proposed method of adjusting for TTR provides the simplest, clearest, and most workable method by which to adjust the per capita indicator in order to ensure that FEMA accurately measures a State's financial capabilities.

As shown in Table 1, the individual States' per capita indicators would range from $1.51 to $3.15. Every State's per capita indicator would increase due to the adjustment for increases to the CPI–U from 1986 and 1999. However, adjusting for TTR would decrease 29 States' per capita threshold from the base amount, 20 States would see an increase in their per capita indicator threshold, and 7 States would still have a $2.32 adjusted per capita indicator.[98]

FEMA proposes not to adjust the District of Columbia's per capita indicator for TTR. The complex tax and Federal appropriation circumstances in the District of Columbia, as well as Congress' control over the ability of the District to manipulate its own revenues, would require impractical and potentially inaccurate adjustments in the TTR method. For example, Federal law prohibits the District from taxing non-resident commuters. Additionally, evaluating the District of Columbia's TTR is further complicated by the direct Federal oversight and appropriation of the District's budget. Accordingly, TTR does not provide the additional accuracy in determining the District's financial capability as it does for the States. Therefore, FEMA would use the increased per capita indicator to determine the District's per capita threshold, without adjusting for TTR. FEMA specifically requests comment on possible alternatives to this approach that would improve the accuracy of FEMA's fiscal capacity analysis for the District.

Additionally, FEMA is not proposing to adjust the per capita indicator for TTR for the territories because Treasury

[94] 82 FR 4064, 4072 (Jan. 12, 2017).

[95] U.S Dept. of Treasury, 2018 Total Taxable Resources Estimates (2018), *https://home.treasury.gov/system/files/226/TTR-tables-2018.pdf.*

[96] The GAO recommended the same approach to use a fiscal index to adjust the per capita indicator. GAO, GAO 12–838 at 71–72.

[97] Notably, the revisions to the regulations governing requests for IA included the ability for States to submit information on their GDP and local per capita personal income (PCPI) which FEMA may use as a supplemental or alternative factor to TTR when measuring a State's fiscal capacity to provide IA. *See* 44 CFR 206.48(b)(1). While such data may be useful in the IA context, it is less so in the PA context. First, FEMA notes that the use of State GDP and local PCPI are only as potential supplemental or alternative data points for fiscal capacity; TTR is still the preeminent factor for determining fiscal capacity for IA requests. Second, the IA program does not use a per capita indicator like the PA program, nor does it use any adjustment factors such as the proposed rule. Accordingly, if FEMA were to incorporate State GDP and local PCPI, along with TTR, into its consideration of PA requests, it would need to create a formula to adjust the per capita indicator, which would add complexity to the per capita indicator with little benefit given that TTR already incorporates a measure of a State's GDP and personal income. Moreover, States may submit data on their GDP or local PCPI to supplement their request for a PA declaration, since FEMA may consider information in addition to the factors in 44 CFR 206.48(a) to the extent that it further informs FEMA's recommendation to the President.

[98] As noted above, FEMA is not proposing to use TTR data for the territories and DC. South Dakota had a TTR of 100 in 2018.

does not report TTR for the territories.[99] This would result in the territories having the same per capita threshold as the average State, which may in practice be an over-estimation of the territories' fiscal capacity. However, without a published TTR to use, adopting the same approach proposed here for the States simply is not an option. FEMA requests comment on alternative approaches that would improve FEMA's fiscal capacity analysis for the territories. One such alternative, on which FEMA requests comment, would be to adjust the per capita indicator for the territories by the lowest TTR reported for any of the States.

3. Using Annual Population Data To Calculate the States' COA Indicator

FEMA proposes to use the U.S. Census Bureau's annual population estimates produced under PEP instead of the decennial census population data when calculating the State COA indicator. PEP produces annual estimates for years after the last published decennial census, as well as for past decades. The Census Bureau uses existing data series such as births, deaths, Federal tax returns, Medicare enrollment, and immigration to update the decennial census base counts. PEP estimates are used in Federal funding allocations, in setting the levels of national surveys, and in monitoring recent demographic changes.[100] As years pass since the most-recent decennial survey, the PEP estimates bear less relation to the previous numbers and adopt a stronger correlation to the results of the next decennial survey. In other words, as more time elapses between the most recently completed decennial survey and the next decennial survey, the PEP estimates become more current measures of the States' populations than the most recently conducted decennial survey.

Using the annual PEP data instead of data from the most recent decennial census would provide a more contemporaneous measure of a State's population to use in FEMA's calculation of State COA indicators. As shown in the examples of Nevada and Puerto Rico, use of decennial census data can lead to inaccurate assessments of a State's current population. Using the U.S. Census Bureau's annual PEP data instead of the decennial census data would ensure a more current assessment. Using the PEP data would better enable FEMA to achieve its readiness and preparedness missions because FEMA would be able to expend more attention and resources to large catastrophic incidents since less FEMA focus and resources would be needed for smaller incidents within the States' capabilities.

4. State COA Indicators After Accounting for Proposed Changes

The following table shows for each State: (1) The most recent TTR per capita index (2016),[101] (2) the proposed State per capita indicator after adjusting for inflation and TTR, (3) State population from the most recent PEP estimates (2018),[102] (4) the resultant proposed State COA indicators, (5) the FY2019 State COA indicators based on the FY2019 per capita indicator ($1.50) [103] and 2010 decennial census data, and (6) the difference between the proposed and baseline State COA indicators.

TABLE 1—PROPOSED STATE COA INDICATORS

State	2016 TTR (percentage)	Proposed state per capita indicator (2016 TTR * $2.32)	PEP population estimate (2018)	Proposed state COA indicators (A)	FY 2019 state COA indicators—baseline (B)	Difference (A – B)	Percent change
Alabama	73.7	$1.71	4,887,871	$8,358,259	$7,169,604	$1,188,655	16.6
Alaska	110.5	2.56	737,438	1,887,841	1,065,347	822,494	77.2
Arizona	76.6	1.78	7,171,646	12,765,530	9,588,026	3,177,504	33.1
Arkansas	74.2	1.72	3,013,825	5,183,779	4,373,877	809,902	18.5
California	114.2	2.65	39,557,045	104,826,169	55,880,934	48,945,235	87.6
Colorado	102	2.37	5,695,564	13,498,487	7,543,794	5,954,693	78.9
Connecticut	136.8	3.17	3,572,665	11,325,348	5,361,146	5,964,202	111.2
District of Columbia	100	2.32	967,171	2,243,837	902,585	1,341,252	148.6
Delaware	131.7	3.06	702,455	2,149,512	1,346,901	802,611	59.6
Florida	85.4	1.98	21,299,325	42,172,664	28,201,965	13,970,699	49.5
Georgia	87.3	2.03	10,519,475	21,354,534	14,531,480	6,823,054	47.0
Hawaii	99	2.30	1,420,491	3,267,129	2,040,452	1,226,677	60.1
Idaho	74.5	1.73	1,754,208	3,034,780	2,351,373	683,407	29.1
Illinois	108.4	2.51	12,741,080	31,980,111	19,245,948	12,734,163	66.2
Indiana	90.7	2.10	6,691,878	14,052,944	9,725,703	4,327,241	44.5
Iowa	102.5	2.38	3,156,145	7,511,625	4,569,533	2,942,092	64.4
Kansas	96.3	2.23	2,911,505	6,492,656	4,279,677	2,212,979	51.7
Kentucky	76.6	1.78	4,468,402	7,953,756	6,509,051	1,444,705	22.2
Louisiana	85.8	1.99	4,659,978	9,273,356	6,800,058	2,473,298	36.4
Maine	79.6	1.85	1,338,404	2,476,047	1,992,542	483,505	24.3
Maryland	117.2	2.72	6,042,718	16,436,193	8,660,328	7,775,865	89.8
Massachusetts	130.4	3.03	6,902,149	20,913,511	9,821,444	11,092,067	112.9
Michigan	85.6	1.99	9,995,915	19,891,871	14,825,460	5,066,411	34.2
Minnesota	105	2.44	5,611,179	13,691,277	7,955,888	5,735,389	72.1
Mississippi	65.5	1.52	2,986,530	4,539,526	4,450,946	88,580	2.0
Missouri	86.1	2.00	6,126,452	12,252,904	8,983,391	3,269,513	36.4
Montana	80.2	1.86	1,062,305	1,975,887	1,484,123	491,764	33.1
Nebraska	107.1	2.48	1,929,268	4,784,585	2,739,512	2,045,073	74.7

[99] The territories for which Treasury does not report TTR include: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands.

[100] U.S. Census Bureau, Population and Housing Units Estimates: Frequently Asked Questions (available at: *https://www.census.gov/programs-surveys/popest/about/faq.html*) (accessed April 26, 2019).

[101] The Treasury Department publishes updated TTR per capita indices two years after the year in question. The most recent data available at the time of this analysis was 2016 data.

[102] PEP estimates are released in July each year covering the previous year and all other years back to the last decennial census. At the time of this analysis, the data for 2018 was the most recent data available.

[103] FEMA publishes updated per capita indicators in the **Federal Register** each year, with FY 2019 being the most recent data available at the time of this analysis. If this proposed change were adopted, FEMA's annual publication in the **Federal Register** would include a list of TTR-adjusted per capita indicators and COA indicators for each State.

TABLE 1—PROPOSED STATE COA INDICATORS—Continued

State	2016 TTR (percentage)	Proposed state per capita indicator (2016 TTR * $2.32)	PEP population estimate (2018)	Proposed state COA indicators (A)	FY 2019 state COA indicators—baseline (B)	Difference (A – B)	Percent change
Nevada	91.9	2.13	3,034,392	6,463,255	4,050,827	2,412,428	59.6
New Hampshire	112.9	2.62	1,356,458	3,553,920	1,974,705	1,579,215	80.0
New Jersey	122.8	2.85	8,908,520	25,389,282	13,187,841	12,201,441	92.5
New Mexico	76	1.76	2,095,428	3,687,953	3,088,769	599,184	19.4
New York	132	3.06	19,542,209	59,799,160	29,067,153	30,732,007	105.7
North Carolina	86.4	2.00	10,383,620	20,767,240	14,303,225	6,464,015	45.2
North Dakota	119.8	2.78	760,077	2,113,014	1,008,887	1,104,127	109.4
Ohio	91.6	2.13	11,689,442	24,898,511	17,304,756	7,593,755	43.9
Oklahoma	80.7	1.87	3,943,079	7,373,558	5,627,027	1,746,531	31.0
Oregon	95.7	2.22	4,190,713	9,303,383	5,746,611	3,556,772	61.9
Pennsylvania	100.4	2.33	12,807,060	29,840,450	19,053,569	10,786,881	56.6
Rhode Island	101.9	2.36	1,057,315	2,495,263	1,578,851	916,412	58.0
South Carolina	75.5	1.75	5,084,127	8,897,222	6,938,046	1,959,176	28.2
South Dakota	100	2.32	882,235	2,046,785	1,221,270	825,515	67.6
Tennessee	84.9	1.97	6,770,010	13,336,920	9,519,158	3,817,762	40.1
Texas	96.6	2.24	28,701,845	64,292,133	37,718,342	26,573,791	70.5
Utah	87.4	2.03	3,161,105	6,417,043	4,145,828	2,271,215	54.8
Vermont *	91.7	2.13	626,299	1,334,017	938,612	395,405	42.1
Virginia	105.1	2.44	8,517,685	20,783,151	12,001,536	8,781,615	73.2
Washington	116	2.69	7,535,591	20,270,740	10,086,810	10,183,930	101.0
West Virginia	72	1.67	1,805,832	3,015,739	2,779,491	236,248	8.5
Wisconsin	95.4	2.21	5,813,568	12,847,985	8,530,479	4,317,506	50.6
Wyoming	117.9	2.74	577,737	1,582,999	845,439	737,560	87.2
Puerto Rico	100	2.32	3,195,153	7,412,755	5,588,684	1,824,071	32.6
American Samoa *	100	2.32	55,519	128,804	83,279	45,525	54.7
Guam *	100	2.32	159,358	369,711	239,037	130,674	54.7
Northern Mariana Islands *	100	2.32	44,943	104,268	67,415	36,853	54.7
Virgin Islands *	100	2.32	106,405	246,860	159,608	87,252	54.7

* These jurisdictions are subject to the current $1 million minimum threshold because the State COA indicator falls beneath the minimum threshold.

B. 44 CFR 206.48(a)(1)—Adjusting the $1 Million Minimum Threshold for Inflation

FEMA proposes to increase the minimum threshold in the cost of assistance estimates factor to account for inflation from 1999, and to adjust the threshold using CPI–U annually hereafter. The proposed rule would increase the current minimum threshold from $1 million to $1.535 million for FY 2019.[104] As noted above, FEMA has never increased the minimum threshold since it established the threshold in 1999, despite a 51 percent increase in the CPI–U and corresponding rises in the costs to respond to incidents, as well as rises in State GDP, expenditures, and TTR. Accordingly, while FEMA believed in 1999 that $1 million was a reasonable amount for even the least populous States and Territories to handle on their own, FEMA believes that the $1 million minimum threshold may no longer be an accurate benchmark of the least populous States' and Territories' capabilities to respond to incidents. Based on the rises in State and Territories' GDP, expenditures, and TTR, FEMA believes that States and Territories should be able to handle the increased minimum threshold.

With the proposed changes to the per capita indicator and the minimum threshold, Vermont, and the territories of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands would have State COA indicators that would fall below the proposed minimum threshold.[105] Accordingly, these jurisdictions would be subject to the $1.535 million minimum threshold.

Importantly, by accounting for increases to the CPI–U since 1999 and annually moving forward, the minimum threshold would be more representative of current dollar values and be a more accurate indicator of the least populous States' capabilities to respond to incidents. The reduction in disaster declarations would keep FEMA from expending resources and attention on incidents within the States' capabilities, allowing FEMA to better prepare for large, catastrophic incidents. A higher minimum threshold would incentivize less populous States and Territories to build their response and recovery capabilities and mitigate the hazards of future incidents.

In addition to analyzing the effects of increasing the minimum threshold to account for CPI–U from 1999, FEMA analyzed several alternatives to increasing the minimum threshold. The full results of the analysis are presented in the RIA. FEMA analyzed increases since 1999 in State general fund expenditures (which were used as a partial basis for the $1 per capita indicator set in 1986), State TTR, and State GDP, as potential alternatives to the proposed action.

FEMA also analyzed whether its administrative costs for past smaller disasters demonstrated a threshold for which FEMA's administrative burden exceeded the amount of Federal assistance provided. In other words, instances in which FEMA's cost to deliver the assistance may have exceeded the cost of the assistance provided. Administrative costs include

[104] FEMA calculated the inflation adjustment by comparing the January CPI–U for the base year 1999 (164.3) with the August CPI–U for 2018 (252.146). This resulted in an inflation adjustment factor of 1.535. FEMA then multiplied the inflation adjustment factor of 1.535 by the original minimum threshold of $1 million to find a minimum threshold of $1,535,000 (rounded).

[105] As shown in Table 1 above, with the proposed changes to the per capita indicator, Vermont's State COA indicator would be just over $1.30 million. Each of the noted territorial jurisdictions COA indicators fall well below the proposed $1.535 million minimum threshold. Therefore, under this proposed rule, in cases where the estimated cost of assistance meets or exceeds the COA indicators for Vermont or the territorial jurisdictions, but is less than the $1.535 million minimum threshold, the minimum threshold would apply, and the estimated cost of assistance for the State or Territory would have to meet this higher amount. FEMA anticipates that these territorial jurisdictions will generally be subject to the annual minimum threshold year to year due to their small populations.

disaster-related personnel costs such as salaries, benefits, and travel; the cost of tasking another Federal agency to support operations (mission assignments); technical assistance contracts associated with the execution of the PA program; and, general administrative costs such as leases, communications, supplies, and equipment that are incurred from declaration to disaster closure.[106] Given the broad scope of items included in administrative costs, particularly related to personnel, administrative costs are a good representation of the overall Federal resources and attention that are expended on a given disaster.

Based on the analysis of alternatives, FEMA believes that increasing the minimum threshold to account for post-1999 increases to CPI–U is the best alternative for raising the minimum threshold because the other alternatives would increase the complexity of setting the minimum threshold, with few, if any, additional benefits. As explained in the stand-alone RIA found in the docket of this rulemaking,[107] while the other alternatives may result in modest gains in reducing disaster declarations and Federal expenditures, those gains would be outweighed by the complexity that FEMA and stakeholders would encounter in implementing these other alternatives. Importantly, however, in addition to increases in the CPI–U, the increases in State expenditures, GDP, and TTR, and FEMA's average administrative costs for small disasters collectively demonstrate that the current $1 million threshold is no longer an accurate benchmark for the States' capabilities to respond to disasters on their own. Therefore, based on the totality of this information, FEMA believes an increase to the minimum threshold is necessary.

Accordingly, FEMA proposes to amend the minimum threshold to account for increases to the CPI–U from 1999 to present, and annually thereafter. The proposed changes would provide the simplest and most certain means of increasing the minimum threshold, and for annual changes to the threshold. The proposed use of the CPI–U to increase the minimum threshold is also consistent with the adjustments to the per capita indicator. Additionally, adjusting the minimum threshold for changes to the CPI–U would better reflect current dollar values and the States' incident response capabilities, allow FEMA to be better prepared for larger, catastrophic incidents, and incentivize States to build their response capabilities and mitigate hazards posed by future incidents, thereby helping FEMA achieve its mission to make the nation better prepared and more resilient.

C. 44 CFR 206.48(a)(2)–(6)—Other Factors

Section 1232 of the DRRA requires the Administrator of FEMA to give greater consideration to recent multiple disasters or severe localized impacts when making disaster declaration recommendations to the President, and to make corresponding adjustments to FEMA's policies and regulations regarding such consideration. The current text of 44 CFR 206.48(a)(5) provides broad discretion for the consideration of multiple disasters occurring in the 12-month period prior to the event. Consistent with that provision and with FEMA's May 1 guidance to Regional Administrators, directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters,[108] FEMA is giving greater consideration to these factors when making disaster declaration recommendations. Accordingly, FEMA is not proposing to substantively amend § 206.48(a)(5), but requests comment on whether a revision of the 12-month time limit currently in place is necessary to give greater consideration to this factor as required by the DRRA.

Similarly, FEMA proposes not to substantively amend the current regulatory text for the localized impacts factor in § 206.48(a)(2). As noted above, FEMA has instructed Regional staff to give greater consideration to local impacts moving forward[109] and FEMA believes that the current regulatory text provides FEMA sufficient flexibility to provide adequate consideration of local impacts while ensuring that FEMA does not over step the statutory requirement that an event be beyond State capability.[110]

Additionally, with regard to the requirements of section 1239 of the DRRA that FEMA review all of the declaration factors and update them as necessary, FEMA does not propose to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance'') at this time. FEMA believes that the regulatory text for these factors already provides adequate consideration of important information for FEMA's assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States. Notably, although FEMA is not proposing to substantively amend these factors, FEMA may consider relevant information submitted by a requesting State that is outside the scope of the declaration factors listed in 44 CFR 206.48(a).

D. 44 CFR 206.48—Minor Technical and Grammatical Edits

FEMA also proposes minor technical and corresponding grammatical changes to the undesignated introductory paragraph and to § 206.48(a) to ensure consistent language between the PA declaration factors in 44 CFR 206.48(a) and the IA factors in 44 CFR 206.48(b). FEMA proposes to replace all uses of the term ''we'' in 44 CFR 206.48 with ''FEMA''. This would be consistent with the IA declaration factors in 44 CFR 206.48(b). FEMA also proposes minor corresponding edits to account for the change to the use of ''FEMA'' to ensure proper grammar.

VI. Regulatory Analysis

A. Executive Order 12866, As Amended, Regulatory Planning and Review; Executive Order 13563, Improving Regulation and Regulatory Review; and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and

[106] Administrative costs do not include program costs associated with mission assignments for Direct Federal Assistance, Urban Search and Rescue costs, and all other program deliverables and assistance such as grants to survivors.

[107] *See* Regulatory Impact Analysis at 47–51.

[108] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[109] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[110] Importantly, the DRRA did not amend section 401 of the Stafford Act which requires that the President determine that an event, to qualify as a major disaster warranting Federal assistance, be beyond the capabilities of the State and the affected local governments. *See* 42 U.S.C. 5170(a). So, while the President must give consideration to the impact of an event on local governments, he must also determine that the event exceeds the capabilities of the State.

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has designated this rule an ''economically significant regulatory action,'' under section 3(f)(1) of Executive Order 12866. Accordingly, this rule has been reviewed by OMB. This rule is exempt from the requirements of Executive Order 13771 because it has de minimis costs spread across all States and territories. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

FEMA conducted a Regulatory Impact Analysis (RIA) to assess the potential costs, benefits, and transfers from this proposed rule, and it has been found to be economically significant under E.O. 12866. FEMA provides an executive summary of the RIA below. For the full analysis, please see the RIA posted in the docket of this proposed rule on *regulations.gov.*

FEMA proposes to amend one of the factors it considers when recommending a major disaster declaration that authorizes PA. Specifically, the proposed rule would update 44 CFR 206.48(a)(1), ''Estimated cost of the assistance.'' FEMA proposes four associated changes in 44 CFR 206.48(a) to conform regulations to Section 1239 of the Disaster Recovery Reform Act of 2018 (DRRA). Table 2 provides a summary of the impacts of the proposed rule. The four proposed changes are:

(1) Increase the per capita indicator from $1.50 to $2.32 to account for inflation using Consumer Price Index for All Urban Consumers (CPI–U) data from 1986 to 1999 because no inflation factor was applied during that time frame. Adjust the per capita indicator by each individual State's total taxable resources (TTR).

(2) Increase the minimum threshold for major disaster declarations that authorize PA from $1 million to $1.535 million to account for inflation since 1999 and to adjust the threshold by CPI–U annually thereafter.[111]

(3) Use the US Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) when calculating the individual State's threshold. FEMA's current practice is to use the decennial census population data when calculating the State COA indicator.

(4) Make minor technical and corresponding grammatical changes to the undesignated introductory paragraph and to paragraph (a) of § 206.48.

TABLE 2—SUMMARY OF THE IMPACTS OF THE PROPOSED RULE (2018$)

Category	Summary
Proposed Changes	Replace the per capita indicator of $1.50 with $2.32 to account for inflation from 1986–1999 and then adjust by State TTR annually. Replace the minimum threshold of $1,000,000 with $1,535,000 and adjust by CPI–U annually. Use PEP annual population estimates instead of decennial census data to calculate the State COA indicators. Technical and grammatical changes to 44 CFR 206.48(a).
Affected Population	Applicants eligible to submit an application for a PA project, include 56 State and Territorial governments, 573 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations (PNPs). From 2008–2017, 7,456 Applicants would have been impacted by the proposed rule.
Transfers	$208.76 million annualized and $1.47 billion and $1.78 billion 10-year monetized reduction in transfers to the Applicants from FEMA at 7 and 3 percent discount rates, respectively.
Cost Savings (due to reduced disaster declaration requests and applications).	$62.71 million annualized and $440.45 million and $534.93 million 10-year monetized FEMA costs savings at 7 and 3 percent discount rates, respectively. $8.04 million annualized; and $56.44 million and $68.55 million 10-year monetized; Applicant cost savings at 7 and 3 percent discount rates, respectively.
Costs (quantitative)	$5,274 and $4,513 annualized; and $37,042 and $38,496 10-year monetized costs to Applicants and FEMA at 7 and 3 percent discount rates, respectively.
Costs (qualitative)	Applicants would need to invest more in response recovery, and mitigation capabilities. Damaged facilities may not be repaired or replaced and could be susceptible to future disasters.
Benefits (quantitative)	No quantitative benefits.
Benefits (qualitative)	Provide FEMA with a more accurate assessment of whether an incident has exceeded an Applicant's capabilities to respond to and recover from an incident. Incentivize Applicants to invest more in response, recovery, and mitigation capabilities, and increase overall national preparedness for incidents. Allow FEMA to refine its focus and resources on large-scale disasters.

[111] January 1999 CPI–U was 164.3 and August 2018 CPI–U was 252.146. Calculation: (252.14 − 164.3)/164.3 + 1 = 1.535 conversation factor (rounded). 1.535 × $1,000,000 = $1,535,000.

Affected Population

The proposed rule would reduce the number of major disaster declarations authorizing PA and therefore affect all non-Federal entities that are eligible to request PA following a Federal major disaster declaration. Eligible applicants for PA include 50 State and 6 Territorial governments, and the District of Columbia as well as 573 Federally recognized Indian Tribal governments,[112] local governments, and certain PNPs. A disaster declaration is done at the State level, but the Applicants fill out the forms for PA eligibility and to receive funding once PA funding is made available through a declaration. For simplicity, FEMA refers to the affected population as Applicants throughout the RIA. If this proposed rule had been in effect from 2008–2017, 7,456 Applicants for 159 PA disasters would have been impacted by the proposed rule. These Applicants would have had a reduction in grant funding, including funding and management costs for PA, funding and management costs for HMGP, and funding and management costs for BRIC. These Applicants would have also had paperwork cost savings for not filling out the forms to determine eligibility and receive funding.

Reduction in Disaster Declarations

As discussed later in this analysis, FEMA used data for the PA disasters from fiscal years (FY) 2008–2017 to estimate how the proposed rule would impact the number of PA disasters and the funding and costs associated with those PA disasters. FEMA used historical data on the estimated impacts on PA disasters from 2008–2017 as a proxy to estimate the impacts over the next ten years after this rule becomes final and effective. FEMA found there were a total of 585 PA disasters over the 10-year period of analysis, an average of 59 disasters per year. FEMA estimates that there likely would be 159 PA disasters that would no longer be declared disasters under the proposed rule, an average of 16 fewer PA disasters declared per year as discussed further in the RIA. This represents a 27 percent reduction in PA disasters declared from 2008–2017 under this proposed rule.

Transfers

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society. Transfers can have significant efficiency effects in addition to distributional effects and are not included in the estimates of the benefits and costs of a regulation. Transfers are analyzed in this RIA because grants, *i.e.* those grants made by FEMA for PA, are considered transfers.

The reduction in PA disasters would result in a reduction in grant funding to the PA Applicants. The reduction in funding from these programs equates to a reduction in transfers from FEMA to the Applicants. FEMA estimates the total 10-year undiscounted transfers of the proposed rulemaking would be $2.09 billion. The total 10-year discounted transfers would be $1.47 billion at a 7 percent discount rate and 1.78 billion at a 3 percent discount rate, with annualized transfers of $208.76 million at both 7 and 3 percent discount rates (Table 3).

TABLE 3—TOTAL ESTIMATED TRANSFERS OF THE PROPOSED RULE

[2018$]

Year	Total undiscounted reduction in transfers from FEMA to applicants	Discounted	
		7%	3%
1	$208,758,700	$195,101,589	$202,678,350
2	208,758,700	182,337,933	196,775,097
3	208,758,700	170,409,284	191,043,783
4	208,758,700	159,261,013	185,479,401
5	208,758,700	148,842,068	180,077,088
6	208,758,700	139,104,736	174,832,125
7	208,758,700	130,004,427	169,739,927
8	208,758,700	121,499,464	164,796,046
9	208,758,700	113,550,901	159,996,161
10	208,758,700	106,122,337	155,336,078
Total	2,087,587,000	1,466,233,752	1,780,754,055
Annualized		208,758,700	208,758,700

Cost Savings

The proposed rulemaking would result in administrative cost savings for FEMA, and paperwork cost savings for the Applicants and FEMA due to a decrease in the number of PA, BRIC, and HMGP applications resulting from fewer disaster declarations. A reduction in declarations would allow FEMA to focus its efforts and resources on larger disasters without the complications of reallocating response resources from multiple smaller scale commitments. The 10-year undiscounted FEMA cost savings resulting from the proposed rule would be $627.10 million ($440.45 million discounted at 7 percent discount rate and $534.92 million at a 3 percent discount rate; $62.71 million annualized at both 7 and 3 percent discount rates). FEMA estimates the 10-year undiscounted Applicant cost savings would be $73.30 million ($51.48 million at 7 percent and $62.53 million at 3 percent; $7.33 million annualized at both 7 and 3 percent). The total 10-year undiscounted cost savings for both FEMA and the Applicants would be $700.40 million, because there would be fewer requests for disasters to be declared and there would be fewer Applicants able to apply for relief. The

[112] As noted above, Tribal governments may directly submit a request for a major disaster declaration to FEMA under the Tribal Declarations Pilot Guidance, instead of requesting assistance through the State. The potential impacts of this proposed rule are discussed in more detail below and in the RIA. *See* Section 13 of the RIA.

10-year total discounted cost savings would be $491.93 million at 7 percent and $597.46 million at 3 percent, with an annualized cost savings of $70.75 million (Table 4).

TABLE 4—TOTAL ESTIMATED COST SAVINGS OF THE PROPOSED RULE

[2018$]

Year	Applicant cost savings	FEMA cost savings	Total undiscounted cost savings	Discounted	
				7%	3%
1	$8,035,714	$62,710,053	$70,745,767	$66,117,539	$68,685,211
2	8,035,714	62,710,053	70,745,767	61,792,093	66,684,671
3	8,035,714	62,710,053	70,745,767	57,749,619	64,742,399
4	8,035,714	62,710,053	70,745,767	53,971,607	62,856,698
5	8,035,714	62,710,053	70,745,767	50,440,754	61,025,920
6	8,035,714	62,710,053	70,745,767	47,140,892	59,248,466
7	8,035,714	62,710,053	70,745,767	44,056,908	57,522,783
8	8,035,714	62,710,053	70,745,767	41,174,681	55,847,362
9	8,035,714	62,710,053	70,745,767	38,481,010	54,220,740
10	8,035,714	62,710,053	70,745,767	35,963,561	52,641,495
Total	80,357,140	627,100,530	707,457,670	496,888,663	603,475,742
Annualized	.....	.....	.....	70,745,767	70,745,767

Costs

The proposed rule would substantively revise the estimated cost of the assistance disaster declaration factor. The proposed rule would not create new factors for FEMA to consider when reviewing a request for a PA disaster. FEMA would not change its current process for updating the per capita indicator or PA damage thresholds. FEMA's current practice is to update the per capita indicator each fiscal year to adjust for inflation using the for CPI–U and post the updated indicator on the **Federal Register** and FEMA website. The proposed rule would also require FEMA to update the minimum threshold every year to adjust for inflation. This is a new practice that FEMA is implementing to more accurately gauge a State's fiscal capacity to respond to disasters, as the threshold has not been updated since it was introduced in 1999. However, FEMA already calculates the change in CPI–U to apply to the per capita indicator each year. FEMA would apply the same change in CPI–U used to update the per capita indicator to the minimum threshold. The proposed rule would require FEMA to adjust the per capita indicator for each State's TTR, which is a new practice. FEMA estimates it would cost $12 per year for a FEMA employee to adjust the per capita indicator by TTR annually.

FEMA would continue to post the updated per capita indicator each fiscal year and would not require any additional annual calculations or data requirements from the Applicants. The proposed rule would impose a one-time cost of $39,545 to the Applicants to familiarize themselves with the proposed changes the first year (Table 5). The minimum threshold would now be published yearly along with the per capita indicator. Because Applicants already look up the per capita indicator, FEMA does not expect additional costs associated with also looking up the minimum threshold. The proposed changes could impose qualitative costs that FEMA was unable to quantify. Qualitative costs are discussed in the RIA. Transferring the costs of PA disasters to Applicants would require the Applicants to invest more in response, recovery, and mitigation capabilities. It is possible that without Federal assistance, Applicants may opt to not repair damaged facilities or pay for other recovery efforts. Damaged facilities that are not repaired or replaced could be more susceptible to subsequent incidents in the future. Additionally, damaged facilities that are not repaired or replaced may no longer be used, which could be a significant loss of infrastructure to small governments who might opt to not repair damaged facilities due to fiscal limitations.

TABLE 5—TOTAL ESTIMATED COSTS OF THE PROPOSED RULE

[2018$]

Year	Applicant costs	FEMA costs	Total undiscounted costs	Discounted	
				7%	3%
1	$39,545	$12	$39,557	$36,969	$38,405
2	0	12	12	10	11
3	0	12	12	10	11
4	0	12	12	9	11
5	0	12	12	9	10
6	0	12	12	8	10
7	0	12	12	7	10
8	0	12	12	7	9
9	0	12	12	7	9
10	0	12	12	6	9
Total	39,545	120	39,665	37,042	38,496

TABLE 5—TOTAL ESTIMATED COSTS OF THE PROPOSED RULE—Continued

[2018$]

Year	Applicant costs	FEMA costs	Total undiscounted costs	Discounted	
				7%	3%
Annualized				5,274	4,513

Benefits

FEMA was unable to quantify benefits of the proposed regulatory changes due to a lack of data on future impacts of adjusting declaration factors. FEMA instead focused on proposed regulatory changes that would provide FEMA with a more accurate assessment of whether an incident has exceeded an Applicant's capabilities to respond to and recover from an incident. This is because the minimum threshold and per capita indicator have not consistently been updated to account for inflation, and not based on a State's fiscal capacity to respond. The proposed changes would ensure that these factors are taken into account. FEMA believes that the proposed changes also would incentivize Applicants to invest more in response, recovery, and mitigation capabilities, since Federal assistance would be focused on larger-scale disasters, and Applicants will have more responsibility to ensure they are adequately equipped to handle smaller disasters. This would provide a better distribution of responsibilities between the Applicants and the Federal Government. These incentives would increase overall national preparedness for incidents. In addition, FEMA believes these changes to the PA declaration factors would result in a reduction in the number of declarations for smaller incidents, allowing FEMA to refine its focus and resources on larger incidents without the complications of reallocating response resources from multiple smaller-scale commitments, that States and local governments would have the capacity to manage without Federal assistance. FEMA requests public comment on the ability of Applicants to invest more in response, recovery, and mitigation capabilities.

Summary

Table 6 provides a summary of the annual and total quantified costs, cost savings, and reduction in transfers by category after implementation of the proposed rule, and Table 7 provides the A–4 accounting summary.

TABLE 6—SUMMARY OF TRANSFERS AND COST SAVINGS OF THE PROPOSED RULE

Transfer, cost, or cost savings item	Annual undiscounted
Reduction in Transfers	
PA Funding	$144,534,939
HMGP Funding	33,330,171
BRIC Funding	7,267,390
PA Management Cost Funding	17,344,193
HMGP Management Cost	4,999,526
Funding	
BRIC Management Cost Funding	1,282,481
Total Reduction in Transfers	208,758,700
Cost Savings	
Applicant Paperwork Cost Savings	8,035,714
FEMA Administrative Cost	62,409,381
Savings	
FEMA Paperwork Cost Savings	300,672
Total FEMA Cost Savings	62,710,053
Total Cost Savings (Applicants and FEMA)	70,745,767
Costs	
Applicant Costs.	
Year 1	39,545
Years 2–10	0
FEMA Costs	12
Total Costs, Year 1	39,557
Total Costs, Years 2–10	12

TABLE 7 A–4 ACCOUNTING STATEMENT

[$2018]

Period of Analysis: 2008 to 2017			
Category	7 percent discount rate	3 percent discount rate	Source citation (RIA, preamble, etc.)
BENEFITS:			
Annualized Quantified	N/A	N/A	
Qualitative	• Provide FEMA with a more accurate assessment of whether an incident exceeds Applicant capabilities. • Allow FEMA to focus efforts and resources on larger incidents. • Provide better distribution of responsibilities between Applicants and the Federal Government.		RIA Section 12.
COSTS:			
Annualized Monetized $millions/year	0.005274	0.004513	RIA Section 8.
Annualized quantified	N/A	N/A	
Qualitative	• Applicants would need to invest more in response, recovery, and mitigation capabilities. • Damaged facilities may not be repaired or replaced, and could be susceptible to future disasters.		
COST SAVINGS:			
Annualized Monetized $millions/year	70.75	70.75	RIA Section 8.
TRANSFERS:			
Annualized Monetized $millions/year	208.76	208.76	RIA Section 9.
From/To	Reduction in transfers from FEMA to PA Applicants		RIA Section 9.
Category	Effects		Source citation (RIA, preamble, etc.)
State, Local, and/or Tribal Government	Included in the Cost Savings is $5.88 million annual paperwork cost savings to Applicants. Included in the Transfers is $8.48 million in PA funding that Tribal Applicants would not have received from 2008–20187. However, $7.11 of that funding would have potentially been available for Tribal governments had that requested a disaster declaration under the Tribal Declarations Pilot Guidance.		RIA.
Small business	There were 7,456 unique Applicants for the 159 removed PA disasters from 2008–2017. Using a sample size of 380, FEMA found that 79% were likely to be small entities (5,890 Applicants). The average PA funding received per small entity in the sample was $168,046, with a range from a low of $0 to a high of $20.65 million. If the changes in the proposed rule were in effect, these entities would not have received this PA funding.		RFA (IRFA).
Wages	None.		
Growth	None.		

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential small entity impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential direct economic impacts on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process.

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA prepared this IRFA to examine the impacts of the proposed rule on small entities. A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per 5 U.S.C. 601–612.

FEMA has discussed most of these issues in other sections of the NPRM and in the stand-alone RIA found in the docket of this rulemaking. In this section, FEMA will address the issues specific to the analysis of small entities that have not been addressed elsewhere.

1. *A description of the reasons why action by the agency is being considered.*

FEMA is proposing to amend the estimated cost of the assistance factor, including the minimum threshold, in 44 CFR 206.48. Pursuant to 44 CFR 206.48, FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the PA program. Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at $1 in 1986) as an indicator that a disaster may warrant Federal assistance. FEMA did not increase the indicator until 1999, when it began adjusting for inflation in 1999 and annually thereafter. Also, in 1999, FEMA established a $1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least $1 million in PA damage, which FEMA believed was a level of damage even the least populous States could handle with their own resources. FEMA has never increased this threshold. The current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters. The lack of increases to the per capita indicator from 1986 to 1999 undercut the value of this factor as an indicator of State capacity given the inflation increases during that time. With respect to the minimum threshold, a 1999 determination by FEMA that all States could handle at least $1.0 million in damages with their own resources is outdated given the 53.5 percent increase from 1999 in the inflation rate over the last 20 years and rising State budgets and expenditures.[113]

Additionally, FEMA proposes to use the U.S. Census Bureau's annual population estimates produced under the PEP instead of the decennial census population data when calculating the State COA indicators. These changes would ensure a more accurate assessment of an individual State's financial capability to respond to and recover from a disaster, which would better enable FEMA to achieve its readiness and preparedness missions by allowing FEMA to expend more attention and resources on disasters that exceed the States' capabilities.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

Section 1239 of DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. FEMA proposes to amend 44 CFR 206.48(a) to make changes to the estimated cost of assistance factor.

FEMA is proposing to revise the cost of assistance estimates factor in 44 CFR 206.48(a)(1) by increasing the per capita indicator to account for inflation from 1986 to 1999 and adjusting the individual States' indicators by their TTR, and by increasing the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter. FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under PEP instead of the decennial census population data. These changes would provide FEMA with a better informed and more accurate assessment of whether an incident has exceeded State capabilities when it makes its recommendations to the President; incentivize States to invest more in response, recovery, and mitigation capabilities, which would provide a better distribution of responsibilities between the States and the Federal Government and better overall national preparedness for disasters; and the associated reductions in declarations of smaller incidents would allow FEMA to better focus its efforts and resources on large disasters without the complications of reallocating resources from multiple smaller-scale commitments.

3. *A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.*

The proposed rule directly affects all Applicants that are eligible to request PA under a Federal major disaster declaration authorizing PA. Eligible Applicants for PA include: State and Territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands; federally recognized Indian Tribal Governments, including Alaska Native villages and organizations; local governments; and certain private nonprofits.[114]

FEMA reviewed the PA disasters that it identified that likely would not have been declared from 2008–2017 due to the proposed rule, as presented in Table 8–1 in Section 8 of the stand-alone RIA found in the docket of this rulemaking, to estimate the number of small entities to which the proposed rule would apply. For each of the 159 PA disasters removed, FEMA used PA data in FEMA's Enterprise Data Warehouse (EDW) database to identify the Applicants for each of the PA disasters.

[113] January 1999 CPI–U of 164.3 and August 2018 CPI–U of 252.146. Calculation: (252.146 − 164.3)/164.3 = 53.5% (rounded).

[114] To be an eligible private nonprofit applicant, the private nonprofit must show that it has: A current ruling letter from the U.S. Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law. Additionally, prior to determining whether the private nonprofit is eligible, FEMA must first determine whether the private nonprofit owns or operates an eligible facility.

FEMA found there were 7,456 unique Applicants for the 158 PA disasters.

FEMA selected a random sample of 383 Applicants from the 7,456 unique Applicants to estimate the percentage that are small entities.[115] The term ''small entities'' includes small businesses that meet the Small Business Administration (SBA) size standard for small business concerns at 13 CFR 121.201, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with population of less than 50,000. FEMA researched and found data and information on 383 randomly sampled Applicants. FEMA found that of the 383 Applicants, 25 were classified as State governments, 312 were local governments, 3 were Tribal governments, and 43 were nonprofits. FEMA removed the 3 Tribal governments from the sample as they are sovereign entities and are not covered by the RFA. State governments are not considered small entities because they have populations greater than 50,000. For the Applicants classified as local governments, FEMA used 2010 decennial Census Bureau population data to determine the Applicant population size. Of the 312 local governments, 259 (or 83 percent) had populations below 50,000 and would be considered as small entities. For nonprofit Applicants, FEMA reviewed the nonprofit's website utilizing an open source database (*Manta.com*) and any other publicly available information to determine the size of the nonprofit and ownership. FEMA researched the 43 private nonprofits and found that all of them were independently owned and operated and are not dominant in their field. Therefore, FEMA assumed all 43 private nonprofits were likely to be small entities. Table 8 summarizes the findings of the small entity threshold analysis.

TABLE 8—SUMMARY OF APPLICANTS IN SAMPLE

Type of recipient or subrecipient	Exceed small entity threshold	Below small entity threshold	Total
State Government	25	0	25
Local Government	53	259	312
Private Nonprofits	0	43	43
Total	78	302	380
Percentage	21%	79%	100%

Of the 380 Applicants, FEMA found that 302 entities were small as defined by the SBA thresholds. Therefore, FEMA estimates that 79% of the total 7,456 Applicants of PA were small entities (5,890 Applicants were small entities). The 302 sampled small entities received a total of $50.75 million in PA funding for the disasters removed from 2008–2017 according to FEMA's EDW database. If the changes in the proposed rule were in effect, these entities would not have received this PA funding. The average PA funding received per small entity in the sample was $168,046 over the 10-year period. The PA funding a small entity received ranged from a low of $0 to a high of $20.65 million. Of the 302 small entities, 4 received $0 in PA funding. FEMA welcomes any data or comments from the public on the number of small entities that may be impacted by this proposed rule an any impacts to those small entities.

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 which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The proposed rule would call for a revision of a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This proposed rule would call for amendments to the existing collection requirements previously approved under the collections of information (COI) with OMB Control Numbers 1660–0009 and 1660–0017.[116] The costs associated with COI 1660–0009 include the time and cost burden for an Applicant to request a disaster declaration. A request for a disaster declaration comes from the State level. There is no burden for small entities included in COI 1660–0009, as the burden to complete FEMA form 010–0–13 is completed by the equivalent of a State Government Chief Executive and a State Administrative Support Worker. Therefore, there is no paperwork burden impact to small entities for COI 1660–0009.

The costs associated with COI 1660–0017 include the time and cost burden for Applicants to provide FEMA information that is required for PA program eligibility determinations, grants management, and compliance with other Federal laws and regulations. For the 159 PA disasters removed from 2008–2017 from this proposed rule, there would be a reduction in paperwork burden for Applicants that applied for the PA program, as covered by COI 1660–0017. There would be a reduction in respondents for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. The number of respondents would not change for FEMA Form 009–0–111, State Administrative Plan and State Plan Amendments (no form), Request for Appeals and Recommendation (no form), and Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form), as these forms are not impacted by the proposed rule.

The burden per response varies by form (see Table 9 in Section E, Paperwork Reduction Act of 1995). The number of forms each Applicant fills out varies by Applicant and by disaster. If an Applicant fills out every form impacted by this proposed rule, the maximum burden per Applicant is 11.4

[115] FEMA used Slovin's formula to determine the sample size. Using a 95 percent confidence interval, a sample size of 380 recipients and subrecipients is sufficient. Slovin's formula = N/(1+Ne^2) = 7,456/(1 + 7,456 * (0.05^2)) = 379.633, rounded up to 380.

[116] ''Public Assistance Program'', 1660–0017 can be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-1660-001*. The most recently approved ICR at the time of this analysis was ICR Reference Number 201902–1660–001. ''The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments'', 1660–0009 can be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201905-1660-003*. The most recently approved ICR at the time of this analysis was ICR Reference Number 201905–1660–003.

hours (found using the ''Average Hourly Burden'' column in Table 9, excluding those forms or items not impacted by the proposed rule). Therefore, small entities would have a maximum reduction of 11.4 hours of paperwork burden for each PA disaster removed due to the proposed rule. FEMA previously estimated that 79% of the total 7,456 Applicants of PA for the 159 removed PA disasters were small entities (5,890 Applicants were small entities). If all 5,890 small entity Applicants had filled out every form impacted by the proposed rule, there would have been a reduction in paperwork burden of 67,146 hours (5,890 small entities × 11.4 hours) from 2008–2017. There are no additional reporting, recordkeeping, or other compliance requirements resulting from this proposed rule.

5. *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.*

There are no relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

6. *A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.*

FEMA considered several alternatives to the proposed changes to the per capita indicator and the minimum threshold. The alternatives are described in more detail in Section 15 of the stand-alone RIA found in the docket of this rulemaking. Because PA is approved at the State level, this proposed rule would only directly affect States. Small entities would be indirectly affected by a reduction in declared disasters at the State level, but FEMA is unable to address the impacts to small entities directly. A summary of those alternatives follows.

FEMA considered two alternatives to adjusting the per capita indicator: adjusting the per capita indicator by PCPI and adjusting the per capita indicator by PCPI and then adjusting by TTR. The preliminary estimate for 2018 US PCPI is $53,712.[117] FEMA established the per capita indicator at $1 in 1986 based on the 1983 US PCPI, which was the latest available published information at the time. The PCPI used to set the original per capita indicator was $11,687.[118] PCPI increased by 360 percent from 1983 to 2018 (($53,712–$11,687)/$11,687). FEMA used the PCPI estimate of $11,687 from the 1986 proposed rulemaking as this was the data FEMA used to set the original per capita indicator. Applying the increase in PCPI to the original per capita indicator of $1 would result in a per capita indicator of $4.60. The per capita indicator alternatives resulted in per capita indicators that were higher than the proposed changes, which would result in more PA disasters that would not have exceeded the proposed thresholds from 2008–2017. Fewer PA disasters would result in more small entities impacted by the proposed rule, since fewer declared disasters would lead to a reduction in Public Assistance provided to local governments and Private Non-Profits within each State. FEMA rejected the PCPI-based per capita indicator thresholds because FEMA believed the resulting per capita indicators may be too high for some States to meet. Moreover, the potentially large changes to PCPI from year to year, in comparison to changes to the CPI–U, could result in instability and uncertainty in what the per capita indicator may be each year for individual States and make it more difficult for States to plan.

FEMA considered four alternatives to adjusting the minimum threshold using CPI–U: Using the change in GDP, State expenditures, or TTR to adjust the minimum threshold, or using FEMA administrative costs to calculate a minimum threshold for which FEMA's administrative burden exceeded the amount of Federal assistance provided. The minimum threshold alternatives resulted in minimum thresholds that were higher than the proposed minimum threshold and would have led to a 1 percent increase in the PA disasters that would not have exceeded the thresholds. Fewer PA disasters could result in more small entities impacted by the proposed rule. FEMA rejected adjusting the minimum threshold using the change in GDP, State expenditures, or TTR because the alternatives increase the complexity of calculating the threshold, but have little additional impact on the reduction in total PA disasters.

FEMA rejected using administrative costs to calculate a minimum threshold because FEMA was unable to derive a specific dollar value of estimated PA obligations at which the proportion of administrative costs relative to PA obligations could justify that a prospective minimum threshold be set at that amount. Based on FEMA's analysis of available information across all PA disasters in the past ten years, there is no specific size of PA disaster at which point administrative costs exceed the amount of PA assistance, or where excessive administrative costs essentially renders such PA assistance ineffectual from a Federal cost standpoint.

FEMA considered the following two alternatives that would have a smaller impact on small entities.

(a) No Regulatory Action

FEMA considered not proposing the minimum threshold and per capita indicator regulatory changes in this proposed rule. FEMA rejected this alternative because section 1239 of the DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. Additionally, the lack of increases to the per capita indicator from 1986 to 1999 undercuts the value of this factor as an indicator of State capacity given the increases in inflation during that time. For the minimum threshold, the lack of an increase since 1999 has prevented this factor from keeping pace with inflation, and rising State budgets and resources. By not proposing the per capita indicator and minimum threshold regulatory changes in the proposed rule, FEMA would be relying upon per capita indicator and minimum threshold factors that are no longer adequate measures of a State's capability to respond to and recover from a disaster. The no regulatory action alternative would result in a greater likelihood that the President declares major disaster declarations for relatively small incidents that a more accurate assessment would find is within a State's financial capabilities to respond to on its own.

(b) Population Alternative

FEMA considered continuing to use the US Census Bureau's decennial census population estimates instead of the proposed PEP annual estimates. FEMA found that using the decennial populations instead of the PEP annual estimates would have resulted in a reduction of 148 PA disasters from

[117] State Annual Personal Income, 2018 (Preliminary) and State Quarterly Personal Income, 4th Quarter 2018, Table 1: Personal Income, Population, and Per Capita Personal Income, by State and Region, 2017–2018, *https://www.bea.gov/system/files/2019-03/spi0319.pdf.*

[118] Disaster Assistance; Subpart C, the Declaration Process and State Commitments, 51 FR 13333, Apr. 18, 1986, found at *http://cdn.loc.gov/service/ll/fedreg/fr051/fr051075/fr051075.pdf.* FEMA began using $1 per capita informally in 1986. Revisions were made to the BEA 1983 PCPI after publication of the proposed 1986 rule. FEMA used the PCPI of $11,687 to maintain consistency with the data used at the time of establishing the per capita indicator.

2008–2017, an average of 15 per year. This is a difference of 10 disasters from when FEMA used the proposed PEP annual populations in the analysis. This difference was a result of the States having a higher population with the PEP annual population estimates compared to the decennial population, and therefore a higher State COA indicator.

FEMA rejected this alternative because FEMA's reliance on population data from the most recent decennial survey can lead to an imprecise assessment of a State's capabilities to respond to and recover from a disaster on its own. Decennial population data can lead to an inaccurate per capita indicator for States experiencing rapid changes in population. This could result in a greater likelihood that the President declares major disaster declarations for relatively small incidents that are within a State's financial capabilities to respond to on its own after it has experienced rapid population growth, or, conversely, a likelihood that the President does not declare major disaster declarations for incidents that may actually exceed a State's capabilities to respond to on its own where that State's population has rapidly decreased.

More detailed information on the alternatives can be found in Section 15 of the stand-alone RIA found in the docket of this rulemaking.

7. Conclusion

FEMA is interested in the potential impacts of the proposed rule on small entities and requests public comment on these potential impacts. If you think that this rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under **ADDRESSES** in the rule. In your comment, explain why, how, and to what degree you think this rule will have an economic impact on you. FEMA is also interested in less burdensome alternatives for small entities. If you know of less burdensome alternatives, please include them in your comment.

C. 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 million 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. FEMA has determined that this proposed rule can be excluded from this assessment as the proposed rule meets the criteria set forth in 2 U.S.C. 1503(4), which states, ''This chapter shall not apply to . . . any provision in a proposed or final Federal regulation that— . . . (4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government.'' Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 42 U.S.C. 4321 *et. seq.,* an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This proposed rule amends an existing regulation without changing its environmental effect, which meets Categorical Exclusion A3(d). This proposed rule is a narrowly crafted revision to FEMA's existing regulations updating the criteria that FEMA considers when recommending an area eligible for PA under a major disaster declaration. The proposed rule is not part of any larger regulatory action. Further, there are no extraordinary circumstances present that would create the potential for a significant environmental impact. Therefore, each of the conditions for application of categorical exclusion A3(d) is satisfied, and this action is categorically excluded from further NEPA review.

Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an EA or an EIS as defined by NEPA. *See* Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, section (V)(B)(2).

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This rulemaking contains a collection of information, as defined by the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520. This action contains proposed amendments to the existing information collection requirements previously approved under OMB Control Number 1660–0009 and 1660–0017. As required by the Paperwork Reduction Act of 1995, FEMA has submitted these proposed collection amendments to OMB for its review.

Collection of Information Number 1660–0009

Title: The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments.

OMB Control Number: 1660–0009.

Type of information collection: Revision of a currently approved collection.

Form Numbers: FEMA Forms 010–0–13 and 009–0–140 (used by FEMA personnel or contractors only).

Summary of the Collection of Information: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration using FEMA Form 010–0–13. The information obtained by joint Federal, State, and

local preliminary damage assessments is analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation will include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation and a copy of the Governor's request to the President. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House.

Need for Information: The Stafford Act requires that all requests for a major disaster or emergency declaration be made by the Governor of the affected State or the Chief Executive of an affected Indian tribal government. Section 401(a) of the Stafford Act stipulates that such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local government, and that Federal assistance is necessary. Section 401(a) further stipulates that as a part of such request, and as a prerequisite to major disaster assistance under the Stafford Act, the Governor shall take appropriate response action under State law and direct the execution of the State's emergency plan and shall furnish specific information that must be included in a request for a major disaster declaration. Section 401(a) stipulates that the request must include specific information on the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster. Section 501(a) requires the same information to be provided in requests for declarations of an emergency.

Use of Information: This collection includes FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency, which asks for the same data that were stated and required in the previous narrative Governor's requests to the President requesting supplemental Federal assistance, through the appropriate Regional Administrator, combined with the findings of a joint FEMA, State and local Preliminary Damage Assessment (PDA). The PDA is analyzed and provides the basis for a Regional Summary, Analysis, and Recommendation, which is submitted to the Assistant Administrator of the Disaster Assistance Directorate. The information is reviewed and evaluated, and the Administrator formulates a recommendation which is submitted to the President for consideration of a disaster or emergency declaration. The FEMA form eliminates the need for follow-up communications and reporting during a declaration request.

Description of the Respondents: State, local, or Tribal government.

Number of Respondents: The current OMB-approved number of respondents is 623 per year. The proposed rulemaking would not impact the number of respondents.

Number of Responses: FEMA estimates the number of responses would be 340 per year. This is a decrease of 16 responses from the OMB-approved number of responses of 356 per year.

Burden of Response: For each response, FEMA estimates it takes 9 hours to complete FEMA Form 010–0–13. In addition, FEMA estimates it takes 24.126 hours to gather information for the FEMA Form 010–0–13. The total burden for each response is 33.126 hours

Estimate of Total Annual Burden: The previously approved total annual burden was 11,792.8 hours. FEMA estimates that the number of responses would decrease by 16 per year. At 33.126 hours per response, the reduced burden for submitting the responses would be 530 hours (rounded). Based on the proposed rule's decrease in burden, the new estimated total annual burden is 11,262.8 hours.

Collection of Information Number 1660–0017

Title: Public Assistance Program,

OMB Control Number: 1660–0017,

Type of information collection: Revision of a currently approved collection.

Form Numbers: FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–111, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, 055–0–0–1, and 009–0–141.

Summary of the Collection of Information: The Stafford Act authorizes grants to assist State, tribal, and local governments and certain Private Non-Profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies.

Need for Information: The information collected is required for the PA program eligibility determinations, grants management, and compliance with other Federal laws and regulations. Title 44 CFR part 206 specifies the information collections necessary to facilitate the provision of assistance under the PA program.

Use of Information: The information collected is utilized by FEMA to make determinations for PA grants based on the information supplied by the respondents.

Description of Respondents: State, local, or tribal government.

Number of Respondents: The current OMB-approved number of respondents is 56 per year for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–111, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, 009–0–141, State Administrative Plan and State Plan Amendments (no form), and Request for Appeals and Recommendation (no form); and 4 per year for Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form). FEMA estimates the number of respondents would be 40 per year, a decrease of 16 respondents from the OMB-approved number of responses of 56 per year, for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. The number of respondents would not change for FEMA Form 009–0–111, State Administrative Plan and State Plan Amendments (no form), Request for Appeals and Recommendation (no form), and Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form).

Number of Responses: The number of responses per respondent varies by form (see Table 9). The number of responses per respondent (form) would not change due to the proposed rule. The decrease in the number of respondents for certain forms would result in a decrease in the total annual responses. FEMA estimates the total annual number of responses would be 284,564 per year. This is a decrease of 113,504 responses from the OMB-approved number of responses of 398,068 per year.

TABLE 9—ESTIMATED ANNUALIZED BURDEN HOURS BY FORM

Form name/form No.	Respondents	Responses per respondent	Total annual responses	Average hourly burden per response	Total hourly annual burden
FEMA Form 009–0–49, Request for Public Assistance	40	129	5,160	0.25	1,290
FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension	40	840	33,600	1.5	50,400
FEMA Form 009–0–91A Project Work Sheet (PW) Damage Description and Scope of Work	40	784	31,360	1.5	47,040
FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns	40	784	31,360	1.3333	41,813
FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet	40	728	29,120	1.5	43,680
FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet	40	728	29,120	1.5	43,680
FEMA Form 009–0–120, Special Considerations Questions	40	840	33,600	0.5	16,800
FEMA Form 009–0–128, Applicant's Benefits Calculation Worksheet	40	784	31,360	0.5	15,680
FEMA Form 009–0–121, PNP Facility Questionnaire	40	94	3,760	0.5	1,880
FEMA Form 009–0–123, Force Account Labor Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–124, Materials Summary Record	40	94	3,760	0.25	940
FEMA Form 009–0–125, Rented Equipment Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–126, Contract Work Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–127, Force Account Equipment Summary Record	40	94	3,760	0.25	940
State Administrative Plan and State Plan Amendments/No Form	56	1	56	8	448
FEMA Form 009–0–111, Quarterly Progress Report	56	4	224	100	22,400
Request for Appeals & Recommendation/No Forms	56	9	504	3	1,512
Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form	4	5	20	3	60
FEMA Form 009–0–141, FAC–TRAX System	40	913	36,520	1.25	45,650
Total			284,564	126.3333	339,853

Burden of Response: The burden per response varies by form (see Table 9). The total burden per response varies by respondent, with a maximum burden per respondent of 126.3333 hours if a respondent completes every form and those items without forms. The burden per response would not change due to this rulemaking.

Estimate of Total Annual Burden: The previously approved total annual burden was 466,025 hours. FEMA estimates that the number of respondents would decrease by 16 per year for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. Table 9 shows the resultant change in the total annual burden by form. Based on the proposed rule's decrease in burden, the new estimated total annual burden is 339,853 hours. This is a reduction of 126,172 hours per year.

TABLE 9—ITEMIZED CHANGES IN ANNUAL BURDEN HOURS

Data collection activity/instrument	Program change (burden currently on OMB Inventory)	Program change (new)	Difference
FEMA Form 009–0–49, Request for Public Assistance	1,806	1,290	−516
FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension	70,560	50,400	−20,160
FEMA Form 009–0–91A Project Work Sheet (PW) Damage Description and Scope of Work	65,856	47,040	−18,816
FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns	58,537	41,813	−16,724
FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet	61,152	43,680	−17,472
FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet	61,152	43,680	−17,472
FEMA Form 009–0–120, Special Considerations Questions	23,520	16,800	−6,720
FEMA Form 009–0–128, Applicant's Benefits Calculation Worksheet	21,952	15,680	−6,272
FEMA Form 009–0–121, PNP Facility Questionnaire	2,632	1,880	−752
FEMA Form 009–0–123, Force Account Labor Summary Record	2,632	1,880	−752
FEMA Form 009–0–124, Materials Summary Record	1,316	940	−376.0
FEMA Form 009–0–125, Rented Equipment Summary Record	2,632	1,880	−752

TABLE 9—ITEMIZED CHANGES IN ANNUAL BURDEN HOURS—Continued

Data collection activity/instrument	Program change (burden currently on OMB Inventory)	Program change (new)	Difference
FEMA Form 009–0–126, Contract Work Summary Record	2,632	1,880	−752
FEMA Form 009–0–127, Force Account Equipment Summary Record	1,316	940	−376
State Administrative Plan and State Plan Amendments/No Form	448	448	0
FEMA Form 009–0–111, Quarterly Progress Report	22,400	22,400	0
Request for Appeals & Recommendation/No Forms	1,512	1,512	0
Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form	60	60	0
FEMA Form 009–0–141, FAC–TRAX System	63,910	45,650	−18,260
Total	466,025	339,853	−126,172

As required by 44 U.S.C. 3507(d), FEMA will submit a copy of the proposed rule to OMB for its review of the collection of information.

FEMA asks for public comment on the proposed collection of information to help determine how useful the information is, whether it can help FEMA perform its functions better, whether it is readily available elsewhere, how accurate the estimate of the burden of collection is, how valid the methods for determining burden are, how FEMA can improve the quality, usefulness, and clarity of the information, and how FEMA can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility, where indicated under the **ADDRESSES** section of the proposed rule, by the date given under the **DATES** section.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB. Before FEMA could enforce the collection of information requirements in this proposed rule, OMB would need to approve FEMA's request to collect this information.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

A Privacy Threshold Analysis for this proposed rule was approved on May 23, 2019. Any information will be collected in existing FEMA Form 010–0–13, and will still only include the Governor's point of contact and general office phone number as well as other State specific and disaster specific information of a non-personally-identifiable nature. The information received through the form is neither retrieved nor retrievable by personally identifiable information (PII). Any retrieval would be done by utilizing State specific or disaster specific information of a non-identifiable nature. This form and its contents are covered by a System of Records Notice, DHS/FEMA/PIA–013 Grant Management Programs and notice is provided by the DHS/FEMA–009 Hazard Mitigation Disaster Public Assistance and Disaster Loan Programs SORN. This rulemaking does not impact FEMA's collection of PII in the disaster declarations process and form and no Privacy Impact Assessment or System of Records Notice is required at this time.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA has reviewed this proposed rule under Executive Order 13175 and believes that this proposed rule would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Sandy Recovery Improvement Act of 2013 requires the President when issuing regulations to ''consider the unique conditions that affect the general welfare of Indian tribal governments.'' To this end, FEMA, in coordination

with DHS, OMB and several tribes and tribal organizations, decided to develop the Tribal Declarations Pilot Guidance. The guidance underwent extensive and exhaustive tribal consultation for over 3 years, which included over 150 listening sessions across the country and the adjudication of over 2,000 comments. Under the Tribal Declarations Pilot Guidance, FEMA established separate factors for evaluating tribal governments' requests. These factors include (but are not limited to) a lower minimum damage amount for Public Assistance ($250,000) and the elimination of a per capita damage amount. These factors reflect the Agency's acknowledgement that tribal nations have different needs and capabilities than states. The factors listed in the Tribal Declarations Pilot Guidance will not be altered by this proposed rule, as the proposed rule only applies to States and Territories. Additionally, as noted in the RIA, Tribal applicants and subapplicants would have received $10.74 million less in PA funding between 2008 and 2017 had the proposed rule been in effect. However, $9 million of that funding would have been potentially available for some of those Tribal governments had they requested a major disaster declaration under the Tribal Declarations Pilot Guidance because those Tribal governments received more than $250,000 in PA assistance. Therefore, it is possible more Tribal governments may request disaster declarations through the Tribal Declarations Pilot Guidance as a result of the proposed rule. However, as discussed in the RIA, there are many other factors that affect whether a Tribal government requests a declaration through the Tribal Declarations Pilot Guidance.

The remaining $1.74 million of PA funding that Tribal governments would likely not have received resulted in an average of $36,192 per project for each of the 44 Tribal governments across the 29 disasters analyzed. While FEMA appreciates that some Tribal governments have limited financial capabilities, FEMA believes most Tribal governments could handle such costs in responding to an event on their own. Accordingly, FEMA does not believe that consultation under Executive Order 13175 is necessary; however, FEMA welcomes comments on the potential impacts of the proposed rule on Tribal governments. Additionally, in accordance with the requirement in section 1239 of the DRRA that FEMA meaningfully consult with State, local and Tribal governments, FEMA will conduct additional outreach with Tribal government stakeholders as well as representatives of State, regional and local governments.

H. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, 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.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 believes that this proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, on the distribution of power and responsibilities among the various levels of government, or on the policymaking discretion of the States, and therefore does not have federalism implications as defined by the Executive order. The proposed rule substantively affects one of several factors that FEMA considers when determining whether to recommend that the President declare that a major disaster has occurred on the basis of a governor's request that such a declaration be made. Importantly, FEMA considers all of the factors in making a decision on a recommendation, as each disaster request involves circumstances unique to that disaster event, the State, and affected communities. Moreover, FEMA's recommendation to the President does not obligate the President to agree with FEMA's recommendation. Rather, the President may declare or not declare a disaster on their own accord. Furthermore, the proposed rule does not affect a State's ability or choice to request such a declaration, since disaster declaration requests are voluntary, and States choose whether or not to request Federal assistance. While FEMA hopes that the proposed rule will encourage States to invest more in mitigating future disasters and their consequences, such funding decisions are ultimately left to the States' discretion. Accordingly, the proposed rule does not have federalism implications as defined by the Executive order.

However, FEMA welcomes comments on the proposed rule's potential impacts on States and territories, and their relationships with the Federal Government. Additionally, in accordance with the requirement in section 1239 of the DRRA that FEMA meaningfully consult with State, local and Tribal governments, FEMA will conduct additional outreach with representatives of State, regional and local governments.

I. Executive Order 11988, Floodplain Management, as amended

Pursuant to Executive Order 11988, each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance

relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting a floodplain(s). The changes proposed in this rule would not have an effect on floodplain management. This proposed rule revises the criteria that FEMA considers when recommending a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. When FEMA undertakes specific actions in administering PA that may have effects on floodplain management, FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive order. This serves as the notice that is required by the E.O..

J. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting land use. The changes proposed in this rule would not have an effect on land use or wetlands. This proposed rule revises the criteria that FEMA considers when recommending a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. When FEMA undertakes specific actions in administering PA that may have such effects, FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive order.

K. Executive Order 12898, Environmental Justice

Pursuant to Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on minority or low-income populations. The proposed rule substantively affects one of several factors that FEMA considers when determining whether to recommend that the President declare that a major disaster has occurred on the basis of a governor's request that such a declaration be made for PA. FEMA's PA program provides assistance to States, local governments, and private non-profits in repairing, restoring, and replacing facilities damaged by disasters, such as buildings, roads, bridges, and other infrastructure. FEMA's review of a governor's request for a major disaster declaration for PA only considers the relevant factors as they pertain to a disaster's impacts on those public or eligible private non-profit facilities covered by the PA program. Accordingly, no action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

L. Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' OMB Circular A–119

''Voluntary consensus standards'' are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. OMB Circular A–119 directs agencies to use voluntary consensus standards in their regulatory actions in lieu of government-unique standards except where inconsistent with law or otherwise impractical. The policies in the Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards.

The proposed rule does not contain a ''standard'' as defined by OMB Circular A–119. This proposed rule revises the criteria that FEMA considers when recommending a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. Accordingly, an analysis under OMB Circular A–119 is not required.

M. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant Executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule, as proposed, is a ''major rule'' within the meaning of the CRA. It will have an

annual effect on the economy of $100,000,000 or more, and may result in a major increase in costs or prices for Federal, State, or local government agencies. It will not have 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.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR part 206, subpart B, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1.

■ 2. Revise § 206.48 introductory text and paragraph (a) to read as follows:

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When FEMA reviews a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. FEMA considers other relevant information as well.

(a) *Public Assistance Program.* FEMA evaluates the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* FEMA evaluates the estimated cost of Federal and non-Federal public assistance against the statewide population to give some measure of the per capita impact within the State. FEMA uses a figure of $2.32 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and will adjust this figure annually based on the Consumer Price Index for all Urban Consumers. With the exception of the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam, FEMA further adjusts each State's per capita indicator according to each State's Total Taxable Resources (TTR) as reported by the U.S. Department of Treasury. FEMA is establishing a minimum threshold of $1.535 million in public assistance damages per disaster in the belief that FEMA can reasonably expect even the lowest population States to cover this level of public assistance damage. FEMA will adjust this minimum threshold annually based on the Consumer Price Index for all Urban Consumers. FEMA will publish the adjusted figures annually in the **Federal Register**.

(2) *Localized impacts.* FEMA evaluates the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, FEMA has at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* FEMA considers the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduces the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, FEMA considers the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, FEMA considers that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* FEMA looks at the disaster history within the last 12-month period to better evaluate the overall impact on the State or locality. FEMA considers declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* FEMA also considers programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

* * * * *

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–27094 Filed 12–11–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 391

[Docket No. FMCSA–2018–0224]

RIN 2126–AC15

Record of Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate provision that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic violations for a driver who is licensed by a foreign authority rather than by a State, that provision would be amended to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities. FMCSA expects that removing the requirement for drivers to provide a list of their convictions for traffic violations to their employers annually would reduce the paperwork burden on drivers and motor carriers without adversely affecting CMV safety.

DATES: Comments on this notice of proposed rulemaking (NPRM) and information collection must be received on or before February 12, 2021.

ADDRESSES: You may submit comments regarding this NPRM identified by docket number FMCSA–2018–0224 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224*. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Office of Driver and Carrier Operations, at Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–4325; or *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments to the NPRM

If you submit a comment to this NPRM, please include the docket number (FMCSA–2018–0224), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224,* click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may make changes based on your comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (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 that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this rulemaking. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned as being available in the docket, go to *http://www.regulations.gov/#!docketDetail;D=FMCSA-2018-0224* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14—FDMS, which can be reviewed at *https://www.transportation.gov/privacy*.

D. Waiver of Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g)(1), FMCSA is required to publish an advance notice of proposed rulemaking or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.[1] As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an advance notice of proposed rulemaking or to proceed with a negotiated rulemaking.

E. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM can be sent to FMCSA within 60 days of publication using any of the methods described in ''Public Participation and Request for Comments'' above.

II. Executive Summary

A. Purpose of the Regulatory Action and Summary of the Major Provisions

As part of FMCSA's ongoing regulatory reform efforts to remove costly, redundant, and burdensome regulations, the Agency proposes to rescind 49 CFR 391.27, *Record of violations,* and all related references to the rule in the Federal Motor Carrier Safety Regulations (FMCSRs). Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during the preceding 12 months. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must retain the list of violations

[1] A ''major rule'' means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

or certification of no violations in the driver's qualification file.

FMCSA would retain the requirement in § 391.25(a), *Annual inquiry and review of driving record,* for an annual MVR inquiry, which is largely duplicative of the requirement in § 391.27 for drivers to provide an annual list of their violations to their motor carriers. Section 391.25 requires each motor carrier to make an annual inquiry to obtain the MVR for each driver it employs from every State [2] in which the driver holds or has held a CMV operator's license or permit in the past year. The motor carrier is required to review the MVR obtained and to maintain a copy of it in the driver's qualification file. Thus, § 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State.

To ensure motor carriers are aware of traffic violations for a driver who is licensed by a foreign authority rather than by a State, FMCSA proposes to amend § 391.25(a) to require motor carriers to inquire annually of each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to the hiring process. Section 391.23, *Investigation and inquiries,* requires a motor carrier to make an inquiry to each State where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR when a motor carrier is hiring a driver. Changes would be made in § 391.23 to require motor carriers to make inquiries to each driver's licensing authority where a driver holds or has held a motor vehicle operator's license or permit. A change also would be made in § 391.21, *Application for employment,* to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23. Other conforming changes are outlined in the section-by-section analysis in Section VII., below.

[2] For purposes of part 391, the term ''State'' includes the District of Columbia (49 CFR 390.5T).

B. Costs and Benefits

The proposed elimination of § 391.27 would result in cost savings to drivers, as they would no longer spend time completing a list of convictions for traffic violations. It would result in cost savings to motor carriers, as they would no longer have to file the lists in driver qualification files. The Agency estimates that rescinding § 391.27 would result in cost savings of $28.1 million over 10 years, at a 7 percent discount rate. The annualized cost savings would be estimated at $4.0 million.

The proposed changes in the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities would have minimal, if any, impact. Only a small proportion of CMV drivers operating in the United States are licensed by a foreign authority rather than by a State. Of the 6.2 million CMV drivers reported in FMCSA's *2018 Pocket Guide to Large Truck and Bus Statistics,*[3] the Agency estimates that at most only 2.0 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total of 2.4 percent represents approximately 139,733 drivers reported as being employed by Canadian and Mexican motor carriers.[4]

The proposed changes would not increase reporting and recordkeeping costs for motor carriers or drivers. This is because the Motor Carrier Management Information System (MCMIS), the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and for purposes of information collection burden calculation, the median fee for obtaining an MVR or its equivalent from either a foreign or a domestic authority is generally the same.[5] FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, though FMCSA is proposing new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collection already includes the reporting and recordkeeping costs and burdens.

In addition, Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their country's licensing authorities.[6] Accordingly, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to obtain the equivalent of MVRs would impose no new record keeping or reporting costs or burdens. Though Canadian and Mexican motor carriers would not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the proposed rule, FMCSA continues to include the costs and burdens for requesting MVR equivalents in the current OMB-approved information collection to treat all motor carriers consistently and for administrative convenience.

FMCSA does not expect this proposed rule would negatively affect CMV safety. Motor carriers would still be required by § 391.25 to make an inquiry at least annually to each driver's licensing authority in which an employed driver holds or has held a CMV operator's license or permit to obtain the MVR of each driver they employ. Thus, motor carriers would still have a reliable way to learn of any convictions for traffic violations incurred by their driver employees.

III. Legal Basis for the Rulemaking

Sections 391.21, 391.23, 391.25, and 391.27 in title 49 of the CFR are based on the authority of the Motor Carrier Act of 1935 (1935 Act) (Pub. L. 74–255, 49 Stat. 543, 546, August 9, 1935) and the Motor Carrier Safety Act of 1984 (1984 Act) (Pub. L. 98–554, 98 Stat. 2832, 2834, 2841, October 30, 1984), both as amended.

This NPRM proposes to rescind § 391.27 and to amend §§ 391.23 and 391.25 to require motor carriers to make an inquiry to each driver's licensing

[3] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf,* Exhibit 1–10 (accessed Apr. 22, 2019).

[4] The sum of the number of Canadian and Mexican drivers as a percentage of the total number of drivers in Exhibit 1–10 does not add up to 2.5 percent due to rounding.

[5] Motor carriers also must pay driver's licensing authorities to request MVRs and MVR equivalents. The current OMB-approved information collection request associated with the reporting and recordkeeping requirements of §§ 391.23 and 391.25 estimates the cost incurred by motor carriers to request MVRs based on the median for the 51 State driver's licensing agencies (SDLAs). The median fee used in this analysis is based on the 51 SDLAs' and Canadian licensing authorities' fees. The median fee is $9 with or without the Canadian authorities' fees. Thus, this new requirement imposes no new costs on motor carriers.

[6] See Section IX.A., below, and footnote 10 for additional information.

authority where each driver they propose to hire, or have employed for the last 12 months, holds or has held a CMV operator's license or permit, to obtain the MVR for that driver. In addition, the Agency proposes to amend § 391.21 to require drivers to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver.

The 1935 Act, as codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (Secretary) to ''prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This NPRM addresses the qualifications of motor carrier employees, consistent with the safe operation of CMVs.

The 1984 Act, as codified at 49 U.S.C. 31136, provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136 requires the Secretary to issue regulations on CMV safety including regulations to ensure that ''commercial motor vehicles are . . . operated safely'' (section 31136(a)(1)). The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the requirement for motor carriers to inquire of driver's licensing authorities to obtain the MVR of each driver they employ would not impose any ''responsibilities . . . on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely.'' This rule would not address medical standards for drivers or possible physical effects caused by driving CMVs (section 31136(a)(3) and (a)(4), respectively). FMCSA believes there is no basis to anticipate that drivers would be coerced (section 31136(a)(5)) because of this rulemaking. The Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe, and thus to remove, recordkeeping and reporting requirements. This deregulatory action to rescind § 391.27 rests on that authority.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315 as they relate to CMV operators, programs, and safety.

Finally, prior to prescribing any regulations, FMCSA must consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the Regulatory Analyses section of this proposed rule.

IV. Background

Currently, 49 CFR 391.27 specifies, in part and subject to limited exceptions, that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during the preceding 12 months. Section 391.27 became effective on January 1, 1971 (35 FR 6458, 6462, Apr. 22, 1970).

On two previous occasions the Federal Highway Administration (FHWA), FMCSA's predecessor agency, proposed removing § 391.27 and its related requirements. The initial proposal was included in a January 10, 1994, NPRM titled ''Removal of Obsolete and Redundant Regulations and Appendices'' (59 FR 1366). In that document, FHWA stated the objective of § 391.27 is to provide the employing motor carrier with information about a driver's moving violations so the carrier can use the information to ensure that its driver has not been disqualified to drive a CMV (59 FR 1367). FHWA also stated that the requirements in § 391.27 are unnecessary and redundant because commercial driver's license (CDL) regulations already require CMV drivers to notify their current employers within 30 days of any conviction for a non-parking violation in any kind of vehicle. FHWA stated further that it is a common practice for motor carriers to obtain State MVRs on each of their drivers once or more per year, though such action is not required.

In response to the NPRM, nine commenters supported and eight opposed the removal of § 391.27. Some commenters recommended replacing the requirement for a list of violations with similar requirements involving an annual inquiry by motor carriers to the State driver's licensing agencies (SDLA) regarding the employee's driving record. Other commenters stated the requirement to provide a list of violations is the only notification requirement applicable to drivers of smaller commercial vehicles, and its removal would eliminate an important source of information. FHWA decided not to remove the requirement to provide a list of violations when the final rule was adopted, but stated it would evaluate the comments further and determine whether a future rulemaking to amend such requirements would be warranted (59 FR 60319, 60320, November 23, 1994).

The second proposal to eliminate § 391.27 was included in a January 27, 1997, NPRM titled ''Review of the [FMCSRs]; Regulatory Removals and Substantive Amendments'' (62 FR 3855). FHWA proposed replacing the requirement for drivers to provide a list of violations with similar requirements involving an annual inquiry regarding drivers' driving records by motor carriers to the SDLA, as proposed in § 391.25. The proposal to eliminate § 391.27 was based on two assumptions. The first assumption was that SDLAs would be able to provide a comprehensive record of crashes and traffic violations for both CDL and non-CDL CMV drivers so a motor carrier could ''better verify that its drivers have not lost their driving privileges and have not been otherwise disqualified to drive a CMV'' (62 FR 3858). The second assumption was that the State records would be more accurate than the practice of relying on a driver's memory or honesty.

Several commenters expressed reservations about the completeness and timeliness of SDLA information at that time. They believed that significant improvements needed to be made in the States' collection and transmission of data before motor carriers should be asked to rely completely on State driving records. Other commenters supported the proposal as a more consistent and objective method to gather information. FHWA determined that it was in the best interest of safety to retain § 391.27. FHWA stated that, until the completeness and timeliness of State-based driver record information is substantially improved, it is important for motor carriers to obtain violation information from both the driver and State-based source to enable cross-verification of information (63 FR 33254, 33262, June 18, 1998). FHWA did amend § 391.25, however, to include a specific requirement for a motor carrier to make an annual inquiry for the driving record of each of its drivers to the appropriate agency of every State in which the driver held a CMV operator's license or permit during the relevant time period (63 FR 33277).

On October 2, 2017, as part of the President's directives to review existing regulations to evaluate their continued necessity, determine whether they solve current problems, and evaluate whether they are burdensome, DOT published a **Federal Register** document seeking input on existing rules and other agency actions (82 FR 45750). DOT invited the

public to identify rules and other actions that are good candidates for repeal, replacement, suspension, or modification. In response, the American Trucking Associations and the American Pyrotechnics Association recommended that FMCSA eliminate the requirement in § 391.27 that a driver provide his or her employer with a list of violations at least annually.[7] They commented that the requirement is duplicative of § 391.25, which requires motor carriers to order a driver's MVR at least annually, because the MVR contains violation information and must be placed in the driver's qualification file.

V. Discussion of Proposed Rulemaking

FMCSA proposes to rescind 49 CFR 391.27, *Record of violations,* and all related references to the rule in the FMCSRs. Section 391.27 provides that each motor carrier must, at least once every 12 months, require each driver it employs to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances, other than violations involving only parking, of which the driver has been convicted or for which the driver has forfeited bond or collateral during that period. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must file the list of violations or certification of no violations in the driver's qualification file.

FMCSA would retain the requirement in § 391.25(a), *Annual inquiry and review of driving record,* for an annual MVR inquiry, which is largely duplicative of the requirement in § 391.27 for drivers to provide a list of their convictions for traffic violations to their motor carriers. With limited exceptions, § 391.25 requires each motor carrier to inquire annually to obtain the MVR for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. Additionally, the motor carrier is required to review the MVR obtained and to maintain a copy of it in the driver's qualification file.

Section 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State. FMCSA proposes to amend § 391.25(a) to require that motor carriers make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. For example, any motor carrier that employs a driver who holds a Canadian or Mexican license to operate a CMV and is authorized to operate in the United States would be required to request the equivalent of an MVR from the Canadian or Mexican licensing authority where the driver is licensed.

The proposed amendment to § 391.25(a) represents a change for motor carriers from making inquiries for MVRs only to States, to include making inquiries for MVR equivalents to Canadian and Mexican driver's licensing authorities. This change would have minimal, if any, impact, as relatively few drivers operating in the United States are licensed by a foreign authority rather than by a State. In addition, Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their country's licensing authorities. Moreover, FMCSA currently includes the costs and burdens for requesting MVR equivalents in its current information collections. As explained above in the discussion of the legal basis for this rulemaking, FMCSA has the statutory authority to make the proposed change.

To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to the hiring process. Paragraph (a)(1) of § 391.23, *Investigation and inquiries,* requires a motor carrier hiring a driver to make an inquiry to each State where the driver holds or has held a motor vehicle operator's license or permit during the preceding 3 years to obtain the driver's MVR. Accordingly, the term ''State'' in paragraph (a)(1) would be changed to provide that the inquiry must be to each ''driver's licensing authority.'' Similar changes to replace references to States would be made in paragraph (b), which requires that a copy of the MVR obtained in response to the inquiry to each State must be placed in the driver's qualification file. A change also would be made in § 391.21(b)(5), *Application for employment,* to require each driver to provide on the employment application the issuing ''driver's licensing authority,'' instead of ''State,'' of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23.

Other FMCSRs would be amended to reflect the elimination of § 391.27 or the change from an inquiry to each ''State'' to an inquiry to each ''driver's licensing authority'' for the MVR. Paragraph (b)(6) in § 391.11, *General qualifications of drivers,* which provides that a driver is not qualified to operate a CMV unless the driver has prepared and furnished the motor carrier that employs him or her with the list of violations or the certificate required by § 391.27, would be removed.

In § 391.51, *General requirements for driver qualification files,* paragraphs (b)(6) and (d)(3), which relate to maintaining in the driver qualification file a list or certificate relating to violations of motor vehicle laws and ordinances as required by § 391.27, would be removed. Paragraphs (b)(2) and (4), and (d)(1) would be amended to reflect the change from an inquiry to each ''State'' to an inquiry to each ''driver's licensing authority'' relating to maintaining copies of MVRs received pursuant to inquiries required by § 391.23(a)(1) or 391.25(a).

In § 391.63, *Multiple-employer drivers,* paragraph (a)(5), which provides that a multiple-employer driver need not furnish a list of violations or a certificate in accordance with § 391.27, would be removed.

Eliminating the requirement for drivers to provide an annual list of their convictions for traffic violations would reduce the paperwork burden on drivers and motor carriers. The burden on motor carriers would be reduced because they would no longer be required to file the lists. The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase reporting or recordkeeping costs. FMCSA is not proposing changes to other self-reporting requirements applicable to drivers.

FMCSA does not expect that this proposed rule would affect CMV safety adversely because the annual MVR inquiry would continue to provide a reliable way for motor carriers to learn of their drivers' convictions for traffic violations. The distribution of the MVR also has become more reliable and efficient. The ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' final rule (76 FR 26854, May 9, 2011) required all States to upgrade their computer systems. In addition, FMCSA has conducted outreach and education with courts and judges, which has improved the transmission of convictions from courts to SDLAs. Accordingly, there have been improvements in data collection and transmission that support this rulemaking at this time.

Retaining the annual MVR inquiry in § 391.25, with the proposed amendment to paragraph (a), would satisfy the objective of § 391.27 to provide the employing motor carrier with the information necessary to ensure that its drivers have not lost their driving

[7] Both comments are available in the docket for this rulemaking.

privileges or been disqualified to drive a CMV. In the event a motor carrier desires additional information concerning violations that the MVR may not reflect (for example, violations occurring in a country where the driver is not licensed), FMCSA believes the best approach would be to allow the driver and motor carrier to determine the most efficient manner and process for them to obtain and communicate the information.

FMCSA is proposing an additional amendment to § 391.23(b) that is unrelated to the proposal to rescind § 391.27. Paragraph (b) of § 391.23 currently requires when no MVR is received from a State that the motor carrier must (1) document a good faith effort to obtain the MVR, and (2) certify that no record exists for the driver in that State. FMCSA is proposing to remove the requirement for a certification. A motor carrier does not have access to a licensing authority's records; therefore, it is impossible for the motor carrier to know what records are or are not maintained for a particular driver by the licensing authority. The requirement for the motor carrier to document a good faith effort to obtain the MVR would be retained.

VI. International Impacts

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. The specific impacts of this proposed rule on foreign licensed drivers and foreign motor carriers operating CMVs in the United States are discussed throughout the preamble of this NPRM.

VII. Section-by-Section Analysis

This section includes a summary of the proposed regulatory changes organized by the part and section number.

A. Part 385

Appendix B to Part 385—Explanation of Safety Rating Process

FMCSA proposes conforming changes to section VII. List of Acute and Critical Regulations of Appendix B to Part 385. Due to the proposed removal of § 391.51(b)(6), which relates to maintaining in the driver's qualification file a list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27, paragraph (b)(7) would be renumbered as paragraph (b)(6). Accordingly, the current entry set forth in Appendix B to Part 385 relating to § 391.51(b)(7), failing to maintain the medical examiner's certificate in the driver's qualification file, would be renumbered as § 391.51(b)(6).

B. Part 391

Section 391.11 General Qualifications of Drivers

In § 391.11, FMCSA proposes to remove paragraph (b)(6), which references the requirements of § 391.27. Paragraphs (b)(7) and (8) would be renumbered as (b)(6) and (7).

Section 391.21 Application for Employment

In paragraph (b)(5) of § 391.21, FMCSA proposes to change the reference to a ''State'' to a ''driver's licensing authority'' to identify the entity issuing each unexpired CMV operator's license or permit to the driver.

Section 391.23 Investigation and Inquiries

In paragraphs (a)(1) and (b) of § 391.23, FMCSA proposes to change references to a ''State'' to a ''driver's licensing authority'' to designate where the motor carrier should make inquiries for MVRs when a driver is hired and from where records are received. In paragraph (b), the requirement for a motor carrier to certify that no record exists, when no MVR is received from the licensing authority for a driver, would be removed.

Section 391.25 Annual Inquiry and Review of Driving Record

Similar to the revisions proposed in § 391.23, FMCSA proposes to amend § 391.25(a) by deleting the words ''the appropriate agency of every State in which'' and adding in their place the words ''each driver's licensing authority where'' to designate where the motor carrier must make annual inquiries.

Section 391.27 Record of Violations

FMCSA proposes to remove § 391.27 and reserve it for future use.

Section 391.51 General Requirements for Driver Qualification Files

In § 391.51, the Agency proposes to delete the words ''State record'' in paragraph (b)(2) and ''State driver licensing agency'' in paragraph (b)(4), and to add in their place the words ''driver's licensing authority.'' Paragraph (b)(6) would be deleted to remove a reference to the requirements of § 391.27, and paragraphs (b)(7) through (9) would be renumbered as paragraphs (b)(6) through (8).

Paragraph (d)(1) would be revised to delete the words ''State driver licensing agency'' and to add in their place the words ''driver's licensing authority.'' To remove a reference to the requirements of § 391.27, paragraph (d)(3) would be removed, and paragraphs (d)(4) through (6) would be renumbered as (d)(3) through (5). A cross reference in new paragraph (d)(3) would be changed because of the renumbering in paragraph (b).

Section 391.63 Multiple-Employer Drivers

In § 391.63, FMCSA proposes to remove paragraph (a)(5) to delete a reference to the requirements of § 391.27. Paragraphs (a)(3) and (4) would be changed to conform by making punctuation changes.

VIII. Guidance Statements

FMCSA employs guidance statements to explain how the Agency applies regulations to specific facts. A guidance statement does not alter the meaning of a regulation. This rulemaking proposes to amend regulations that have associated guidance statements or interpretations. FMCSA would change the existing guidance to conform to the changes proposed in this NPRM.

Guidance statements are not legally binding in their own right and will not be relied on by FMCSA as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with guidance statements is voluntary only, and nonconformity will not affect rights and obligations under existing statutes or regulations.

Section 391.23 Investigation and Inquiries

Question 2 to § 391.23 [8] would be revised as stated immediately below to reflect that inquiries for MVRs must be made to all ''driver's licensing authorities'' where the driver holds or has held a motor vehicle operator's license or permit, rather than only to ''States.''

Question 2: May motor carriers use third parties to ask driver's licensing authorities for copies of the driving record of driver-applicants?

Guidance: Yes. Driver information services or companies acting as the motor carrier's agent may be used to contact driver's licensing authorities. However, the motor carrier is responsible for ensuring the information obtained is accurate.

[8] See *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies* (accessed Nov. 30, 2020).

Section 391.25 Annual Inquiry and Review of Driving Record

Questions 1 and 3 to § 391.25 [9] would be revised as stated immediately below to reflect that MVRs must be requested from all ''driver's licensing authorities'' where the driver held a CMV operator's license or permit, rather than only ''States.'' Question 3 also would be revised to improve clarity and correct grammatical errors.

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether they are part of an official record maintained by a driver's licensing authority, as well as any other information that would indicate the driver has shown a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should be considered.

Question 3: May motor carriers use third parties to ask driver's licensing authorities for copies of driving records to be examined during the carrier's annual review of each driver's record?

Guidance: Yes. An examination of the official driving record maintained by the driver's licensing authority is not required during the annual review. Motor carriers may use third-party agents, such as driver information services or companies, to contact driver's licensing authorities and obtain copies of driving records. However, the motor carrier is responsible for ensuring the information is accurate.

Section 391.27 Record of Violations

Because FMCSA proposes to rescind § 391.27, the guidance to that section also would be rescinded.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, OMB has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (84 FR 71714, Dec. 27, 2019).

As described above, the purpose of this proposed regulatory action is to remove § 391.27 and the requirement for drivers to provide their motor carrier employers a list of convictions for traffic violations (other than parking) that occurred during the previous 12 months or a certification of no violations. The proposed rule would retain the requirement in § 391.25 that motor carriers make an annual inquiry to obtain a driver's MVR. Because § 391.25 is limited to inquiries for drivers licensed by a State, the proposed rule would modify § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes conforming changes to § 391.23, which requires motor carriers to request MVRs for the 3 years preceding the date of employment when hiring a driver. These changes would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities. A change also would be made in § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23. The proposed changes would not add new reporting or recordkeeping costs.

The proposed elimination of § 391.27 would result in cost savings to drivers because they would no longer spend time completing a list of convictions for traffic violations. It would also result in cost savings to motor carriers because they would no longer have to file the lists in driver qualification files. The Agency estimates that the proposed rule would result in cost savings to CMV drivers and motor carriers of $40.1 million over 10 years on an undiscounted basis, and $28.1 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to cost savings of $4.0 million at a 7 percent discount rate.

The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase reporting or recordkeeping costs. The proposed rule would institute new requirements under the FMCSRs for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State. However, the current OMB-approved information collection for §§ 391.23 and 391.25 titled ''Driver Qualification Files,'' OMB Control Number 2126–0004, already includes reporting and recordkeeping costs and burdens incurred by motor carriers to request MVRs for such drivers. As explained below, applicable motor carriers would not incur an increase in costs or burdens as a result of this proposed rule. Nonetheless, FMCSA retains these costs and burdens under OMB Control Number 2126–0004 to treat all motor carriers consistently and for administrative convenience. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

All motor carriers authorized to operate in the United States are required to file with FMCSA Form MCS–150 (Motor Carrier Identification Report), Form MCS–150B (Motor Carrier Identification Report and Hazardous Material Permit Application), or Form MCSA–1. These registration forms require motor carriers to report the number of drivers they employ and are the source of driver counts in MCMIS, which counts the total number of drivers reported by both domestic and foreign motor carriers. In turn, FMCSA uses the MCMIS driver population data published in FMCSA's annual *Pocket Guide to Large Truck and Bus Statistics,* which includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Thus, requests for MVR equivalents for drivers holding licenses issued by Canadian or Mexican licensing authorities have already been included in the OMB-approved information collections for §§ 391.23 and 391.25. In addition, the time for all drivers to prepare and submit employment applications has already been included in the information collection for § 391.21.

This change under the FMCSRs to require inquiries to Canadian and Mexican driver's licensing authorities would have minimal, if any, impact, because relatively few drivers operate in the United States who are licensed by a foreign authority rather than by a State. Of the 6.2 million CMV drivers reported in FMCSA's *2018 Pocket Guide to Large*

[9] See *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/what-extent-must-motor-carrier-review-drivers-overall* and *https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-motor-carriers-use-third-parties-ask-state-agencies-0,* respectively (accessed Nov. 30, 2020).

Truck and Bus Statistics,[10] the Agency estimates that at most only 2.0 percent are employed by Canadian motor carriers operating in the United States and 0.5 percent are employed by Mexican motor carriers operating in the United States. The combined total 2.4 percent represents 139,744 drivers reported as being employed by Canadian and Mexican motor carriers.[11]

Canadian and Mexican motor carriers are already required by their applicable safety codes to request the equivalent of MVRs for their drivers from their licensing authorities.[12] Accordingly, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities for the equivalent of MVRs would not impose any new recordkeeping or reporting costs or burdens because Canadian and Mexican motor carriers are already making the inquiries. Though Canadian and Mexican motor carriers would not be required to change their current business practices and would not have any new costs or burdens imposed as a result of the proposed rule, FMCSA continues to include the costs and burdens for requesting MVR equivalents in the current OMB-approved information collections to treat all carriers consistently and for administrative convenience.

The proposed rule would not increase costs to motor carriers because of fees paid to Canadian and Mexican driver's licensing authorities to request MVR equivalents. The supporting statement (OMB Control Number 2126–0004) for the ''Driver Qualification Files'' information collection, available in the docket, provides that SDLAs assess motor carriers a $10 fee to obtain MVRs consisting of a $9 median fee charged by 51 SDLAs, plus a $1 third-party processing fee. FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada. FMCSA has determined that the median fee charged for a MVR equivalent in Canada is also $9, when adjusted to United States dollars, and that third-party processing fees are consistent as well. There is no fee to request MVR equivalents in Mexico. However, fees are considered a transfer payment. Thus, the requirement that motor carriers obtain MVRs from Canadian and Mexican driver's licensing authorities are transfer payments so they are not included in the benefit-cost analysis. They are included in the Paperwork Reduction Act supporting statement prepared for the proposed rule.

For all the above reasons, FMCSA has determined that the proposed changes to §§ 391.23 and 391.25 to require inquiries to Canadian and Mexican driver's licensing authorities to request MVR equivalents would not impose any new reporting or recordkeeping costs.

Scope and Key Inputs to the Analysis

The baseline for this analysis is the monetized value of motor carriers' and drivers' time spent meeting the annual reporting and recordkeeping requirements of § 391.27. The estimated cost of this information collection has been approved by OMB in an information collection request (ICR) titled ''Driver Qualification Files,'' OMB Control Number 2126–0004, which expires April 30, 2023. The Agency estimated the 3-year average burden associated with § 391.27 at 0.12 million hours and $3.9 million. The baseline in this analysis extends the supporting statement projections an additional 7 years. That is, it estimates the costs that drivers and motor carriers would incur over the 10-year period 2021 through 2030, in the absence of the proposed rule.

Driver Population Projection

The driver population is based on a 0.595 percent annual growth rate applied to the 6.2 million driver population as of December 29, 2017, reported in FMCSA's *2018 Pocket Guide to Large Truck and Bus Statistics.*[13] The growth rate is a weighted average of the annual compound growth rates estimated using the United States Department of Labor, Bureau of Labor Statistics (BLS) Employment Projections Program point projections for the four categories of commercial vehicle drivers for 2016 and 2026.

Table 1 shows the calculation of the growth rate and the calculation of the weighted average compound growth rate.

TABLE 1—POPULATION GROWTH RATE

BLS standard occupation	2016 Total employment (thousands)	2016 Employment percentage of total	2026 Total employment (thousands)	Compound annual growth rate in employment (2016–2026)	Weighted average compound growth rate (percent)
	A	B = A/3,512	C	D = ((C/A) ^ (1/10))–1	E = B × D
Heavy and tractor-trailer truck drivers	1,871	53.3	1,980	0.568	0.303
Light truck or delivery services drivers	953	27.1	953	0.634	0.17
Bus drivers, school or special client	508	14.5	508	0.525	0.08
Bus drivers, transit and intercity	179	5.1	179	0.864	0.04

[10] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf* (accessed Apr. 22, 2019).

[11] The sum of the number of Canadian and Mexican drivers as a percentage of the total number of drivers in Exhibit 1–10 does not equal 2.5 percent due to rounding.

[12] Canadian National Safety Code (NSC) Standard 15, Facility Audit, establishes the minimum requirements for Provincial and Territorial licensing authorities' regulations that specify the content of driver abstracts. Standard 15, Appendix A, Section 3 requires motor carriers to make available for a Facility Audit a driver abstract issued within the last 12 months. The abstract must include name, date of birth and license number, current license class and status (*e.g.,* active or suspended), driver qualifications, and 2-year histories of traffic and criminal driving offenses, convictions, and accidents. NSC Standard 15 is available at *https://ccmta.ca/en/national-safety-code/national-safety-code-nsc#NSC* (accessed Apr. 17, 2019). Similarly, the ''Reglamento del Servicio de Medicina Preventiva en el Transporte'' (Transportation Preventive Medicine Service Regulations) in Chapter VI (Of Solitary Responsibility of the Concessionaire or Permittee, or Airline Operator), Article 39 provides generally that motor carriers are to keep updated individual files for their employees that include records related to accidents or incidents of federal transport. The regulations are available at: *http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGPMPT/Documentos/normatividad/Reglamento_DGPMPT_10-05-2013.pdf* (accessed June 3, 2019).

[13] Available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/safety/data-and-statistics/413361/fmcsa-pocket-guide-2018-final-508-compliant.pdf* (accessed Apr. 22, 2019).

TABLE 1—POPULATION GROWTH RATE—Continued

BLS standard occupation	2016 Total employment (thousands)	2016 Employment percentage of total	2026 Total employment (thousands)	Compound annual growth rate in employment (2016–2026)	Weighted average compound growth rate (percent)
	A	B = A/3,512	C	D = ((C/A) ^ (1/10))–1	E = B × D
	3,512	100	3,620	.....	0.595

Note: The 0.595 percent weighted average growth rate does not equal the sum of the components due to rounding.

Table 2 shows the extrapolation of the driver population from the 6.2 million driver population on December 29, 2017, at a 0.595 percent average annual growth. The 10-year projection period used in this analysis begins in 2021 and ends in 2030. This 10-year population projection is the base from which the Agency estimates the number of drivers, which in the absence of the proposed rule, would be required to provide motor carriers an annual list of violations.

TABLE 2—DRIVER POPULATION 2021–2030

Year	Number of drivers
2017	6,200,000
2018	6,236,870
2019	6,273,960
2020	6,311,270
2021	6,348,802
2022	6,386,558
2023	6,424,538
2024	6,462,743
2025	6,501,176
2026	6,539,838
2027	6,578,729
2028	6,617,852
2029	6,657,207
2030	6,696,796

The number of drivers who would no longer be required to submit an annual list of convictions for traffic violations is estimated as the difference between the projections of annual driver population and annual job openings. The number of job openings is estimated by applying a 71.6 percent average annual driver turnover rate to the annual driver population shown in Table 2. The turnover rate is derived from turnover rates reported for three categories of motor carriers by the American Trucking Associations, which are over-the-road carriers (OTR) at 98 percent, truckload carriers (TL) at 72 percent, and less-than-truckload carriers (LTL) at 14 percent. The OTR category is made up predominantly of CMV drivers transporting general freight on behalf of for-hire motor carriers. The TL category is made up predominantly of CMV drivers transporting specialized freight on behalf of for-hire motor carriers. The LTL category is made up of CMV drivers transporting the property of their motor carrier and drivers engaged in specialized operations analogous to LTL operations. The individual turnover rates are weighted by the relative shares of the driver population distributed among the three categories of motor carriers, which are 52 percent for OTR drivers, 24 percent for TL drivers, and 24 percent for LTL drivers.[14] As shown in Table 3, the sum of the product of the turnover rates and percentage of drivers by category results in a 71.6 percent weighted average turnover rate.

TABLE 3—WEIGHTED AVERAGE TURNOVER RATE

Driver type	Turnover rate (percent)	Percent of drivers in driver type category
Over-the-Road	98	52
Truckload	72	24
Less-than-Truckload Drivers	14	24
Weighted Average Turnover Rate	.....	71.6

Note: The weighted average turnover rate is calculated as: (98% × 52%) + (72% × 24%) + (14% × 24%) = 71.6%.

Table 4 shows the annual projections of the number of drivers subject to the reporting requirements of § 391.27 who would no longer have to submit a list of convictions for traffic violations if § 391.27 is rescinded. The projections cover the 10-year period ending in 2030. Drivers who have been recently hired are not subject to the annual reporting requirements of § 391.27. The hiring process includes similar reporting requirements for which the information collection burden is accounted for under a different regulation.

[14] American Transportation Research Institute, *ATRI Analysis of the Operational Cost of Trucking: 2018 Update.* Available at *http://atri-online.org/wp-content/uploads/2018/10/ATRI-Operational-Costs-of-Trucking-2018.pdf* (accessed Apr. 22, 2019).

TABLE 4—DRIVER POPULATION AFFECTED BY PROPOSED RULE

Year	Driver population *A = From Table 2*	Number of job openings *B = A × 71.6%*	Driver population subject to § 391.27 *C = A − B*
2021	6,348,802	4,545,743	1,803,060
2022	6,386,558	4,572,775	1,813,782
2023	6,424,538	4,599,969	1,824,569
2024	6,462,743	4,627,324	1,835,419
2025	6,501,176	4,654,842	1,846,334
2026	6,539,838	4,682,524	1,857,314
2027	6,578,729	4,710,370	1,868,359
2028	6,617,852	4,738,382	1,879,470
2029	6,657,207	4,766,560	1,890,647
2030	6,696,796	4,794,906	1,901,890

Wage Rates

FMCSA evaluated the opportunity cost of time for drivers using a rounded representative driver wage rate of $36 per hour. This hourly cost represents the value of driver time that, in the absence of the proposed rule, he or she would spend completing a list of convictions for traffic violations, but would now be available to perform other tasks. Table 5 summarizes the estimation of a weighted average hourly wage of $36.25 for drivers. The weighted average hourly wage is derived from the BLS Occupational Employment Statistics (OES) estimates of the median wages of four categories of drivers assigned to BLS Standard Occupation Codes (SOC), shown in Table 5. The median hourly wages for each driver SOC are increased to account for fringe benefits and motor carrier overhead as explained below. The hourly wages are weighted based on the population of drivers for each SOC relative to the total population as shown by the percentages in Table 5, Column B.

BLS does not publish data on fringe benefits for specific occupations, but it does publish fringe benefit data for the broad industry groups in its quarterly Employer Costs for Employee Compensation (ECEC) news releases. This analysis uses the ECEC data to estimate a fringe benefit rate based on the hourly wage for the ''transportation and warehousing'' sector average hourly wage ($25.80) and average hourly benefits ($14.69) for the ''transportation and warehousing'' sector.[15] The ratio of the two values results in a 56.9 percent fringe benefit rate (56.9 percent = $14.69 per hour ÷ $25.80 percent) that is added to the average hourly wage. The hourly wage, including fringe benefits, is further increased by 27.4 percent to account for motor carriers' overhead.[16]

TABLE 5—DRIVER HOURLY WAGE INCLUDING FRINGE BENEFITS AND MOTOR CARRIER OVERHEAD

Standard occupation title and code	Total drivers A = from BLS OES Data	% of total drivers B = A/Sum of Column A	Median hourly base wage C = from BLS OES Data	Weighted hourly wage D = B × C	Fringe benefits rate (percent) E = from BLS ECEC Data	Overhead rate (percent) F	Weighted average hourly cost G = D × (1+0.569) × (1+0.274)
Heavy and Tractor Trailer Drivers (53–3032)	1,748,140	52.8	$20.42	$10.79	56.9	27.4	$21.57
Light truck and delivery Service Drivers (53–3033)	877,670	26.5	15.12	4.01	56.9	27.4	8.02
Bus drivers, school and or special client (53–3022)	176,140	5.3	19.61	1.04	56.9	27.4	2.09
Bus drivers, Transit and Intercity (53–3021)	507,340	15.3	14.93	2.29	56.9	27.4	4.58
Weighted Average Driver Wage							36.25

Notes:

(a) The number of drivers is the number of respondents by SOC included in the BLS survey. The coverage and scope of the survey is described at *https://www.bls.gov/oes/oes_emp.htm#scope* (accessed May 12, 2019).

[15] U.S. Department of Labor, Bureau of Labor Statistics, *Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, June 2018.* Available at *https://www.bls.gov/news.release/archives/ecec* (accessed Apr. 23, 2019).

[16] Berwick, Farooq. *Truck Costing Model for Transportation Managers,* North Dakota State University, Upper Great Plains Transportation Institute, 2003. Appendix A, pp. 42–47. This estimate is based on an average cost of $0.107 per mile of CMV operation for management and overhead, and $0.39 per mile for labor. The ratio of these values results in an estimated 27.4 percent overhead rate (27.4 percent = $0.107 ÷ $0.39). Available at: *https://www.ugpti.org/resources/reports/details.php?id=475* (accessed Apr. 23, 2019).

(b) The $36.25 hourly weighted average wage does not equal the sum of the components due to rounding.

Section 391.27 requires motor carriers to incur labor costs to file drivers' lists of convictions for traffic violations in their driver qualification files. The burden hours associated with this task are monetized using an hourly wage for a file clerk adjusted for fringe benefits and motor carrier overhead. The BLS median wage for a file clerk is $14.48. The hourly wage is increased for fringe benefits and motor carrier overhead, which results in a $28.96 wage, rounded to $29 ($28.96 = $14.48 × (1+56.9%) × (1+27.4%)).

Costs

The proposed rule would result in cost savings to drivers and motor carriers. Drivers' cost savings would be the result of no longer having to prepare an annual list of convictions for traffic violations for their employers. Motor carriers would realize cost savings from no longer having to file the lists in driver qualification files. The Agency estimates that drivers and motor carriers would each spend 2 minutes on their respective tasks.

Table 6 shows the estimated driver cost savings resulting from the removal of § 391.27. Over the 10-year projection period, driver cost savings are estimated at $22.2 million. At a 7 percent discount rate, driver cost savings are estimated at $15.6 million and annualized cost savings are estimated at $2.2 million.

TABLE 6—DRIVER COST SAVINGS

	Driver population providing lists of violations A	Driver burden hours (million) B = A × (2 Minutes/60)	Driver costs (2017$ million) C = B × $36	Driver cost at 7% discount rate ($ million) D
2021	1,803,060	0.060	($2.2)	($2.0)
2022	1,813,782	0.060	(2.2)	(1.9)
2023	1,824,569	0.061	(2.2)	(1.8)
2024	1,835,419	0.061	(2.2)	(1.7)
2025	1,846,334	0.062	(2.2)	(1.6)
2026	1,857,314	0.062	(2.2)	(1.5)
2027	1,868,359	0.062	(2.2)	(1.4)
2028	1,879,470	0.063	(2.3)	(1.3)
2029	1,890,647	0.063	(2.3)	(1.2)
2030	1,901,890	0.063	(2.3)	(1.2)
Total		0.62	(22.2)	(15.6)
Annualized				(2.2)

Notes:
(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
(b) Values shown in parentheses are negative values (*i.e.,* less than zero), and represent a decrease in cost or a cost savings.

Table 7 summarizes motor carrier projected cost savings. Over the 10-year projection period, motor carrier cost savings are estimated at $17.9 million. At a 7 percent discount rate, motor carrier cost savings are estimated at $12.5 million and annualized cost savings at $1.8 million.

TABLE 7—MOTOR CARRIER COST SAVINGS

	Number of lists of violations to file A	Motor carrier burden hours (million) B = A × (2 Minutes/60)	Motor carrier costs (2017$ million) C = B × $29	Motor carrier cost at 7% discount rate ($ million) D
2021	1,803,060	0.060	($1.7)	($1.6)
2022	1,813,782	0.060	(1.8)	(1.5)
2023	1,824,569	0.061	(1.8)	(1.4)
2024	1,835,419	0.061	(1.8)	(1.4)
2025	1,846,334	0.062	(1.8)	(1.3)
2026	1,857,314	0.062	(1.8)	(1.2)
2027	1,868,359	0.062	(1.8)	(1.1)
2028	1,879,470	0.063	(1.8)	(1.1)
2029	1,890,647	0.063	(1.8)	(1.0)
2030	1,901,890	0.063	(1.8)	(0.9)
Total		0.62	(17.9)	(12.5)

TABLE 7—MOTOR CARRIER COST SAVINGS—Continued

	Number of lists of violations to file	Motor carrier burden hours (million)	Motor carrier costs (2017$ million)	Motor carrier cost at 7% discount rate ($ million)
	A	B = A × (2 Minutes/60)	C = B × $29	D
Annualized				(1.8)

Notes:
(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
(b) Values shown in parentheses are negative values (*i.e.,* less than zero), and represent a decrease in cost or a cost savings.

The estimated cost savings resulting from the proposal to rescind § 391.27 total $40.1 million over the 10-year projection period. At a 7 percent discount rate, the estimated total cost savings are $28.1 million and the annualized cost savings are $4.0 million.

Benefits

This proposed rule would allow drivers and motor carriers to more efficiently allocate their time. As discussed above, eliminating the requirement for drivers to provide a list of their convictions for traffic violations on an annual basis would reduce the paperwork burden and result in cost savings for drivers and motor carriers. FMCSA does not expect this proposed rule to affect safety negatively. Motor carriers would still be made aware of their employees' convictions for driving violations via the annual MVR check required in § 391.25.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is expected to have total costs less than zero, and, if finalized, would qualify as an E.O. 13771 deregulatory action. The present value of the cost savings of this proposed rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2021 (the year the proposed rule, if finalized, would be expected to go into effect and cost savings would first be realized), would be $57.8 million. On an annualized basis, these cost savings would be $4.0 million.

For E.O. 13771 accounting, the April 5, 2017, OMB guidance [17] requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, would be $41.2 million. On an annualized basis, the cost savings would be $2.9 million.

C. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).[18]

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980 (5 U.S.C. 601 *et seq.*)), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000 (5 U.S.C. 601). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. FMCSA is therefore publishing this initial regulatory flexibility analysis to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. FMCSA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FMCSA will consider all comments received in the public comment process when deciding on the final regulatory flexibility assessment.

An initial regulatory flexibility analysis must include six components (5 U.S.C. 603(b) and (c)). The Agency discusses each of the components below.

1. A description of the reasons why the action by the agency is being considered.

The Agency is proposing to rescind § 391.27 because the annual list of convictions for traffic violations that drivers are required to provide motor carriers is largely duplicative of information reported on drivers' MVRs that motor carriers are required to obtain from SDLAs on an annual basis pursuant to § 391.25. The Agency finds that the information reported on MVRs that motor carriers obtain from driver's licensing authorities is sufficient, without drivers having to provide an annual list of violations. Thus, the proposed rule relieves drivers and motor carriers of the reporting and recordkeeping costs incurred to comply with § 391.27, without compromising safety.

Section 391.25 currently applies to all motor carriers, domestic and foreign, but is limited to inquiries for drivers licensed by a State. To ensure motor carriers are aware of convictions for traffic violations for a driver who is licensed by a foreign authority rather than by a State, FMCSA proposes to amend § 391.25(a) to require that motor carriers make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. For example, any motor carrier that employs

[17] Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf* (accessed June 26, 2019).

[18] A ''major rule'' means any rule that the Administrator of Office of Information and Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

a driver who holds a Canadian or Mexican license to operate a CMV and is authorized to operate in the United States would be required to request the equivalent of an MVR from the applicable Canadian or Mexican licensing authority where the driver is licensed. The proposed rule would make conforming changes to §§ 391.21 and 391.23 with respect to the hiring-related inquiries for MVRs motor carriers are required to perform.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objective of this rulemaking is to reduce redundant regulatory requirements where applicable.

The statutory authority for §§ 391.21, 391.23, 391.25, and 391.27 in title 49 of the CFR derives from the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984, both as amended. In addition, the Secretary has discretionary authority under 49 U.S.C. 31133(a)(8) to prescribe (and thus to remove) recordkeeping and reporting requirements. This deregulatory action, to eliminate § 391.27, rests on that authority. This statutory authority is delegated to FMCSA by § 1.87. A full explanation of the legal basis for this rulemaking is set forth in Section III.

3. A description, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

''Small entity'' is defined in 5 U.S.C. 601(6) as having the same meaning as the terms ''small business'' in paragraph (3), ''small organization'' in paragraph (4), and ''small governmental jurisdiction'' in paragraph (5). Section 601(3) defines a small business as a ''small business concern'' under section 3 of the Small Business Act (15 U.S.C. 632(a)), which means a business that is independently owned and operated and is not dominant in its field of operation. Section 601(4) defines small organizations as not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, section 601(5) defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

This proposed rule would affect interstate CMV drivers and interstate motor carriers. CMV drivers, however, do not meet the definition of a small entity in section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under section 601(3) of the RFA, nor a small organization under section 601(4) of the RFA.[19]

FMCSA used data from the 2012 Economic Census to determine the percentage of motor carriers with annual revenue at or below the Small Business Administration's (SBA) thresholds.[20] The SBA thresholds are used to classify a business as a small business for purposes of determining eligibility to participate in SBA and Federal contracting programs.[21] The Economic Census sums the number of firms classified according to their North American Industry Classification System (NAICS) code by ranges of annual revenue. The ranges with the high end closest to the SBA thresholds was used to determine the percentage of trucking firms and passenger carriers that meet the definition of an SBA small business. FMCSA used the Economic Census as the basis for estimating the number of small entities affected by the proposed rule. As discussed below, the Agency estimates that 98.7 percent of trucking firms and 95.2 percent of passenger carriers are classified as small businesses.

The Economic Census and the SBA aggregate revenue data for the Truck Transportation industry under the NAICS Code 484. The SBA threshold for NAICS Code 484 is $30 million. For purposes of determining the percentage of trucking firms with annual revenue less than or equal to $30 million, the Agency considered the annual revenue for all truck transportation firms reported in the Economic Survey under NAICS Code 484. The Economic Survey revenue range closest to the SBA $30.0 million threshold includes all truck transportation firms with annual revenue ranging from $10.0 million to $24.9 million. The total number of truck transportation firms within the 8 ranges of annual revenue less than or equal to $30.0 million accounts for 98.7 percent of survey respondents. The Agency finds that this 98.7 percent is a reasonable proxy for the number of trucking firms with annual revenue equal to or less than the $30.0 million SBA threshold.

The Agency used the same methodology to determine the percentage of passenger carriers that qualify as an SBA small business. The SBA threshold for Transit and Ground Transportation firms (NAICS Code 485) is $16.5 million. For purposes of determining the percentage of passenger carriers with annual revenue less than or equal to $16.5 million, the Agency considered the number of passenger carriers in three NAICS Code subsectors: Charter Bus; Interurban Transportation and Rural Transportation; and School and Employee Transportation subsectors.[22] The Economic Census revenue range closest to the SBA $16.5 million threshold includes passenger carriers with revenue ranging from $5 million to $9.9 million. Passenger carriers with revenue less than or equal to $9.9 million account for 95.2 percent of survey respondents within the three subsectors. Thus, the Agency finds that 95.2 percent of passenger carriers with revenue less than or equal to $9.9 million is approximately the same percentage of those with annual revenue less than the $16.5 million SBA threshold.

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 types of professional skills necessary for preparation of the report or record.

By rescinding § 391.27, the proposed rule would eliminate reporting and recordkeeping costs incurred by drivers and motor carriers. For a discussion of the paperwork burden associated with the proposed rule, see Section IX.F., below. CMV drivers would no longer be required to provide their employer an annual list of convictions for traffic violations. All motor carriers would be relieved from the recordkeeping cost of filing the lists in driver qualification files.

5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The Agency proposes to rescind § 391.27 because it duplicates information regarding drivers' convictions for traffic violations that is reported on MVRs that motor carriers are required to request from SDLAs annually pursuant to § 391.25. Section

[19] Though individual CMV drivers are not small entities for purposes of the RFA, individual CMV drivers who are owner-operators are considered small businesses for purposes of the RFA. In addition, driver and motor carrier cost savings are estimated on a per driver basis using an estimate of the total driver population that includes owner-operators.

[20] U.S. Census Bureau, *2012 Economic Survey,* Table EC1248SSSZ4-Summary Statistics by Revenue and Size of Firm. Available at *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_48SSSZ4&prodType=table* (accessed Apr. 24, 2019).

[21] The SBA regulation defining small business size standards by North American Industry Classification System codes is set forth in 13 CFR 121.201.

[22] Commuter rail, public transit systems, taxi, limousine, and special needs transportation that are included in Subsector 485 are excluded from the analysis.

391.25, as revised, would require motor carriers to request MVRs annually from every licensing authority where a driver holds or has held a CMV operator's license or permit in the past year. In addition, a conforming change would be made to § 391.23(a) to require motor carriers to request MVRs from all driver's licensing authorities when hiring new drivers.

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

There is no significant economic impact on small entities because of the proposed rule. FMCSA did not identify any significant alternatives to the proposed rule that would result in equivalent cost savings to small entities, as compared to those resulting from the elimination of § 391.27.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $168 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that an agency consider the impact of paperwork and other information collection burdens imposed on the public. Section 1320.8(b)(3)(vi) of Title 5 of the CFR prohibits an agency from collecting or sponsoring an information collection, as well as imposing an information collection requirement, unless the collection vehicle displays a valid OMB control number. This proposed rule would amend the existing information collection titled ''Driver Qualification Files,'' OMB Control Number 2126–0004, which expires April 20, 2023. In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to OMB for its approval.

This proposed rule would eliminate the information collections required by § 391.27. Under § 391.27, a driver operating a CMV must complete a list of convictions for traffic violations and submit the list to his or her employer on an annual basis. When a driver does not have any violations to report, the driver is required to furnish a certification to that effect. The motor carrier must file the list of violations or certification of no violations in the driver's qualification file. These requirements are largely duplicative of the requirements in § 391.25 that motor carriers make an annual inquiry to SDLAs to request a driver's MVR and file the MVR in the driver's qualification file.

Because § 391.25 is currently limited to inquiries for drivers licensed by a State, the proposed rule would modify § 391.25 to require motor carriers to request a driver's MVR from each licensing authority that issued the driver a license. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities. To maintain consistency within part 391 with respect to requests for MVRs, FMCSA proposes to make conforming changes to § 391.23, which requires motor carriers to request MVRs from SDLAs for the 3 years preceding the date of employment when hiring a driver. A change also would be made in § 391.21 to require each driver to provide on the employment application the issuing driver's licensing authority, instead of State, of each unexpired CMV operator's license or permit that has been issued to the driver so motor carriers could make the required inquiries under § 391.23.

The proposed changes to §§ 391.21, 391.23, and 391.25 would not increase paperwork burdens. This is because MCMIS, the repository for the Agency's driver population data, counts the total number of drivers reported by motor carriers, both foreign and domestic, and for purposes of information collection burden calculation, the median fee for obtaining an MVR or its equivalent from either a foreign or a domestic authority are the same.[23] FMCSA uses the MCMIS driver population data, which currently includes drivers employed by Canadian and Mexican motor carriers, to calculate the burden associated with information collections and paperwork. Therefore, though the proposed rule would institute new requirements for motor carriers to request MVRs for their drivers operating in the United States who are licensed by a foreign authority rather than by a State, the current OMB-approved information collections for §§ 391.23 and 391.25 in the ''Driver Qualification Files'' ICR already include reporting and recordkeeping costs incurred by motor carriers to request MVRs for such drivers. Similarly, the current OMB-approved information collection for § 391.21 already includes reporting and recordkeeping costs incurred by drivers to prepare and submit employment applications.

The proposed changes to §§ 391.23 and 391.25 also would not increase costs to motor carriers because of fees paid to Canadian and Mexican driver's licensing authorities to obtain the equivalent of MVRs. As set forth in section 13 of the supporting statement, FMCSA has surveyed fees charged by driver's licensing authorities and third-party processing companies in Canada and has determined that they are consistent with those to obtain MVRs from States. However, there is no fee to obtain MVR equivalents in Mexico.

The proposed elimination of § 391.27 would delete IC–2.1 (driver submits list of violations to motor carrier) and IC–2.2 (motor carrier files list of violations in driver qualification file). The supporting statement shows the burden associated with IC–2.1 is 0.6 million hours and $2.16 million. The burden associated with IC–2.2 is 0.6 million

[23] Though Mexican motor carriers do not pay a fee to obtain MVR equivalents, FMCSA continues to include the cost for consistency and administrative convenience.

hours and $1.74 million. Thus, the elimination of § 391.27 would result in a paperwork burden reduction of 0.12 million hours and $3.9 million for drivers and motor carriers.

The draft supporting statement for the ICR prepared for this rulemaking is compared to the approved supporting statement for the ICR. The draft supporting statement accounts for the incremental reduction in burden hours and costs realized from rescinding § 391.27 and updates the driver population. The draft supporting statement burden hours and costs cover the 3-year period ending in 2023, whereas the approved supporting statement covers the 3-year period ending in 2022. Response times for each information collection and hourly wage rate used to monetize burden hours have not been changed. The Agency has decreased its estimate of the total information collection burden from 12.26 million hours at a cost of $350.45 million, to 12.22 million hours at a cost of $348.61 million. The net reporting and recordkeeping cost savings in the draft supporting statement prepared for this proposed rule are estimated at $1.84 million ($350.45 million–$348.61 million). The estimated $3.9 million cost savings from rescinding § 391.27 are partially offset by a $2.06 million increase in labor costs for other components of the ICR, adjusted for population growth. Thus, the estimated net reduction in reporting and recordkeeping costs is $1.84 million ($3.90 million–$2.06 million).

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Review: Revision of a currently-approved information collection.

Summary: The proposed rule would eliminate § 391.27 and the requirements that a driver operating a CMV complete a list of convictions for traffic violations or a certification of no traffic violations, and submit the list or certification to his or her employer on an annual basis. The motor carrier must file the lists and certifications in the driver's qualification file. The proposed elimination of § 391.27 would delete current IC–2.1 (driver submits list of violations to motor carrier) and IC–2.2 (motor carrier files list of violations in driver qualification file). In the summary statistics below, motor carriers are included in the estimated number of respondents.

Estimated Number of Respondents: 6.93 million (6.39 million drivers + 0.54 million motor carriers).

Estimated responses: 98.37 million.

Frequency: Responses may be random, annual, or when hiring a driver.

Estimated burden hours: 12.22 million.

Estimated cost: $348.61 million.

FMCSA asks for comment on the information collection requirements of this proposed rule, as well as the total paperwork burden for the ICR. The Agency's analysis of these comments will be used in devising the Agency's estimate of the information collection burden of the final rule. The draft rulemaking and approved supporting statements for this ICR are available in the docket for comment and review.

Specifically, the Agency asks for comment on: (1) Whether the proposed information collection is necessary for FMCSA to perform its functions; (2) how the Agency can improve the quality, usefulness, and clarity of the information to be collected; (3) the accuracy of FMCSA's estimate of the burden of this information collection; and (4) how the Agency can minimize the burden of the information collection.

If you have comments on the collection of information, you must send those comments as described under Section I.E. of the **SUPPLEMENTARY INFORMATION** section at the beginning of this document.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268 (Dec. 8, 2004), note following 5 U.S.C. 552a), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this proposed rule does not create privacy risks to individuals.

In addition, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking to the DOT, Office of the Secretary's Privacy Office. The DOT Privacy Office also has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this proposed rule.

J. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.s.(2). The Categorical Exclusion (CE) in paragraph 6.s.(2) covers a requirement for drivers to notify their current employer and State of domicile of certain convictions. The proposed deregulatory action in this rulemaking is covered by this CE, there are no extraordinary circumstances present, and the proposed rule would not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, and Transportation.

Accordingly, FMCSA proposes to amend 49 CFR chapter III to read as follows:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for Part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 2. Amend Appendix B to Part 385, section VII, by removing the entry for ''§ 391.51(b)(7)'' and adding an entry for ''§ 391.51(b)(6)'' to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations.

* * * * *

§ 391.51(b)(6) Failing to maintain medical examiner's certificate in driver's qualification file (critical).

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 3. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

§ 391.11 General qualifications of drivers [Amended]

■ 4. Amend § 391.11 by removing paragraph (b)(6) and redesignating paragraphs (b)(7) and (8) as paragraphs (b)(6) and (7), respectively.

■ 5. Amend § 391.21 by revising paragraph (b)(5) to read as follows:

§ 391.21 Application for employment.

* * * * *

(b) * * *

(5) The issuing driver's licensing authority, number, and expiration date of each unexpired commercial motor vehicle operator's license or permit that has been issued to the applicant;

* * * * *

■ 6. Amend § 391.23 by revising paragraphs (a)(1) and (b) to read as follows:

§ 391.23 Investigation and inquiries.

(a) * * *

(1) An inquiry, within 30 days of the date the driver's employment begins, to each driver's licensing authority where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

* * * * *

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each driver's licensing authority required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from a driver's licensing authority required to submit this response, the motor carrier must document a good faith effort to obtain such information. The inquiry to a driver's licensing authority must be made in the form and manner each authority prescribes.

* * * * *

■ 7. Revise § 391.25(a) to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry to obtain the motor vehicle record of each driver it employs, covering at least the preceding 12 months, to each driver's licensing authority where the driver held a commercial motor vehicle operator's license or permit during the time period.

* * * * *

§ 391.27 [Removed and Reserved]

■ 8. Remove and reserve § 391.27.

■ 9. Amend § 391.51 as follows:

■ a. Revise paragraphs (b)(2) and (4);

■ b. Remove paragraph (b)(6) and redesignate paragraphs (b)(7) through (9) as paragraphs (b)(6) through (8), respectively;

■ c. Revise paragraph (d)(1);

■ d. Remove paragraph (d)(3) and redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5), respectively; and

■ e. Revise newly redesignated paragraph (d)(3).

The revisions to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(2) A copy of the motor vehicle record received from each driver's licensing authority pursuant to § 391.23(a)(1);

* * * * *

(4) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(d) * * *

(1) The motor vehicle record received from each driver's licensing authority to the annual driver record inquiry required by § 391.25(a);

* * * * *

(3) The medical examiner's certificate required by § 391.43(g), a legible copy of the certificate, or, for CDL drivers, any CDLIS MVR obtained as required by § 391.51(b)(6)(ii);

* * * * *

■ 10. Amend § 391.63 by revising paragraphs (a)(3) and (4) and removing paragraph (a)(5) to read as follows:

§ 391.63 Multiple-employer drivers.

(a) * * *

(3) Perform the annual driving record inquiry required by § 391.25(a); or

(4) Perform the annual review of the person's driving record required by § 391.25(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

James W. Deck,

Deputy Administrator.

[FR Doc. 2020–26957 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 85, No. 240

Monday, December 14, 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

December 9, 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 January 13, 2021 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: Black Stem Rust; Identification Requirements and Addition of Rust-Resistant Varieties.

OMB Control Number: 0579–0186.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant products to prevent the introduction of plant pests into the United States or their dissemination within the United States. Black stem rust is one of the most destructive plant diseases of small grains that are known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water. The fungus is spread from host to host by windborne spores.

Need and Use of the Information: APHIS will collect information to prevent the spread of black stem rust by providing for and requiring the accurate identification of rust-resistant varieties by inspectors. When a business request APHIS to add a variety to the list of rust-resistant barberries, it need to provide APHIS with a written description and color pictures that can be used by the State nursery inspectors to clearly identify the variety and distinguish it from other varieties. This action enables nurseries to move the species into and through protected areas and to propagate and sell the species in States or parts of States designated as protected areas.

Description of Respondents: Business or other for profit; State, Local, and Tribal Government.

Number of Respondents: 2.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–27404 Filed 12–11–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 8, 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 January 13, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union.

OMB Control Number: 0579–0218.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is

the primary Federal law governing the protection of animal health. The Law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, dated May 13, 2002, the Farm Security and Rural Investment Act of 2002. Disease prevention is the most effective method to maintain a healthy animal population and for enhancing the United States' ability to compete in the world market of animal and animal product trade. The Animal and Plant Health Inspection Service (APHIS) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not present or prevalent here.

Need and Use of the Information: APHIS will collect information using an Application for Import or in Transit Permit, concerning the origin and history of the items destined for importation into the United States. APHIS will also collect information to ensure that swine, pork and pork products, and swine semen pose a negligible risk of introducing exotic swine diseases into the United States. A Declaration of Importation form is also used to collection information in this collection. Collecting this information less frequently or failing to collect it would increase the chances of CSF and other swine diseases being introduced into the United States.

Description of Respondents: Foreign Federal Governments and Businesses.

Number of Respondents: 194.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,600.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–27366 Filed 12–11–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee Meeting

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. Secure Rural Schools Program information can be found at the following website: *https://www.fs.usda.gov/working-with-us/states/secure-rural-schools.*

DATES: The meeting will be held on January 7, 2021, 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 virtual 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 January 4, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to 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 accomodation. 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: December 9, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–27450 Filed 12–11–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tri-County 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 and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on January 12, 2021, beginning at 1:30 p.m., Mountain Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, 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 the Beaverhead-Deerlodge National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jeanne Dawson, RAC Coordinator, by phone at (406) 683–3987 or by email at *jeanne.dawson@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 discuss and provide recommendations on fee change proposals for developed recreation sites on national forest lands.

This 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 December 29, 2021, 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, requests for time for oral comments or requests for instructions to participate virtually must be sent to Jeanne Dawson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725, by email to *jeanne.dawson@usda.gov,* or by phone at (406) 683–3987.

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: December 9, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–27451 Filed 12–11–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Storage and Use of Explosives and Magazine Security on National Forest System Lands Under a Special Use Authorization

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments on a new information collection request entitled Storage and Use of Explosives and Magazine Security on National Forest System Lands under a Special Use Authorization.

DATES: Comments must be received in writing by February 12, 2021.

ADDRESSES: Comments concerning this notice should be sent to Sean Wetterberg, National Winter Sports Program Manager, 125 South State Street, Suite 7105, Salt Lake City, UT 84138. Comments also may be submitted by email at *sean.wetterberg@usda.gov.*

The public may inspect comments received at the address above during normal business hours. Visitors are encouraged to call ahead to facilitate entry to the building at 801–975–3793.

FOR FURTHER INFORMATION CONTACT: Sean Wetterberg, National Winter Sports Program Manager at by telephone at 801–975–3793 or by email at *sean.wetterberg@usda.gov.* Individuals who use telecommunication devices for the deaf may call the Federal Relay Service FRS at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Storage and Use of Explosives and Magazine Security on National Forest System Lands Under a Special Use Authorization.

OMB Number: 0596–NEW.

Type of Request: New.

Abstract: Existing directives in the Forest Service Manual and Handbook are being revised to improve security and administration of explosive magazines and explosives use that are authorized under a special use authorization. The revisions clarify that all non-Forest Service storage and use of explosives, including use and storage of military weapons and ammunition for purposes of avalanche mitigation on National Forest System lands, must be authorized by a special use authorization that contains clause B–29 in Forest Service Handbook 2709.11, Chapter 50, section 52.2, on storage and use of explosives and magazine security. Clause B–29 requires authorization holders to comply with applicable United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, state, or Department of the Army requirements and applicable Forest Service requirements.

To allow the Forest Service to monitor holder compliance with clause B–29, the revised directives require holders of an authorization containing the clause to submit certain documentation annually as part of their operating plan. The required documentation includes copies of a log containing the date and type of magazine inspections (including inspections required every seven days) and the date all deficiencies identified in any magazine inspection report were corrected; copies of any magazine inspection reports; a copy of the holder's current ATF-issued federal explosives license or federal explosives permit, if applicable; and a copy of a log containing the date of the most recent magazine lock and key replacement.

Estimate of Annual Burden: 10 minutes.

Type of Respondents: Holders of a special use authorization authorizing the storage and use of explosives.

Estimated Annual Number of Respondents: 60.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the

request for Office of Management and Budget approval.

Michiko J. Martin,

Director, Recreation, Heritage & Volunteer Services, National Forest System.

[FR Doc. 2020–27361 Filed 12–11–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number [201123–0315]]

2022 Census of Governments

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination and request for comment.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) publishes this notice to request public comment on the content of the 2022 Census of Governments. This collection will be primarily electronic using a secure encrypted internet data collection system called Centurion. The Census of Governments is conducted at 5-year intervals (years ending in 2 and 7) and is the most comprehensive compilation of statistics about U.S. state and local governments.

DATES: Written comments must be submitted on or before February 12, 2021 to ensure consideration of your comments on the 2022 Census of Governments content.

ADDRESSES: Direct all written comments regarding the 2022 Census of Governments to Raemeka Mayo, Assistant Division Chief, Public Sector Programs, Economy-Wide Statistics, Room 5K179, Washington, DC 20233; or Email [*COG22.FRN@census.gov*].

FOR FURTHER INFORMATION CONTACT: Raemeka Mayo, Assistant Division Chief, Public Sector Programs, Economy-Wide Statistics, Room 5K179, Washington, DC 20233, by phone (301) 763–4688, or by email <Raemeka.*M.Mayo@census.gov*>.

SUPPLEMENTARY INFORMATION:

A. Background

The granting of specific authority to conduct the program is found in Title 13, United States Code (U.S.C.), Section 161, which authorizes and requires the Census of Governments. Section 161 of the statute directs the Secretary of Commerce to ''. . .take, compile, and publish for the year 1957 and for every fifth year thereafter a census of governments. Each such census shall include, but shall not be limited to, data on taxes and tax valuations, governmental receipts, expenditures, indebtedness, and employees of states, counties, cities, and other governmental units.''

This notice announces that the Census Bureau is preparing to conduct the 2022 Census of Governments. The Census of Governments is the U.S. government's official 5-year measure of state and local governments, and has been taken periodically since 1957. The Census of Governments is the most comprehensive source of information about state and local governments from the national to the local level. These Census of Governments data products provide unique basic measures for U.S. state and local governments. Data include details on debt and assets, as well as revenues and expenditures and employment by government function. Published data cover approximately 90,000 state and local governments that includes approximately 3,000 counties and 35,000 cities and towns, 13,000 independent school districts, and 39,000 special districts. The Census of Governments is the most comprehensive, comparable, and precise source of uniform statistics on economic activity of state and local Governments. It provides detailed, high quality, and authoritative statistics that meet the needs of government, businesses, policymakers, academic researchers, and the American public. The program's data products provide essential information to Congress and federal agencies for planning and evaluating intergovernmental programs. Moreover, they provide the official measures of output for state and local governments and serve much of the foundation for the National Income and Product Accounts, Gross Domestic Product estimates, and other composite measures of the Nation's economic performance. These data provide benchmarks for other federal statistical series, including current surveys, such as the Justice Assistance Data Survey and Quarterly Summary of State and Local Government Tax Revenue, conducted by the Census Bureau. Census of Governments data are also used by business organizations and economic development agencies to provide insight into the complex nature and fiscal health of state and local government finances.

B. Data Collection

The 2022 Census of Governments will be conducted by electronic collection (99 percent internet Collection). The electronic instrument, Centurion, provides improved quality with automatic data checks, and is context-sensitive to assist the data provider in identifying potential reporting problems before submission, thus reducing the need for follow-up. Centurion is internet-based, eliminating the need for downloading software and increasing the integrity and confidentiality of the data. The Census Bureau will furnish usernames and passwords for the electronic instrument to the organizations included in the survey. The Census Bureau also collects electronic data files through arrangements with state governments or customized electronic reporting instruments with state and local governments, and central collection arrangements with local governments.

C. Census of Governments Content

The 2017 Census of Governments forms are available on *https://census.gov/govs.* This web page includes links to each respective survey's page, where the survey forms can be found under the tab, ''Information for Respondents.'' Please take a moment to review the forms relevant to your interests and provide us with your comments for consideration as we prepare content for the 2022 questionnaires. We are particularly interested in comments on the usefulness of existing inquiries for continued inclusion and in suggestions for new measures that would be appropriate to include in the Census of Governments.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. The Census Bureau, through the proper established procedures, will be obtaining an OMB control number under the PRA as we get closer to launching this component in 2022.

Steven D. Dillingham, Director, Bureau of the Census, approved the publication of this Notice in the **Federal Register**.

Dated: December 8, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–27402 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number (201123–0314)]

2022 Economic Census

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination and request for comment.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) publishes this notice to announce that it is planning to conduct the 2022 Economic Census. The Census Bureau also is requesting public comment on the 2022 Economic Census content. This collection will be fully electronic using a secure encrypted internet data collection system called Centurion. The Economic Census is conducted at 5-year intervals (years ending in 2 and 7) and is the most comprehensive compilation of statistics about U.S. businesses and the economy.

DATES: Written comments must be submitted on or before February 12, 2021 to ensure consideration of your comments on the 2022 Economic Census content.

ADDRESSES: Please direct all written comments regarding the 2022 Economic Census to Kimberly Moore, Chief, Economy-Wide Statistics Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–7400 or via email to *econ.content@census.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly Moore, Chief, Economy-Wide Statistics Division, U.S. Census Bureau by phone (301) 763–7643, or by email at *kimberly.p.moore@census.gov,* or at *econ.content@census.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The granting of specific authority to conduct the program is found in Title 13, United States Code (U.S.C.), Section 131, which authorizes and requires the Economic Census. Section 131 of Title 13 U.S.C. directs the Secretary [of Commerce] to ''. . .take, compile, and publish censuses of manufactures, of mineral industries, and of other businesses, including the distributive trades, service establishments, and transportation'' every five years.

This notice announces that the Census Bureau is preparing to conduct the 2022 Economic Census. The Census Bureau will begin the mailout for electronic collection for the 2022 Economic Census in the Fall of 2022, and responses will be due by mid-March 2023. The Economic Census is the U.S. Government's official 5-year measure of American business and the economy, and has been taken periodically since 1810. The Economic Census is the most comprehensive source of information about American businesses from the national to the local level. Economic Census data products provide uniquely detailed basic measures that are summarized by North American Industry Classification System (NAICS) industry for the U.S., states, metropolitan areas, counties, and economic places. Data include details on the product composition of industry sales, receipts, revenue, or shipments, and on a great variety of industry-specific subjects. Additionally, the Economic Census produces statistics about businesses in Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands, and it provides data on selected special-interest topics, including the characteristics of business owners, domestic freight shipments, and business expenses. Published data cover close to 1,000 types of businesses, approximately 8,000 goods and services, every state and territory, the District of Columbia, over 3,000 counties and 15,000 cities and towns. (Geographic levels shown vary by NAICS sector.)

The Economic Census is the most comprehensive measure of the U.S. economy, providing industry and market statistics at the national, state, and local levels. It provides information on business locations, the workforce, and trillions of dollars of sales by product and service type. Information is generated for almost one thousand different industries and over 20 thousand geographic areas. Economic Census data serve as the foundation for the gross domestic product (GDP) and other leading economic indicators for the nation. The Economic Census supplies weights and benchmarks for indexes of industrial production, productivity, and prices; and provides benchmarks for other Federal statistical series. Businesses, government, policymakers, academic researchers, trade associations, economic planning and development agencies, and the American public use Economic Census statistics. In addition, the Economic Census serves as one of the primary mechanisms for updating the Census Bureau's database of all known employer business establishments. This database, known as the Business Register, serves as the source of the sampling frame and samples for many of the current business surveys conducted by the Census Bureau. The Economic Census provides updates to the industry classification, ownership, location, employment, and payroll of business establishments listed on the Business Register.

The 2022 Economic Census will be the second to be conducted completely by electronic collection through the internet. The electronic instrument, Centurion, provides improved quality with automatic data checks, and is context-sensitive to assist the data provider in identifying potential reporting problems before submission, thus reducing the need for follow-up. Centurion is internet-based, eliminating the need for downloading software and increasing the integrity and confidentiality of the data. The Census Bureau will furnish usernames and passwords for Centurion to the organizations included in the survey, and an image of Centurion will be available on the 2022 Economic Census website once the Economic Census has launched.

B. Economic Census Content

The Census Bureau posted copies of the 2017 Economic Census forms on its website at: *https://bhs.econ.census.gov/ombpdfs/*. Please take a moment to review the forms relevant to your interests and provide us with your comments for consideration as we prepare content for the 2022 questionnaires. We are particularly interested in comments on the usefulness of existing questions for continued inclusion and in suggestions for new measures that would be appropriate to include in the Economic Census.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. The Census Bureau, through the proper established procedures, will be obtaining an OMB control number under the PRA as we get closer to launching the program in 2022.

Steven D. Dillingham, Director, Bureau of the Census, approved the publication of this Notice in the **Federal Register**.

Dated: December 8, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–27403 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number 201105–0290]

Change to County Equivalents in the State of Connecticut

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed program and request for comments.

SUMMARY: This notice provides information about the State of Connecticut's (hereafter Connecticut or the State) formal request to the Bureau of the Census (hereafter, Census Bureau) to adopt the State's nine planning regions as the county equivalent geographic unit for purposes of collecting, tabulating, and disseminating statistical data, replacing the eight counties, which ceased to function as governmental and administrative entities in 1960. The Census Bureau proposes to implement this change in 2023. The Census Bureau is publishing this Notice to inform users of county-level data of the proposed change and is requesting information related to potential impacts of this change. The Census Bureau and the State of Connecticut will use this information to reach a final decision regarding whether to implement this change to the county equivalents in Connecticut as well as the timing of implementation.

DATES: Written comments on this notice must be submitted on or before February 12, 2021.

ADDRESSES: Please direct all written comments on this proposed program to Vincent Osier, Geographic Standards, Criteria, and Quality Branch, Geography Division, U.S. Census Bureau, Room 4H173, 4600 Silver Hill Road, Washington, DC 20233–7400. Email: *geo.geography@census.gov.* Phone: 301–763–1128.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed program should be directed to Vincent Osier, Geographic Standards, Criteria, and Quality Branch, Geography Division, U.S. Census Bureau, Room 4H173, 4600 Silver Hill Road, Washington, DC 20233–7400. Email: *Vincent.osier@census.gov.* Phone: 301–763–9039 or 301–763–1128.

SUPPLEMENTARY INFORMATION: This notice provides information about the State of Connecticut's formal request to the Census Bureau to adopt the State's nine planning regions, designated under Section 16a–4a(4) of the Connecticut General Statutes, as the county-equivalent geographic unit for purposes of collecting, tabulating, and disseminating statistical data. The Census Bureau seeks information and comments related to the impact that adoption of planning regions as county equivalents might have on data analysis, planning and decision making, and program implementation; specifically, (1) are there data collection and tabulation programs or nonstatistical programs that will not be able to implement this change; (2) will the proposed change in county equivalents pose such a substantial break in data continuity that longitudinal analyses are not possible; and (3) are there specific programs and other uses of county-level information in which continued reference to the more familiar current counties is advisable and preferred?

The Census Bureau strives to provide statistical data for geographic areas that are meaningful and relevant to analysis and decision-making. In Connecticut, nine councils of governments (COGs) exist to address matters of mutual interest to their constituent cities and towns, with each city and town represented by its municipal chief elected official. Connecticut's counties ceased to function as governmental and administrative entities in 1960.

The nine COGs function as regional planning organizations, coordinating activities for their constituent cities and towns, and in that capacity can exercise a variety of responsibilities typically undertaken by counties in other states. As such, the planning regions are more meaningful and relevant areas for tabulation and dissemination of statistical data within Connecticut as well as for regional and national county comparisons, than are the eight counties. The Census Bureau proposes to implement this change in 2023, and use the new county equivalents when reporting demographic and economic statistical data referenced to 2023 and all years thereafter.

Background

Officials with the Connecticut Office of Policy and Management contacted the Census Bureau in October 2017 regarding the possibility of replacing the State's eight counties with the State's nine planning regions for purposes of collecting, tabulating, and disseminating statistical data. Connecticut officials noted that cities and towns, not counties, are the primary units of local government.

Although Connecticut's eight counties have long provided stable geographic units for reporting statistical data, they have not served as functional governmental and administrative entities since county government was abolished in 1960. The State's nine COGs function as regional planning organizations, coordinating activities for their constituent cities and towns (note, however, that in some instances the name of the planning region differs from that of its COG). As such, planning regions provide a more meaningful geographic unit for reporting data since the data would be aligned with the collection of municipalities (*i.e.,* cities and towns) that constitute the governance framework for each COG. Each municipality within a designated planning region is entitled to membership in the region's COG upon adoption of an ordinance by its legislative body. The chief elected official of each member municipality is then provided a vote on all COG matters. By reporting statistical data for COGs, member municipalities will be in a better position to plan and act collaboratively and strategically on the efficient delivery of services, bulk purchasing, and other matters of practical interest.

While COGs do not have the authority to levy taxes, they are authorized under State law to assess dues on their member municipalities, to accept other sources of public and private assistance for the purpose of providing regional and shared services, and to administer a regional property tax base revenue sharing system if approved by a unanimous vote of its member municipalities. In this regard, as well as the ability to provide the variety of services listed below, the Connecticut's COGs and associated planning regions have the authority to carry out administrative functions that are typically found among counties in other states. Section 8–31b(b) of the Connecticut General Statutes states that

> Regional services provided to member municipalities shall be determined by each regional council of governments . . . and may include, without limitation, the following services: (1) Engineering; (2) inspectional and planning; (3) economic development; (4) public safety; (5) emergency management; (6) animal control; (7) land use management; (8) tourism promotion; (9) social; (10) health; (11) education; (12) data management; (13) regional sewerage; (14) housing; (15) computerized mapping; (16) household hazardous waste collection; (17) recycling; (18) public facility siting; (19) coordination of master planning; (20) vocational training and development; (21) solid waste disposal; (22) fire protection; (23) regional resource protection; (24) regional impact studies; and (25) transportation.

In the same section, the COGs are authorized to ''accept or participate in any grant, donation or program made available to counties by any other governmental or private entity.''

Adoption of COGs as county equivalents will make them eligible to apply for federal grant programs open to counties.

Scope of Change

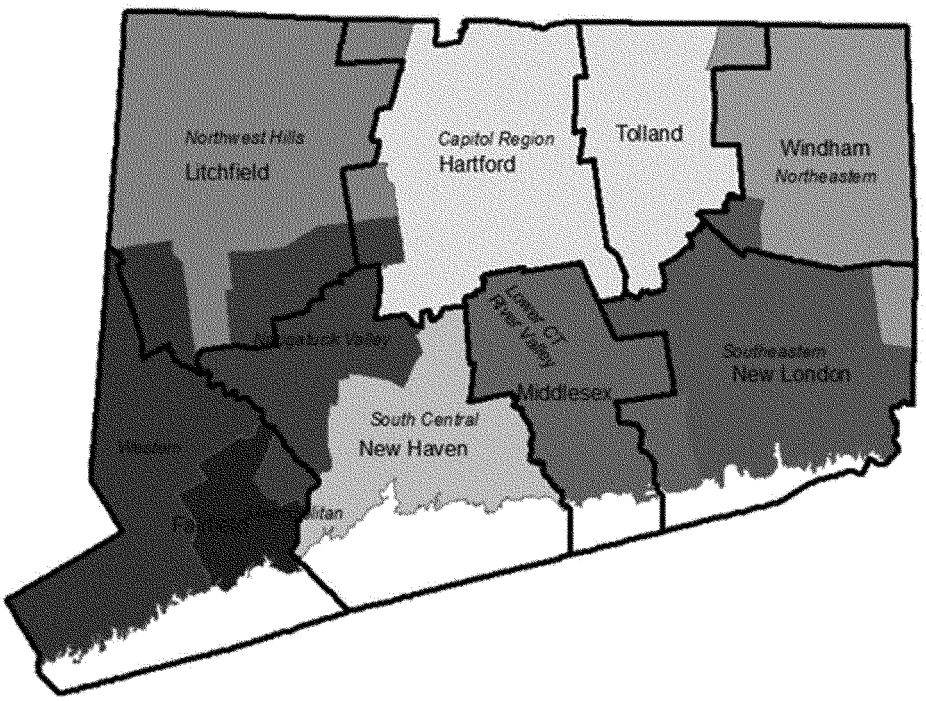
Adoption of the nine planning regions as county equivalents applies to the collection, tabulation, and dissemination of Census Bureau statistical data for Connecticut. The Census Bureau proposes to implement this change in 2023, and will use planning regions in all of its programs that collect, tabulate, and disseminate demographic or economic data, such as the American Community Survey (ACS), the intercensal Population Estimates Program, Small Area Income and Poverty Estimates (SAIPE) Program, the Economic Census, County Business Patterns, and the Longitudinal Employer-Household Dynamics Program. While other federal agencies are encouraged to adopt Connecticut's planning regions as county equivalents for use in their statistical and non-statistical programs, the Census Bureau does not have the authority to require such a change. Nevertheless, adoption of planning regions as county equivalents will assure comparability of data produced by all federal agencies as well as comparability between statistical and non-statistical programs.

Transitioning From Counties to Planning Regions

Relationship Between Counties and Planning Regions

Figure 1 depicts the relationship between Connecticut's eight counties and its nine planning regions. Although the planning regions and counties do not align, there is substantial overlap, to the extent that one can discern the relationships between individual planning regions and counties. The closest relationship is between Middlesex County and Lower Connecticut River Valley planning region, with all 15 of the cities and towns within the county also located within the planning region (which also contains two towns located in New London County. See Table 2).

Figure 1. Relationship between Counties and Planning Regions. County boundaries are shown as thick lines; names are labeled in standard font. The planning regions are shaded; names are in italics.



Cities and towns are the constituent governments within each COG/planning region. As such, data for cities and towns can be aggregated to planning regions, facilitating reconstruction of time series data and longitudinal analysis. Table 1 provides the 2010 Census population and the 2019 estimated population for each planning region, based on aggregated data for constituent cities and towns.

Source: *https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html*

TABLE 1—PLANNING REGION POPULATION: 2010 AND 2019

Planning region	2010 Census population	2019 Population estimate
Capitol	973,959	969,831
Greater Bridgeport	318,004	320,921

TABLE 1—PLANNING REGION POPULATION: 2010 AND 2019—Continued

Planning region	2010 Census population	2019 Population estimate
Lower Connecticut River Valley	175,686	172,058
Naugatuck Valley	448,738	442,869
Northeastern Connecticut	96,617	95,570
Northwest Hills	115,247	110,102
South Central Connecticut	570,001	566,579
Southeastern Connecticut	286,711	277,635
Western Connecticut	589,135	609,722

Table 2 provides the number of cities and towns within each of the eight counties and the number within corresponding planning regions, further illustrating the overlap between counties and planning regions.

TABLE 2—DISTRIBUTION OF CITIES AND TOWNS WITHIN COUNTIES AND PLANNING REGIONS.

County	Cities and towns in county	Cities and towns within planning regions								
		Capitol	Greater bridgeport	Lower CT river valley	Naugatuck valley	Northeastern CT	NW Hills	South central CT	Southeastern CT	Western CT
Fairfield	23		6		1					16
Hartford	29	26			1		2			
Litchfield	26				5		19			2
Middle-sex	15			15						
New Haven	27				12			15		
New London	21			2		1			18	
Tolland	13	12				1				
Wind-ham	15					14			1	
Total	169	38	6	17	19	16	21	15	19	18

Using the distribution of cities and towns within counties and planning regions as a guide, Table 3 presents the approximate relationship between counties and planning regions, which could be used when building longitudinal data for geographic areas for which counties and county equivalents are building blocks if component city- and town-level data were not available.

TABLE 3—COUNTIES-TO-PLANNING REGIONS APPROXIMATION

County	2018 County population estimate	Planning region	2019 Planning region population estimate
Fairfield		Greater Bridgeport	320,921
	943,823	Western Connecticut	609,722ROW≤
Hartford	892,697	Capitol	969,831
Tolland	150,921		
Litchfield	181,111	Northwest Hills	110,102
Middlesex	162,682	Lower Connecticut River Valley	172,058
New Haven	857,620	Naugatuck Valley	442,869
		South Central Connecticut	566,579
New London	266,784	Southeastern Connecticut	277,635
Windham	117,027	Northeastern Connecticut	95,570

To assist with transitioning from counties to planning regions and to assist with development of longitudinal data for the new county equivalents, the Census Bureau will produce and make available reference files identifying the cities and towns that constitute each planning region. This will facilitate aggregation of data from decennial censuses, the ACS, the intercensal Population Estimates Program, SAIPE, the Economic Census, and the Longitudinal Employer-Household Dynamics Program, all of which collect, tabulate, and disseminate data for cities and towns in Connecticut. In addition, the Census Bureau will produce and make available other reference files, identifying the relationships between various sub-state and sub-county geographic areas and the planning regions.

Upon adoption of this change, the Census Bureau will include planning regions in all geospatial data products, including TIGER/Line shapefiles, TIGER/Line geodatabases, cartographic boundary files, and mapping services.

Each planning region will be assigned a three-digit Federal Information Processing Series (FIPS) code, starting with 017, and continuing in alphabetical order by name (Table 4). Codes 001 through 015 will continue to reference the eight counties but will be retired. Each planning region also will be assigned an eight-digit American National Standards Institute (ANSI) code and will be included in the U.S. Board on Geographic Names' Geographic Names Information System. In addition, the Census Bureau will work with the State of Connecticut to determine the appropriate FIPS class code, functional status code, and other

codes that describe the attributes of the planning regions. The FIPS codes, ANSI codes, and attribute codes will be included in Census Bureau geographic reference products when this proposed change is adopted.

TABLE 4—PLANNING REGION NAMES, LEGAL/STATISTICAL AREA DESCRIPTION, AND FEDERAL INFORMATION PROCESSING SERIES (FIPS) CODES

Name	FIPS state-county code
Capitol Planning Region	09017
Greater Bridgeport Planning Region	09019
Lower Connecticut River Valley Planning Region	09021
Naugatuck Valley Planning Region	09023
Northeastern Connecticut Planning Region	09025
Northwest Hills Planning Region	09027
South Central Connecticut Planning Region	09029
Southeastern Connecticut Planning Region	09031
Western Connecticut Planning Region	09033

Relationship to Other Statistical Geographic Entities

The Census Bureau accounted for the change from counties to planning regions when implementing the Participant Statistical Areas Program (PSAP) for the 2020 Census, the program in which the Census Bureau works with local officials to review and update block groups and census tracts. The planning regions were the official PSAP participants in Connecticut for both the 2010 and 2020 censuses, thus ensuring that census tracts and block groups generally aligned with city and town boundaries, facilitating transition to the new county equivalents. The Census Bureau further reviewed block group and census tract boundaries for the 2020 Census to ensure alignment with planning region boundaries. As a result, the change to county equivalents in Connecticut will not affect block group and census tract boundaries. Both types of entities will nest within planning region boundaries.

The adoption of planning regions as county equivalents will affect the delineation of Metropolitan and Micropolitan Statistical Areas as well as Combined Statistical Areas by the Office of Management and Budget. Areas delineated based on 2020 Census and 2016–2020 ACS 5-year data will reflect the new county equivalents. New England City and Town Areas (NECTAs) and combined NECTAs are not affected by this change.

Timeline

The Census Bureau proposes to implement adoption of the nine planning regions as county equivalents in 2023 and include the planning regions in all geospatial and statistical data products referenced to 2023 and each year thereafter.

Officials with the State of Connecticut's Office of Policy and Management contacted the Census Bureau in October 2017 regarding the process they should follow in order to adopt the State's nine planning regions as county equivalents. At that time, Census Bureau staff advised that officials first obtain broad data user support throughout the State, including from other State agencies, the State Data Center, as well as the planning regions. Once broad support for the change was achieved, a formal request addressed to the Census Bureau's Director was needed for the Census Bureau to take formal steps toward adoption of the nine planning regions as county equivalents. The State's formal request was received by the Census Bureau in August 2019. The State also submitted a letter of support from the Connecticut Data Collaborative/State Data Center attesting to the importance and value of data for planning regions to analysts, decision makers, and other data users throughout Connecticut as well as broad support for the change among data users throughout the State. In addition, members of Connecticut's Congressional Delegation, chairs of each of the State's nine COGs, and officials from the Connecticut Conference of Municipalities, Council of Small Towns, and the Advisory Commission on Intergovernmental Relations were copied on the State's letter to the Census Bureau. The Census Bureau held a meeting with Connecticut State and local government officials, state agency staff, and COG chairs in April 2020 to provide an update on outreach regarding the proposed change; meeting participants reiterated the importance of, and support for, adoption of the State's nine planning regions as county equivalents.

The Census Bureau began outreach to other federal agencies and data users regarding this change in October 2019, following the State of Connecticut's formal request to replace its eight counties with the nine planning regions. The Census Bureau has held seven briefings for federal agency staff: one for the Interagency Council on Statistical Policy; two organized by the Federal Committee on Statistical Methodology-Geospatial Interest Group; two for Department of Housing and Urban Development staff, including staff managing the Community Development Block Grant and other funding programs; one for Bureau of Labor Statistics staff; and one organized by the US Department of Transportation attended by federal, state, and local transportation planners. This Notice serves as the formal process by which the Census Bureau is announcing the intended change and through which it will gather formal comments.

Following completion of the formal period of comment associated with this Notice, the Census Bureau, in consultation with officials with the State of Connecticut, will review comments received and reach a final decision regarding whether to implement adoption of the nine planning regions as county equivalents.

TABLE 4—TIMELINE OF ACTIVITIES

Activity	Dates
Officials from the State of Connecticut's Office of Policy and Management contact Census Bureau regarding proposed adoption of planning regions as county equivalents.	October 2017.

TABLE 4—TIMELINE OF ACTIVITIES—Continued

Activity	Dates
Office of Policy and Management staff conduct outreach at the State-level to obtain consensus for change	November 2017–March 2019.
Formal request from the State of Connecticut to the Census Bureau's Director regarding adoption of planning regions as county equivalents.	August 2019.
Census Bureau outreach to federal agencies and other data users	September 2019–present.
Federal Register Notice announcing the Census Bureau's proposed implementation of the change in county equivalents.	Fall 2020.
Census Bureau, in consultation with the State of Connecticut, issues final decision regarding adoption of planning regions as county equivalents.	Summer 2021.

Steven D. Dillingham, Director, Bureau of the Census, approved the publication of this Notice in the **Federal Register**.

Dated: December 9, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–27459 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Capital Expenditures Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 10, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

OMB Control Number: 0607–0782.

Form Number(s): ACE–1(L), ACE–1(M), ACE–1(S), ACE–2.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 70,127.

Average Hours per Response: 2.69.

Burden Hours: 188,787.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Data on the amount of business expenditures for new plants and equipment and measures of the stock of existing facilities are critical to evaluating productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and overall economic performance. The ACES is the sole source of detailed comprehensive statistics on investment in buildings and other structures, machinery, and equipment by private nonfarm businesses in the United States.

This request is for a revision to the currently approved collection and will cover the 2020 through 2022 ACES (conducted in years 2021 through 2023). Changes from the previous ACES authorization are the collection of content related to the Coronavirus Pandemic, the presence of robotic equipment and investment in robotic equipment by industry segment from employer businesses, and the amount of time it took to complete the nonemployer survey. The detailed capital expenditures data, collected every five years, were collected in the 2017 ACES and will be collected again in the 2022 ACES.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 131 and 182. Sections 224 and 225 of Title 13 make this survey mandatory.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0782.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–27462 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–217–2020]

Foreign-Trade Zone 22—Chicago, Illinois; Application for Subzone Expansion; Abbott Laboratories, Itasca, Illinois

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Illinois International Port District, grantee of FTZ 22, requesting an expansion of Subzone 22F on behalf of Abbott Laboratories (Abbott), located in Itasca, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 8, 2020.

Subzone 22F currently consists of the following sites: Site 2 (480 acres)—One Abbott Park Road, North Chicago; Site 3 (129 acres)—Atkinson Road, North Chicago; Site 4 (42 acres) 22nd Street, North Chicago; Site 5 (17 acres)—1300 East Touhy, Des Plaines; and, Site 7 (1.4 acres)—1800 Brummel Avenue, Elk Grove Village.

The proposed expansion would add an additional site to the subzone: Proposed Site 8 (5.64 acres)—1015 West Devon Avenue, Itasca, DuPage County. No authorization for expanded production activity has been requested at this time. The subzone will be subject

to the existing activation limit of FTZ 22.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 25, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 8, 2021.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov.*

Dated: December 9, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–27424 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2020]

Foreign-Trade Zone (FTZ) 90—Syracuse, New York; Authorization of Production Activity; Xylem Water Systems USA LLC (Centrifugal and Submersible Pumps), Auburn, New York

On August 11, 2020, Xylem Water Systems USA LLC submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 90D, in Auburn, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 55636, September 9, 2020). On December 9, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 9, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–27425 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–134]

Certain Metal Lockers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain metal lockers and parts thereof (metal lockers) from the People's Republic of China (China). The period of investigation is January 01, 2019 through December 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 14, 2020.

FOR FURTHER INFORMATION CONTACT: Charles Doss or Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2020, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions [1] concerning imports of metal lockers from China, filed in proper form on behalf of List Industries, Inc., Lyon LLC, Penco Products, Inc, and Tennsco LLC (collectively, the petitioners).[2] On August 5, 2020, Commerce published the notice of initiation of this CVD investigation of metal lockers from China.[3] On September 21, 2020, Commerce postponed the preliminary determination of this investigation to December 7, 2020.[4] For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[5] This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are metal lockers from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.* , scope).[7] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce intends to issue its preliminary decision regarding comments concerning the scope of the AD and CVD investigations in the preliminary determination of the

[1] *See* Petitioners' Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties Against Imports of Certain Metal Lockers and Parts Thereof from the People's Republic of China,'' dated July 9, 2020 (Petition).

[2] On October 15, 2020, the petitioners notified Commerce that Lyon LLC was withdrawing as a petitioner in this investigation. On November 6, 2020, DeBourgh Manufacturing Co. was listed with List Industries, Inc., Penco Products, Inc., and Tennsco LLC as the petitioners in this investigation.

[3] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 47353 (August 5, 2020) (*Initiation Notice*), and accompanying Initiation Checklist.

[4] *See Certain Metal Lockers and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination of Countervailing Duty Investigation*, 85 FR 59287 (September 21, 2020).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Metal Lockers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

[7] *See Initiation Notice.*

companion AD investigation, whose deadline is February 4, 2021.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8]

Commerce notes that, in making these findings, it relied, in part, on facts available and because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[9] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of metal lockers from China based on a request made by the petitioners.[10] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than April 20, 2021, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Commerce calculated an individual estimated countervailable subsidy rate for Zhejiang Xingyi Metal Products Co., Ltd. (Zhejiang Xingyi), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis* , or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Zhejiang Xingyi is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Rate for Non-Responsive Companies

Eight potential producers and/or exporters of metal lockers from China did not respond to Commerce's Quantity and Value (Q&V) Questionnaire. We find that, by not responding to the Q&V Questionnaire within the deadline established by Commerce, these companies withheld requested information and significantly impeded this proceeding.[11] Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these eight companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V Questionnaire, the eight companies did not cooperate to the best of their ability in this investigation.

Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the eight companies will not obtain a more favorable result than if they had fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Zhejiang Xingyi Metal Products Co., Ltd.	36.83
All Others	36.83
Changshu Taron Machinery Equipment Manufacturing Co., Ltd.	144.01
Guangdong Yuhua Building Materials Co., Ltd.	144.01
Jiangsu Tongrun Tool Cabinet Co., Ltd.	144.01
Luoyang Mas Younger Office Furniture Co. / Louyang Mas Younger Export and Import Co.	144.01
Luoyang Shidiu Import and Export Co., Ltd.	144.01
Suzhou Yuanda Commercial Products Co. Ltd.	144.01
Winnsen Industry Co., Ltd.	144.01
Xiamen Headleader Technology	144.01

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

Commerce is currently unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. Accordingly, we intend to take additional steps in lieu of on-site verification. Commerce will notify interested parties of any additional documentation or information required.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See* sections 776(a) and (b) of the Act.

[10] *See* Petitioners' Letter, ''Certain Metal Lockers and Parts Thereof from the People's Republic of China Petitioners' Request to Align Final Determinations,'' dated November 30, 2020.

[11] These eight companies are Changshu Taron Machinery Equipment Manufacturing Co., Ltd.; Guangdong Yuhua Building Materials Co., Ltd.; Jiangsu Tongrun Tool Cabinet Co., Ltd.; Luoyang Mas Younger Office Furniture Co. / Louyang Mas Younger Export and Import Co.; Luoyang Shidiu Import and Export Co., Ltd.; Suzhou Yuanda Commercial Products Co. Ltd.; Winnsen Industry Co., Ltd.; and Xiamen Headleader Technology.

case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: December 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain metal lockers, with or without doors, and parts thereof (certain metal lockers). The subject certain metal lockers are metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. In a multiple locker assembly (whether a welded locker unit, otherwise assembled locker unit or knocked down unit or kit), the width measurement shall be based on the width of an individual locker not the overall unit dimensions. All measurements in this scope are based on actual measurements. The subject certain metal lockers typically include the bodies (back, side, shelf, top and bottom panels), door frames with or without doors which can be integrated into the sides or made separately, and doors. The subject metal lockers typically are made of flat-rolled metal, metal mesh and/or expanded metal, which includes but is not limited to alloy or non-alloy steel (whether or not galvanized or otherwise metallically coated for corrosion resistance), stainless steel, or aluminum, but the doors may also include transparent polycarbonate, Plexiglas or similar transparent material or any combination thereof. Metal mesh refers to both wire mesh and expanded metal mesh. Wire mesh is a wire product in which the horizontal and transverse wires are welded at the cross-section in a grid pattern. Expanded metal mesh is made by slitting and stretching metal sheets to make a screen of diamond or other shaped openings. The doors are configured with or for a handle or other device that permit the use of a mechanical or electronic lock or locking mechanism, including, but not limited to: A combination lock, a padlock, a key lock, lever or knob lock, and a wireless lock. The subject locker may also enter with the lock or locking device included or installed. The doors or body panels may also include vents (including wire mesh or expanded metal mesh vents) or perforations. The bodies, body components and doors are typically powder coated, otherwise painted or epoxy coated or may be unpainted. The subject merchandise includes metal lockers imported either as welded or otherwise assembled units (ready for installation or use) or as knocked down units or kits (requiring assembly prior to installation or use).

The subject lockers may be shipped as individual or multiple locker units preassembled, welded, or combined into banks or tiers for ease of installation or as sets of component parts, bulk packed (*i.e.* , all backs in one package, crate, rack, carton or container and sides in another package, crate, rack, carton or container) or any combination thereof. The knocked down lockers are shipped unassembled requiring a supplier, contractor or end-user to assemble the individual lockers and locker banks prior to installation.

The scope also includes all parts and components of lockers made from flat-rolled metal or expanded metal (*e.g.* , doors, frames, shelves, tops, bottoms, backs, side panels, etc.) as well as accessories that are attached to the lockers when installed (including, but not limited to, slope tops, bases, expansion filler panels, dividers, recess trim, decorative end panels, and end caps) that may be imported together with lockers or other locker components or on their own. The particular accessories listed for illustrative purposes are defined as follows:

a. *Slope tops:* Slope tops are slanted metal panels or units that fit on the tops of the lockers and that slope from back to front to prevent the accumulation of dust and debris on top of the locker and to discourage the use of the tops of lockers as storage areas. Slope tops come in various configurations including, but not limited to, unit slope tops (in place of flat tops), slope hoods made of a back, top and end pieces which fit over multiple units and convert flat tops to a sloping tops, and slope top kits that convert flat tops to sloping tops and include tops, backs and ends.

b. *Bases:* Locker bases are panels made from flat-rolled metal that either conceal the legs of the locker unit, or for lockers without legs, provide a toe space in the front of the locker and conceal the flanges for floor anchoring.

c. *Expansion filler panel:* Expansion filler panels or fillers are metal panels that attach to locker units to cover columns, pipes or other obstacles in a row of lockers or fill in gaps between the locker and the wall. Fillers may also include metal panels that are used on the sides or the top of the lockers to fill gaps.

d. *Dividers:* Dividers are metal panels that divide the space within a locker unit into different storage areas.

e. *Recess trim:* Recess trim is a narrow metal trim that bridges the gap between lockers and walls or soffits when lockers are recessed into a wall.

f. *Decorative end panels:* End panels fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners. They typically are painted to match the lockers.

g. *End caps:* End caps fit onto the exposed ends of locker units to cover holes, bolts, nuts, screws and other fasteners.

The scope also includes all hardware for assembly and installation of the lockers and locker banks that are imported with or shipped, invoiced or sold with the imported locker or locker system.

Excluded from the scope are wire mesh lockers. Wire mesh lockers are those with each of the following characteristics:

(1) At least three sides, including the door, made from wire mesh;

(2) the width and depth each exceed 25 inches; and

(3) the height exceeds 90 inches.

Also excluded are lockers with bodies made entirely of plastic, wood or any nonmetallic material.

Also excluded are exchange lockers with multiple individual locking doors mounted on one master locking door to access multiple units. Excluded exchange lockers

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[13] *See Temporary Rule.*

have multiple individual storage spaces, typically arranged in tiers, with access doors for each of the multiple individual storage space mounted on a single frame that can be swung open to allow access to all of the individual storage spaces at once. For example, uniform or garment exchange lockers are designed for the distinct function of securely and hygienically exchanging clean and soiled uniforms. Thus, excluded exchange lockers are a multi-access point locker whereas covered lockers are a single access point locker for personal storage.

Also excluded are metal lockers that are imported with an installed electronic, internet-enabled locking device that permits communication or connection between the locker's locking device and other internet connected devices.

Also excluded are hardware and accessories for assembly and installation of the lockers, locker banks and storage systems that are separately imported in bulk and are not incorporated into a locker, locker system or knocked down kit at the time of importation. Such excluded hardware and accessories include but are not limited to bulk imported rivets, nuts, bolts, hinges, door handles, locks, door/frame latching components, and coat hooks. Accessories of sheet metal, including but not limited to end panels, bases, dividers and sloping tops, are not excluded accessories.

The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Diversification of China's Economy
VI. Subsidies Valuation
VII. Use of Facts Otherwise Available and Adverse Inferences
VIII. Benchmarks and Interest Rates
IX. Analysis of Programs
X. Calculation of the All-Others Rate
XI. Recommendation

[FR Doc. 2020–27423 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–831, A–588–879, A–469–822]

Methionine From France, Japan and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable December 14, 2020.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin at (202) 482–2638 (France); Robert Scully at (202) 482–0572 (Japan); and Elizabeth Bremer at (202) 482–4987 (Spain); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2020, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of methionine from France, Japan, and Spain.[1] Currently, the preliminary determinations are due no later than January 5, 2021.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days of the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 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 December 1, 2020, Novus International, Inc. (the petitioner) submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[2] The petitioner stated that it requests postponement due to concerns that Commerce will need further information and complete questionnaire responses. Under the current timeline, the petitioner believes that Commerce will not have complete responses and sufficient information to issue these preliminary determinations.[3]

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for these preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than February 24, 2021. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–27422 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Methionine from France, Japan and Spain: Initiation of Less-Than-Fair-Value Investigations,* 85 FR 52324 (August 25, 2020).

[2] *See* Petitioner's Letter, ''Methionine from France, Spain, and Japan: Request to Extend Preliminary Determinations,'' dated December 1, 2020.

[3] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA574]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2021. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom

longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2021 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on January 21, February 18, and March 18, 2021. The Safe Handling, Release, and Identification Workshops will be held on January 7, January 22, February 4, February 18, March 5, and March 18, 2021. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Norfolk, VA; Fort Pierce, FL; and Wilmington, NC. The Safe Handling, Release, and Identification Workshops will be held in Gulfport, MS; Charleston, SC; Portsmouth, NH; Largo, FL; Philadelphia, PA; and Houston, TX. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by email at *rick.a.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are posted online at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops*.

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for three years. Thus, certificates that were initially issued in 2018 will be expiring in 2021. Approximately 177 free Atlantic Shark Identification Workshops have been conducted since October 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. January 21, 2021, 12 p.m.–4 p.m., La Quinta Inn, 1387 North Military Highway, Norfolk, VA 23502.
2. February 18, 2021, 12 p.m.–4 p.m., Hampton Inn, 1985 Reynolds Drive, Fort Pierce, FL 34945.
3. March 18, 2021, 12 p.m.–4 p.m., Hampton Inn, 124 Old Eastwood Road, Wilmington, NC 28403.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification; and
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2018 will be expiring in 2021. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 364 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. January 7, 2021, 9 a.m.–5 p.m., Holiday Inn, 9515 Highway 49, Gulfport, MS 39503.

2. January 22, 2021, 9 a.m.–5 p.m., Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414.

3. February 4, 2021, 9 a.m.–5 p.m., Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801.

4. February 18, 2021, 9 a.m.–5 p.m., Holiday Inn Express, 210 Seminole Boulevard, Largo, Florida 33770.

5. March 5, 2021, 9 a.m.–5 p.m., Embassy Suites, 9000 Bartram Avenue, Philadelphia, PA 19153.

6. March 18, 2021, 9 a.m.–5 p.m., Holiday Inn Express, 9300 South Main Street, Houston, Texas 77025.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification; and
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

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

Dated: December 9, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–27426 Filed 12–11–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held January 14, 2021, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: This meeting will be conducted in an electronic format and open to the public via audio teleconference (866–880–0098 participant code 48261650). Public comments may be emailed to *arichardson@ntia.gov* or mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Antonio Richardson, Designated Federal Officer, at (202) 482–4156 or *arichardson@ntia.gov;* and/or visit NTIA's website at *https://www.ntia.gov/category/csmac.*

SUPPLEMENTARY INFORMATION: *Background:* The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *https://www.ntia.doc.gov/files/ntia/publications/csmac_charter_10.1.19.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.gov/category/csmac.*

Matters To Be Considered: The Committee provides advice to the Assistant Secretary to assist in developing and maintaining spectrum management policies that enable the United States to maintain or strengthen its global leadership role in the introduction of communications technology, services, and innovation; thus expanding the economy, adding jobs, and increasing international trade, while at the same time providing for the expansion of existing technologies and supporting the country's homeland security, national defense, and other critical needs of government missions. NTIA will post a detailed agenda on its website, *http://www.ntia.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.gov/category/csmac.*

Time and Date: The meeting will be held on January 14, 2021, from 1:00 p.m. to 4:00 p.m. EST. The meeting time and the agenda topics are subject to change. Please refer to NTIA's website, *http://www.ntia.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: This meeting will be conducted in an electronic format and open to the public via audio teleconference. Individuals requiring accommodations are asked to notify Mr. Richardson at (202) 482–4156 or *arichardson@ntia.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to join the teleconference and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of the meeting are strongly encouraged to submit their comments in Microsoft Word and/or PDF format via electronic mail to *arichardson@ntia.gov.* Comments may also be sent via postal mail to Commerce Spectrum Management Advisory Committee, National

Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in one or both of the file formats specified above. CDs should be labeled with the name and organizational affiliation of the filer. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. Additionally, please note that there may be a delay in the distribution of comments submitted via postal mail to Committee members.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's website at *http://www.ntia.gov/category/csmac.*

Dated: December 9, 2020.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2020–27444 Filed 12–11–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15044–000]

Maysville PSH, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 10, 2020, Maysville PSH, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the closed-loop Maysville Pumped Storage Project located in Mason County, Kentucky and Adams County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Maysville Pumped Storage Project would consist of the following: (1) A 7,400-foot-long, 110-foot-high roller-compacted concrete ring dam; (2) an upper reservoir with a surface area of 65 acres and a storage capacity of 5,625 acre-feet; (3) a 630-foot-long, 18.5-foot-diameter concrete-lined, inclined headrace tunnel leading to; (4) a 1,020 foot-long, 18.5-foot-diameter high pressure, steel-lined vertical shaft connecting to; (5) three 100-foot-long, 10-foot-diameter steel penstocks; (6) a 400-foot-long by 75-foot-wide and 160-foot-high underground powerhouse containing three 167-megawatt reversible pump-turbines; (7) a 150-foot-long by 75-foot-wide and 44-foot-high underground transformer chamber; (8) a 3,200-foot-long, 21.6-foot-diameter concrete-lined tailrace conduit; (9) a lower reservoir created within excavated underground mine space in Mason County, Kentucky, with a surface area of 120 acres and a storage capacity of 5,556 acre-feet; and (10) a new 2.8-mile-long, 230 kilovolt (kv) transmission line, which would run underground from the transformer chamber through the existing mine for 1.2 miles, continue under the Ohio River through a 0.2-mile-long, 18-foot-diameter tunnel, and then run overhead for 1.4 miles to the point of interconnection with a 345-kV bus at the former Stuart Generating Station in Adams County, Ohio. The proposed project would have an estimated annual generation of 876,000 megawatt-hours.

Applicant Contact: Luigi Resta, Maysville PSH, LLC, 201 S. Main St., Ste. 2000; Salt Lake City, UT 84111; phone: (415) 602–2569.

FERC Contact: Rachel McNamara; phone: (202) 502–8340.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15044) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27437 Filed 12–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4202–024]

KEI (Maine) Power Management (II) LLC; Notice of Conference Call

a. *Date and Time of Meeting:* December 18, 2020 at 1:00 p.m. Eastern Standard Time.

b. *FERC Contact:* Steve Kartalia at *stephen.kartalia@ferc.gov* or (202) 502–6131.

c. *Purpose of Meeting:* On October 15, 2020, the National Marine Fisheries Service (NMFS) requested that, pursuant to section 16.8(b)(6) of the Commission's regulations, the Director of the Office of Energy Projects resolve a dispute with KEI (Maine) Power Management (II) LLC (KEI Power), regarding two studies NMFS requested during the first stage of consultation for the proposed relicensing of the Lowell Tannery Hydroelectric Project No. 4202 (project). NMFS's dispute involves two studies: an upstream fish passage effectiveness study, and a downstream fish passage effectiveness and survival study. Commission staff need additional information to provide a recommendation on the dispute involving upstream fish passage.

Commission staff is meeting with KEI Power, NMFS, the U.S. Fish and Wildlife Service, and other interested participants, via conference call, to discuss the project's upstream fish passage facility, project operation, and

existing information about the project's effects on upstream fish passage.

d. *Proposed Agenda:* (1) Introduction of participants; (2) FERC staff explain purpose of meeting and gather information about upstream passage at the project; (3) Participants discuss upstream passage at the project; and (4) Meeting conclusion.

e. A summary of the meeting will be prepared and filed in the Commission's public file for the project.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. If interested, please contact Steve Kartalia at *stephen.kartalia@ferc.gov* or (202) 502–6131, by December 16, 2020, to receive the conference call number and access code.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27436 Filed 12–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–9–000]

Commission Information Collection Activities (FERC–725U); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, FERC–725U (Mandatory Reliability Standards: Reliability Standard CIP–014–2).

DATES: Comments on the collection of information are due February 12, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–9–000) by one of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov*
- *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
- Effective 7/1/2020, delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* or telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION: *Title:* FERC–725U (Mandatory Reliability Standards: Reliability Standard CIP–014)

OMB Control No.: 1902–0274.

Type of Request: Three-year approval of the FERC–725U information collection requirements, with no changes to the reporting or recordkeeping requirements.

Abstract: On August 8, 2005, The Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law. EPAct 2005 added a new section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight or by the Commission independently. In 2006, the Commission certified NERC (now called the North American Electric Reliability Corporation) as the ERO pursuant to section 215 of the FPA. Reliability Standard CIP–014–2 requires applicable transmission owners and transmission operators to identify and protect transmission stations and transmission substations, and their associated primary control centers that if rendered inoperable or damaged resulting from a physical attack could result in widespread instability, uncontrolled separation, or cascading within an Interconnection.

In terms of information collection requirements, an applicable entity must create or maintain documentation showing compliance, when appropriate, with each requirement of the Reliability Standard. This Reliability Standard CIP–014–2 has six requirements. Transmission owners and transmission operators must keep data or evidence to show compliance with the standard for three years unless directed by its Compliance Enforcement Authority. If a responsible entity is found non-compliant, it must keep information related to the non-compliance until mitigation is complete and approved, or for three years, whichever is longer.

Type of Respondents: Intrastate natural gas and Hinshaw pipelines

Estimate of Annual Burden [1] *and Cost* [2]: The Commission estimates the total Public Reporting Burden for the FERC–725U information collection as:

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–725U are approximately the same as the Commission's average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is $172,329/year (or $83.00/hour).

FERC–725U

[Mandatory Reliability Standards: Reliability Standard CIP–014]

	Number of respondents [3] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Average annual cost per respondent (5) ÷ (1)
Annual Reporting and Recordkeeping.	336	1	336	32.71 hrs.; $2,714.93 ..	10,991 hrs.; $912,253	$2,714,93
Total FERC–725U	336	1	336	32.71 hrs.; $2,714.93 ..	10,991 hrs.; $912,253	$2,714.93

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27434 Filed 12–11–20; 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: RP21–300–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreement—12/4/2020 to be effective 12/4/2020.

Filed Date: 12/4/20.

Accession Number: 20201204–5026.

Comments Due: 5 p.m. ET 12/16/20.

Docket Numbers: RP21–301–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Yankee Gas 510802 eff 12–5–2020 to be effective 12/5/2020.

Filed Date: 12/4/20.

Accession Number: 20201204–5087.

Comments Due: 5 p.m. ET 12/16/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27439 Filed 12–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 96–048]

Pacific Gas and Electric Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 96–048.

c. *Date Filed:* November 24, 2020.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Kerckhoff Hydroelectric Project.

f. *Location:* The existing project is located on the San Joaquin River, in Fresno and Madera Counties, California. The project occupies 328.1 acres of federal land administered by the United States Forest Service and Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Maureen Zawalick, Pacific Gas and Electric Company, PO Box 770000, MC N11D–1138, San Francisco, CA 94177–0001, (805) 545–4242

i. *FERC Contact:* Evan Williams, (202) 502–8462 or *evan.williams@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing Kerckhoff Hydroelectric Project consists of: (1) a 175-acre, 3-mile-long impoundment at normal full pond elevation 985.0 feet; (2) a 114.5-foot-high, 507-foot-long concrete arch dam with a spillway crest of 91 feet that includes: (a) Fourteen 14.3-foot-high by 20-foot-wide radial gates, and (b) three 72-inch-diameter low-level outlet pipes at an elevation of 897.0 feet, with a maximum combined discharge capacity of 3,900 cubic feet per second; (3) a 75-foot-long, 18-inch-diameter instream flow pipe; (4) two powerhouse facilities (Kerckhoff 1 and Kerckhoff 2); and (5) appurtenant facilities.

The Project's Kerckhoff 1 (K1) powerhouse and associated facilities include: (1) A 73.3-foot-high, 29.5-foot by 26-foot-wide reinforced concrete intake structure located in Kerckhoff Reservoir; (2) a 16,913-foot-long, 17-foot-wide by 17-foot-high unlined tunnel; (3) two approximately 120-foot-long, 20-foot in cross section adits; (4)

[3] The total number of transmission owners and operators equals 336, this represents the unique US entities taken from October 2, 2020 NERC Compliance registry information.

one approximately 507.8-foot-long, 16-to-18-foot in cross section adit; (5) a 75-foot-high, unlined vertical shaft surge chamber with a 40-foot maximum diameter lower section and 17-foot maximum diameter upper section; (6) one 913-foot-long, 84- to- 90-inch-diameter steel penstock; (7) one 946-foot-long, 84- to- 90-inch-diameter steel penstock; (8) an approximately 45-foot-wide by 99-foot-long reinforced concrete powerhouse containing three vertical reaction-type Francis turbine units; and (9) appurtenant facilities. The project's K1 transmission facilities include: (1) A switchyard located on a steep hillside immediately behind the powerhouse; (2) two transformer banks consisting of one, three-phase and seven, single-phase 6.6/115-kilovolt (kV) transformers; and (3) three, 115-kV circuit breakers. Three sets of non-project 115-kV transmission lines exit the switchyard.

K1 Powerhouse Unit No. 2 is not operational and was removed from the current project license in 2013. K1 Powerhouse Units No. 1 and No. 3 are rated at 11.36 megawatts (MW) each for an authorized installed capacity of 22.72 MW; however, both units have not operated since 2018. The three adits were sealed with concrete walls about 200 feet from their entrances, effectively eliminating access to the adits and to the tunnel via the adits. K1 penstock No. 2 is no longer operational; it was abandoned in place and removed from the current project license in 2013. PG&E permanently closed and sealed the main shutoff and bypass valves at K1 penstock No. 2, removed an approximately 12-foot-long section of the penstock immediately downstream of the shutoff valve, removed exposed air valves and cap, and permanently closed the turbine shutoff valve.

The Project's Kerckhoff 2 (K2) powerhouse and associated facilities include: (1) A 63-foot-high, 43-foot by 52-foot-wide reinforced concrete intake structure located in Kerckhoff Reservoir; (2) a 21,632-foot-long, 24-foot-diameter unlined tunnel; (3) an 8-foot-diameter adit tunnel; (4) a 216.8-foot-high, vertical shaft surge chamber composed of a 20-foot-diameter lower section, a 71-foot-diameter middle section, and a 110-foot-diameter upper section, capped at the surface by a 34-foot-high, 111.5-foot-diameter above-ground steel surge tank; (5) one approximately 1,013-foot-long penstock composed of three sections: (a) A 481-foot-long, 20-foot-diameter concrete-lined upper section; (b) a 338-foot-long, 18-foot-diameter concrete-lined middle section; and (c) a 194-foot-long, 15-foot-diameter steel-lined lower section; (6) an approximately 85-foot-diameter, 124-foot-high three-floor (basement floor, turbine floor, and generator floor) underground powerhouse chamber containing one vertical shaft, Francis-type turbine rated at 140 MW; (7) an approximately 531-foot-long, 25-foot-diameter concrete-lined discharge tunnel, with two 19-foot-high, 13-foot-wide gates; (8) a 40-foot-wide open tailrace channel; and (9) appurtenant facilities. The project's K2 transmission facilities include: (1) An approximately 152-foot-wide by 177-foot-long switchyard located at ground level immediately above the underground powerhouse; (2) a transformer; and (3) four, 115-kV circuit breakers. Two sets of non-project 115-kV transmission lines exit the switchyard. From 1984 to 2019, with both powerhouses in operation, average annual generation was approximately 471,424 megawatt-hours.

PG&E operates the project for power generation, making use of available flows from upstream hydroelectric projects. The project operates in a run-of-river mode because of the project reservoir's limited storage capacity. Water used by the project for power generation is released back into the San Joaquin River and flows into Millerton Lake, a United States Bureau of Reclamation facility, located immediately downstream of the K2 Powerhouse.

The San Joaquin River basin upstream of the project is extensively developed for hydroelectric power generation, which influences the timing and magnitude of inflows into the project. Current operational requirements include flow requirements to protect American shad and water temperature requirements to protect smallmouth bass. PG&E is required to discharge a minimum flow of 25 cubic feet per second (cfs) downstream of Kerckhoff Dam during Normal water years and a minimum flow of 15 cfs during Dry water years. Minimum flows are temporarily modified in response to operating emergencies and for fishery management purposes upon agreement between PG&E and the California Department of Fish and Wildlife (CDFW). Additional releases can be determined necessary by CDFW to maintain stream temperatures and to flush sediments in the streambed below Kerckhoff Dam. Kerckhoff Reservoir has an estimated capacity of 2,434 acre-feet of usable capacity at normal maximum water surface elevation and is generally operated as a forebay with no seasonal targets, therefore maintaining storage relatively constant at near full pool. Although, operational limitations of the K2 Powerhouse result in an operational storage of the reservoir of 692 acre-feet. PG&E has primarily operated the K1 Powerhouse only when the K2 Powerhouse is offline, at capacity, or during the American shad spawning releases; although, the K1 Powerhouse has not been operational since 2018. The K2 Powerhouse has a rough operating zone that occurs during flows of approximately 1,750 cfs to 3,200 cfs that generate 45—92 MW. To manage the rough operating zone, PG&E does not allow the unit to linger in the 45—92 MW range. Instead, the K2 Powerhouse operates above or below the range, in order to avoid damaging equipment. Further, the K2 Powerhouse cannot operate with flows less than approximately 580 cfs.

PG&E proposes to modify the existing project boundary to encompass all facilities necessary for operation and maintenance of the project. PG&E proposes to adjust the boundary around Kerckhoff Reservoir, Smalley Cove Recreation Area and the adjacent dispersed day use area, the K1 and K2 developments, the fiber optics and 12-kV distribution lines running from the K2 Switchyard to a non-project substation, and gaging stations and associated facilities. PG&E also proposes to eliminate a shared public access road from the project boundary. With these proposed changes, the area of PG&E-owned land within the project boundary will decrease to 122.8 acres, and federal lands will decrease to 114.4 acres. The area of private lands encompassed by the project boundary will increase to 54.2 acres.

PG&E also proposes to retire the K1 Powerhouse by making certain facilities, including turbine-related facilities, Adits 1 and 2, surge chamber, penstocks, and headworks, inoperable. However, PG&E proposes to retain: (1) the K1 intake structure, tunnel, and North Adit to continue providing instream flow releases, (2) the K1 Powerhouse building for operations support, and (3) the K1 switchyard because it is part of the electric transmission system.

PG&E further proposes the following plans and measures to protect and enhance environmental resources: (1) American Shad Spawning Season Flow Release Regime; (2) Aquatic Resources Plan; (3) Wildlife Management Plan; (4) Vegetation Management and Pest Control Plan; (5) Project Road and Trail Maintenance Plan; (6) Recreation Management Plan; (7) Whitewater Recreation Flow Release Measure; and (8) Historic Properties Management Plan.

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 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, (866) 208–3676 or TYY, (202) 502–8659.

m. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27435 Filed 12–11–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–32–000.

Applicants: Montauk Holdings USA, LLC, Montauk Renewables, Inc., Bowerman Power LFG, LLC, Pico Energy, LLC, TX LFG Energy, LP, Tulsa LFG, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Montauk Holdings USA, LLC, et al.

Filed Date: 12/7/20.

Accession Number: 20201207–5215.

Comments Due: 5 p.m. ET 12/28/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–49–000.

Applicants: 325MK 8ME LLC.

Description: Self-Certification of Exempt Wholesale Generator Status of 325MK 8ME LLC.

Filed Date: 12/4/20.

Accession Number: 20201204–5261.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: EG21–50–000.

Applicants: Chalk Point Power, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Chalk Point Power, LLC.

Filed Date: 12/4/20.

Accession Number: 20201204–5262.

Comments Due: 5 p.m. ET 12/28/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–073.

Applicants: J.P. Morgan Ventures Energy Corporation.

Description: Response to November 6, 2020 Deficiency Letter of the J.P. Morgan Ventures Energy Corporation.

Filed Date: 12/7/20.

Accession Number: 20201207–5225.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER15–1471–010; ER16–915–003; ER15–1672–009; ER10–2861–008; ER19–2287–001; ER16–2010–004; ER19–2289–001; ER19–2294–001; ER12–1308–011; ER16–711–007; ER16–2561–004; ER13–1504–009; ER19–2305–001.

Applicants: Blue Sky West, LLC, Comanche Solar PV, LLC, Evergreen Wind Power II, LLC, Fountain Valley Power, L.L.C., Goal Line L.P., Hancock Wind, LLC, KES Kingsburg, L.P., Mesquite Power, LLC, Palouse Wind, LLC, Pio Pico Energy Center, LLC, Sunflower Wind Project, LLC, SWG Arapahoe, LLC, Valencia Power, LLC.

Description: Response to November 6, 2020 Deficiency Letter of Blue Sky West, LLC, et. al.

Filed Date: 12/7/20.

Accession Number: 20201207–5232.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER20–2721–002.

Applicants: Smoky Mountain Transmission LLC.

Description: Tariff Amendment: Resubmission of Interconnection and Transmission Service Agreement to be effective 2/7/2021.

Filed Date: 12/8/20.

Accession Number: 20201208–5026.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–117–001.

Applicants: System Energy Resources, Inc.

Description: Tariff Amendment: SERI UPSA Ratebase Credit to be effective 10/16/2020.

Filed Date: 12/7/20.

Accession Number: 20201207–5123.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER21–129–001.

Applicants: System Energy Resources, Inc.

Description: Tariff Amendment: SERI UPSA Excess ADIT Credit to be effective 10/17/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5084.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–195–001.

Applicants: LS Power Grid California, LLC.

Description: Tariff Amendment: LS Power Grid California Amended Filing to be effective 12/31/9998.

Filed Date: 12/8/20.

Accession Number: 20201208–5137.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–598–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5860; Queue No. AF2–099 to be effective 11/10/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5019.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–599–000.

Applicants: Smoky Mountain Transmission LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 2/7/2021.

Filed Date: 12/8/20.

Accession Number: 20201208–5030.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–600–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX–LCRA TSC (Ft. Stockton Sw) Facilities Development Agreement to be effective 11/19/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5033.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–601–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Sparta Solar 1st A&R Generation Interconnection Agreement to be effective 11/23/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5038.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–602–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Taygete Energy Project (Taygete 1) 3rd A&R Generation Interconnection Agmt to be effective 12/2/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5047.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–603–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Transmission Company of Illinois, Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: 2020–12–08_SA 3598 Duke Energy-ATXI TIA to be effective 11/30/2020.

Filed Date: 12/8/20.
Accession Number: 20201208–5063.
Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–604–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Charlton Solar Energy Center LGIA Termination Filing to be effective 12/8/2020.
Filed Date: 12/8/20.
Accession Number: 20201208–5067.
Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–605–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission submits Revised IA SA No. 4577 to be effective 2/7/2021.
Filed Date: 12/8/20.
Accession Number: 20201208–5072.
Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–606–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Rate Schedule FERC No. 317 between Tri-State and MCREA to be effective 2/26/2020.
Filed Date: 12/8/20.
Accession Number: 20201208–5086.
Comments Due: 5 p.m. ET 12/29/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–11–000; ES21–12–000; ES21–13–000; ES21–14–000; ES21–15–000; ES21–16–000
Applicants: Massachusetts Electric Company, Nantucket Electric Company, The Narragansett Electric Company, Niagara Mohawk Power Corporation, New England Hydro-Transmission Electric Company, Inc., National Grid Generation LLC.
Description: Joint Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Massachusetts Electric Company, et al.
Filed Date: 12/4/20.
Accession Number: 20201204–5260.
Comments Due: 5 p.m. ET 12/28/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27438 Filed 12–11–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10015–93–OECA]

Notice of Availability of EPA Tampering Policy and Request for Information Regarding 1986 Catalyst Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for information.

SUMMARY: The United States Environmental Protection Agency's Office of Enforcement and Compliance Assurance has issued *EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act.* This Policy states how the EPA intends to handle certain potential civil violations of the Clean Air Act's prohibitions on tampering with vehicle and engine emissions controls as well as the manufacturing, selling, offering to sell, and installation of parts and components that defeat emissions controls. The EPA Tampering Policy creates no obligations on regulated parties, and it is not a rule. Further, it is principally a restatement of currently applicable enforcement discretion policies. The EPA Tampering Policy supersedes and replaces former statements of enforcement policy, as specified in the Policy itself. The EPA Tampering Policy neither supersedes nor replaces a 1986 enforcement policy that is specific to replacement catalytic converters for light-duty gasoline motor vehicles that are beyond their emissions warranty. Rather, with this **Federal Register** document, the EPA requests information to help the agency make a future decision on whether and how to update or withdraw the 1986 catalyst policy. EPA does not anticipate any measurable costs to be incurred by the affected entities associated with the Tampering Policy or the request for information regarding the 1986 catalyst policy.

DATES: The EPA requests information relevant to the agency's ongoing evaluation of the 1986 catalyst policy and potential future enforcement policy regarding replacement catalytic converters for light-duty gasoline motor vehicles that are beyond their emissions warranty. Comments must be received by February 12, 2021.

ADDRESSES: Submit comments, identified in the subject line by ''Catalyst Policy,'' to *tampering@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Evan Belser, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2242A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–6850; *belser.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview of EPA Tampering Policy

Manufacturers employ various systems, technologies, and designs to control emissions of air pollution from their vehicles, engines, and equipment. They do so to comply with Part A of Title II of the Clean Air Act (Act or CAA), 42 U.S.C. 7521–7554. These emissions controls reduce emissions of harmful air pollutants and help prevent respiratory disease, premature death, and environmental harm. The Act prohibits tampering with these emissions controls, and also prohibits making, selling, and installing products that defeat emissions controls. CAA § 203(a)(3), 42 U.S.C. 7522(a)(3). Violations of these prohibitions can severely impact air quality and prevent a level playing field in the aftermarket parts industry and among those who service vehicles and engines.

The EPA's enforcement and compliance efforts to stop tampering and aftermarket defeat devices are the subject of an ongoing National Compliance Initiative. The agency has stepped up its enforcement in this area in response to the widespread removal of vehicle emissions controls that are essential for achieving and maintaining National Ambient Air Quality Standards. Agency enforcement personnel are holding accountable those who manufacture and sell aftermarket defeat devices, those who tamper with commercial fleets of vehicles, and those service shops that routinely delete emissions control equipment. Such conduct is illegal, and undercuts local, state, and federal efforts to improve air quality.

To complement this enforcement effort, the EPA's Office of Enforcement and Compliance Assurance (OECA) has updated the agency's enforcement policy concerning potential violations of the Act's prohibitions on tampering and aftermarket defeat devices. The *EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act* (EPA Tampering Policy, or Policy) will foster consistency in how EPA enforcement personnel approach this work. This Policy will also provide compliance assistance, for example, by describing measures that aftermarket parts companies, service technicians, and others may take to help prevent violations. This update is helpful in part because prior enforcement policies pre-date the 1990 amendments to the Clean Air Act that added the defeat device prohibition alongside the tampering prohibition and expanded the jurisdiction of the Act to include nonroad vehicles and engines. CAA §§ 203(a)(3)(B) and 213, 42 U.S.C. 7522(a)(3)(B) and 7547. Also, this Policy speaks in terms of today's technology, which has advanced considerably since the time of EPA's prior enforcement policies.

The EPA Tampering Policy is a statement of EPA enforcement policy—it is not a regulation—and so it establishes no performance standards, test methods, reporting requirements, or other features more characteristic of a regulatory certification program. This Policy does not purport to address every possible kind of conduct that may be subject to the Act's prohibitions.

This Policy consolidates and restates the principles of the existing enforcement policies (as listed in the Policy's Introduction). Most notably, in this Policy the EPA reaffirms its longstanding practice of using enforcement discretion not to pursue conduct that could potentially constitute a violation of the Clean Air Act provided the person performing that conduct has a documented, reasonable basis to conclude that the conduct does not adversely affect emissions. The Policy includes six circumstances that help to illustrate what the EPA generally views to be a reasonable basis deserving of enforcement discretion, paraphrased here:

- *Reasonable Basis A:* Identical to the EPA-certified configuration
- *Reasonable Basis B:* Replacement after-treatment system that is as effective as the vehicle's or engine's original system and is durable enough to last for a period of time equal to at least half of the vehicle's or engine's useful life as defined in EPA regulations
- *Reasonable Basis C:* Addition of a new after-treatment system to decrease emissions
- *Reasonable Basis D:* Emissions testing demonstrates no adverse effect on emissions
- *Reasonable Basis E:* Aftermarket part certified or approved by EPA
- *Reasonable Basis F:* Aftermarket part exempted by the California Air Resources Board

The EPA Tampering Policy may be viewed at the following website: Air Enforcement Policy, Guidance and Publications, *https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications#Mobile.*

II. Request for Information Relevant to the 1986 Catalyst Policy

By this publication and as explained below, the EPA requests information relevant to the agency's ongoing evaluation of a 1986 EPA enforcement policy that specifically addresses the manufacture, sale, offering for sale, and installation of replacement catalytic converters (or catalysts) for light-duty gasoline motor vehicles that are beyond their emissions warranty. Sale and Use of Aftermarket Catalytic Converters, 51 FR 28114 and 51 FR 28132 (Aug. 5, 1986) (1986 catalyst policy), *available at https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications#Mobile.*

A. Background

A catalyst is a device installed in the exhaust system of a vehicle. It treats and eliminates harmful pollution produced in the vehicle's engine, and is a type of device commonly referred to as an ''after-treatment system.'' Automakers install catalysts in their new vehicles to meet tailpipe emissions standards (commonly referred to as ''OEM catalysts'', which stands for original equipment manufacturer). The manufacture, sale, offering for sale, and installation of an OEM catalyst, or an identical catalyst, would not be a violation of the Act. However, manufacture, sale, offering for sale, and installation of a less effective catalyst may be a violation and, in the absence of any applicable EPA enforcement policy, subject to investigation and potential enforcement action.

The EPA issued the 1986 catalyst policy in response to various challenges associated with the early generations of vehicles equipped with catalytic converters. In the 1986 catalyst policy, the EPA stated that the agency would generally take no enforcement action for the manufacture, sale, or installation of a replacement catalyst even if that catalyst was less effective than the OEM catalyst so long as it met certain criteria. The 1986 catalyst policy included performance criteria for replacement catalysts (*e.g.,* control emissions of NOx with 30% effectiveness for at least 25,000 miles). The criteria reflected the anticipated division between those situations where the EPA would likely investigate further and those situations where the EPA would likely take no further action. Replacement catalysts that met the criteria in the 1986 catalyst policy were with few exceptions less effective than the catalysts that automakers installed in their new vehicles in the 1980s. Catalyst technology has advanced markedly since 1986, and now OEM catalysts are far more effective and durable than in the 1980s.

B. Specific Policy Considerations

The EPA broadly requests information that may inform the agency's ongoing evaluation of the 1986 catalyst policy and potential future enforcement policy regarding replacement catalytic converters for light-duty gasoline motor vehicles that are beyond their emissions warranty. This includes information and data on: potential costs and air quality benefits of withdrawing or changing the 1986 catalyst policy; the current state of the market of replacement catalysts, including the cost, volume of sales, frequency of installation, the age and mileage of vehicles on which replacement catalysts are installed; to what extent catalyst replacement is needed due to failure of the original catalyst, or other reason including theft; and the effectiveness of replacement catalysts at treating air pollution, including whether and to what extent replacement catalysts in the current market conform to the catalysts described in the 1986 catalyst policy.

Further, the EPA specifically requests information relevant to the five following policy considerations.

First, the EPA requests information on whether the agency has accomplished the goals of the 1986 catalyst policy. As detailed in that policy, the stated goals included: Supporting fledgling state and local vehicle inspection programs by encouraging them to require their citizens to replace catalysts that were missing, lead poisoned, or otherwise ineffective; and encouraging the development of inexpensive, multiple-application catalysts, and to confirm the effectiveness of these products.

Second, the EPA requests information on whether EPA should establish a consistent enforcement policy for all types replacement after-treatment

systems for vehicles and engines. After-treatment systems are devices that treat exhaust from the engine in order to reduce the amount of pollution emitted into the ambient air. Vehicle and engine manufacturers employ after-treatment systems in order to comply with EPA emissions standards for a wide range of types of vehicles and engines, including gasoline and diesel products for the on-road and nonroad sectors. Common after-treatment systems include catalytic converters, diesel particulate filters, selective catalytic reduction systems, and diesel oxidation catalysts. These systems vary in their applications and technologies, but the question of whether such parts are legal is the same in all cases: do they violate the prohibitions on tampering and aftermarket defeat devices in section 203(a)(3) of the Clean Air Act?

Note that the EPA Tampering Policy includes provisions that generally address replacement after-treatment systems. These provisions are primarily stated in ''Reasonable Basis B'' in the EPA Tampering Policy (other pertinent provisions are stated in Reasonable Bases A and F). In the agency's ongoing evaluation of the 1986 catalyst policy, the agency is considering whether to withdraw the 1986 catalyst policy and instead apply these general provisions from the Tampering Policy to replacement catalysts for light-duty gasoline motor vehicles that are beyond their emissions warranty. As applied, Reasonable Basis B would say that the EPA would typically find there is a reasonable basis where a catalyst is as effective as the vehicle's original catalyst (which, for example, controls emissions of NOx with more than 90% effectiveness in recent model year vehicles) and will remain as effective for at least half of the vehicle's ''useful life'' as defined in EPA regulations (*e.g.,* 60,000 miles for many vehicles on the road whose useful life in the regulations is 120,000 miles).

Third, the EPA requests information on whether and how the 1986 catalyst policy affects the market for aftermarket catalysts. Over time, that market has seen demand for increasingly effective catalysts. This follows the same basic progression by vehicle manufacturers which have installed increasingly effective catalysts in their new motor vehicles in order to comply with increasingly stringent tailpipe emissions standards. Manufacturers have also used increasingly advanced on-board diagnostic (OBD) systems to monitor the performance of a vehicle's emissions-related components and provide owners with an early warning of malfunctions through the dashboard ''check engine'' light (also known as a Malfunction Indicator Light). Catalysts that control emissions significantly less effectively than OEM catalysts may fail entirely at keeping the ''check engine'' light off, or may keep the light off for only a short period of time. Note that whether or for how long a replacement catalyst successfully keeps the ''check engine'' light does not determine whether that catalyst is compliant, but state and local vehicle inspection and maintenance programs require the light be off in order for the vehicle to qualify for registration. Over time, aftermarket catalyst manufacturers have supplied increasingly effective catalysts to help their customers who want to keep the ''check engine'' light off and to ensure protection of air quality. In meeting this demand, aftermarket catalyst manufacturers commonly make their catalysts more effective than the performance criteria set forth in the 1986 catalyst policy and these more effective catalysts may last longer.

Another market condition relates to the fact that the California Air Resources Board (CARB) requires all aftermarket catalysts sold in California to control air pollution with an effectiveness that is similar to the vehicle's OEM catalyst. Other states including New York and Maine have adopted California's catalyst requirements, at least for those motor vehicles that were originally certified to meet California's emissions standards (which sometimes vary from federal emissions standards depending on the vehicle application). This has created a kind of patchwork where there are significant differences among states in the effectiveness of catalysts for some vehicle applications. The EPA requests information on whether this creates confusion among vehicle owners or challenges for companies that manufacture and supply catalysts, and if so, how. The EPA further requests information on whether and how these conditions might change if the EPA were to withdraw the 1986 catalyst policy and instead employ the EPA Tampering Policy for replacement catalytic converters for gasoline light-duty motor vehicles that are beyond their emissions warranty.

Fourth, the EPA requests information on the effect of EPA enforcement policy on catalyst costs. This includes information on the effect on the cost of catalysts of the 1986 catalyst policy. This also includes information on the effect on the cost of catalysts that may result if the EPA instead applies the EPA Tampering Policy to replacement catalytic converters for gasoline light-duty motor vehicles that are beyond their emissions warranty. Such information may include price to the ultimate purchaser of catalysts, the frequency of the need for catalyst replacement for the same vehicle, cost considerations for distributors and retailers, and cost considerations for catalyst manufacturers, as well as any non-confidential information on sales volume. More effective catalysts cost more than less effective catalysts because they are manufactured with better materials, better design, and higher amounts of the expensive precious metals that are needed to reduce air pollution. Like many aftermarket automotive parts, catalyst costs vary widely and depend on the catalyst manufacturer, distributor, retailer, and the application (*i.e.,* make, model, and year of the light-duty motor vehicle that needs the catalyst). OEM catalysts are generally the most expensive option for any given application.

Finally, the EPA requests information regarding an appropriate timeline for an orderly transition to a new enforcement policy in the event the EPA replaces the 1986 catalyst policy. The EPA acknowledges that catalyst manufacturers, distributors, retailers, and installers may require time to transition away from catalysts subject to the 1986 catalyst policy. The EPA requests information on what changes may be required for participants in this industry. The EPA specifically requests information regarding an appropriate timeline, or timelines, for manufacturers, distributors, and retailers to transition in the event that the EPA withdraws the 1986 catalyst policy and instead applies the EPA Tampering Policy (specifically Reasonable Bases A, B, and F).

C. Submit Information

Submit comments, identified in the subject line by ''Catalyst Policy,'' to *tampering@epa.gov.* Comment must be received by February 12, 2021. Once submitted, comments cannot be edited or removed. The EPA may publish any comment received. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full

EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Susan Parker Bodine,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 2020–27433 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Intent to Conduct a Detailed Economic Impact Analysis

AGENCY: Export-Import Bank.

ACTION: Notice.

SUMMARY: Pursuant to the Charter of the Export-Import Bank of the United States, this notice is to inform the public that the Export-Import Bank of the United States has received an application for $8.56 million in medium-term loan insurance to support the export of approximately $7.4 million worth of engineering services, grinding technology, steam heating and other mechanical equipment. The U.S. exports will enable the Brazilian company to double production at an existing facility, allowing it to produce up to 3 million liters a day of ethanol, 574 thousand metric tons a year of Distillers Dried Grains with Solubles (DDGS) and 36,500 liters a year of Corn Oil. Production of ethanol and corn oil will be sold primarily in Brazil. New production of DDGS will be sold primarily in Brazil, with smaller amounts to Europe and Asia

DATES: Comments are due 14 days from publication in the **Federal Register**.

ADDRESSES: Interested parties may submit comments on this transaction electronically on *www.regulations.gov,* or by email to *economic.impact@exim.gov.*

Scott Condren,

Policy Analysis.

[FR Doc. 2020–27371 Filed 12–11–20; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Application for Exemption from Prohibited Service at Savings and Loan Holding Companies (FR LL–12; OMB No. 7100–0338).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection:

Report title: Application for Exemption from Prohibited Service at Savings and Loan Holding Companies.

Agency form number: FR LL–12.

OMB control number: 7100–0338.

Frequency: As needed.

Respondents: Savings and loan holding companies (SLHCs) and prohibited persons that seek to participate in the affairs of an SLHC.

Estimated number of respondents: Individuals: 43; SLHCs: 2.

Estimated average hours per response: Individuals: 16; SLHCs: 16.

Estimated annual burden hours: Individuals: 688; SLHCs: 32; total: 720.

General description of report: The Federal Deposit Insurance (FDI) Act and the Board's Regulation LL (12 CFR part 238) prohibit individuals who have been convicted of certain criminal offenses, or who have agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such criminal offenses, from participating in the affairs of a SLHC or any of its subsidiaries without the written consent of the Board. Such an individual, or the SLHC with which the individual seeks to participate, may apply for an exemption from this prohibition.

All prohibited persons and SLHCs that seek an exemption are subject to the application requirements of subpart I of Regulation LL. An applicant must provide information regarding the position at the SLHC held or to be held by the prohibited person, the prohibited person's level of ownership of the SLHC, the specific nature of the offense involved, evidence of rehabilitation, and other relevant factors listed in section 238.88(b) of Regulation LL (12 CFR 238.88(b)). An applicant may submit this information in a letter or by using the Federal Deposit Insurance Corporation's (FDIC) Application Pursuant to Section 19 of the Federal Deposit Insurance Act (OMB No. 3064–0018). The SLHC or prohibited person may seek an exemption only for a designated position (or positions) with respect to an SLHC identified in the application.

Legal authorization and confidentiality: The FR LL–12 is authorized by section 19(e)(2) of the FDI Act, under which the ''Board . . . may provide exemptions [from the prohibition] by regulation or order . . . if the exemption is consistent with the purposes of this subsection.'' The FR LL–12 is required to obtain a benefit.

Individual respondents may request that information submitted to the Board through the FR LL–12 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. Information collected through the FR LL–12 may be kept confidential under exemption 4 of the Freedom of Information Act (FOIA), which protects commercial or financial information that is privileged or confidential, or under FOIA exemption 6, which covers information about individuals, the disclosure of which ''would constitute a clearly unwarranted invasion of personal privacy.'' Additionally, to the extent the FR LL–12 contains information extracted from examination reports, it may be withheld from disclosure under FOIA exemption 8, which protects information ''related to examination, operating, or condition reports.''

Current actions: On August 21, 2020, the Board published a notice in the

Federal Register (85 FR 51718) requesting public comment for 60 days on the extension, without revision, of the FR LL–12. The comment period for this notice expired on October 20, 2020. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 8, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–27369 Filed 12–11–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Government Securities Dealers Reports (FR 2004; OMB No. 7100–0003).

DATES: Comments must be submitted on or before February 12, 2021.

ADDRESSES: You may submit comments, identified by FR 2004, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), Supplement to the Daily Report of Specific Issues (FR 2004SD ad hoc), Daily Report of Dealer Activity in Treasury Financing (FR 2004WI), Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class A (FR 2004FA), Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class B (FR 2004FB), Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class C (FR 2004FC), and Settlement Cycle Report of Dealer Fails and Transaction Volumes (FR 2004FM).

Agency form number: FR 2004.

OMB control number: 7100–0003.

Frequency: Weekly, daily, monthly.

Respondents: Dealers in the U.S. government securities market.

Estimated number of respondents: 24.

Estimated average hours per response: FR 2004A, 3.0; FR 2004B, 3.7; FR 2004C, 4.1; FR 2004SI, 2.2; FR 2004SD, 2.2; FR 2004SD ad hoc, 2.0; FR 2004WI, 1.0; FR 2004FA, 1.0; FR 2004FB, 1.0; FR 2004FC, 1.0; and FR 2004FM, 1.5.

Estimated annual burden hours: FR 2004A, 3,744; FR 2004B, 4,618; FR 2004C, 5,117; FR 2004SI, 2,746; FR 2004SD, 2,112; FR 2004SD ad hoc, 1,248; FR 2004WI, 3,840; FR 2004FA, 288; FR 2004FB, 288; FR 2004FC, 288; FR 2004FM, 432.

General description of report: The Federal Reserve Bank of New York (FRBNY), on behalf of the Federal Reserve System, collects data from primary dealers in the U.S. government securities market. Filing of these data is

required to obtain the benefit of primary dealer status. The Federal Reserve uses these data to (1) monitor the condition of the U.S. government securities market in its Treasury market surveillance and analysis of the market and (2) assist and support the U.S. Department of the Treasury (Treasury) in its role as fiscal agent for Treasury financing operations. In addition, these data are used in the analysis of broad financial conditions and a range of financial stability issues.

Proposed revisions: The Board proposes to revise several of the reporting forms, as follows:

1. FR 2004A—Add two rows to collect data on gross positions for Treasury coupon bonds due in more than 11 years but less than or equal to 21 years and Treasury coupon bonds due in more than 21 years, beginning with the July 7, 2021, as of date. Also, delete an existing row to collect data on gross positions for Treasury coupons bonds ''due in more than 11 years.'' Additionally, add a row to collect Federal Agency and GSE Residential Pass-through MBS TBAs separately from Specified pools.

2. FR 2004B—Mirroring the changes on the FR 2004A, add two rows to collect data on outright transactions of Treasury coupon bonds due in more than 11 years but less than or equal to 21 years and Treasury coupon bonds due in more than 21 years, and delete an existing row for Treasury coupon securities due in more than 11 years, beginning with the July 7, 2021, as of date. Additionally, add two rows to separately collect Federal Agency and GSE Residential Pass-through MBS TBAs transactions from Specified Pool transactions, with each further broken down into the existing cash/dollar roll splits.

3. FR 2004C—For each asset category, add a split by clearing/settlement venue: Uncleared Bilateral—Specified and General; Cleared Bilateral—Specified, General, and Sponsored; GCF; and Triparty (excluding GCF). Add eighteen columns for current tenor breakdown to be applied to each column. Add five rows to capture securities financing activity for Federal Agency and GSE Residential MBS separately from Federal Agency and GSE Commercial MBS and to separate ''Total Repo'' from ''Total Other Financing Activity.''

4. FR 2004SI—Add an additional row to separately collect transactions, net positions, financing arrangements, and settlement fails for the 20 year Treasury bond, beginning with the July 7, 2021, as of date.

5. FR 2004SD—Add an additional row to separately collect transactions, net positions, financing arrangements, and settlement fails for the 20 year Treasury bond, beginning with the July 7, 2021, as of date.

6. FR 2004WI—Add a row to separately collect data on net positions, forward financing commitments, and outright transactions for new or re-opened 20 year Treasury bonds trading in the when-issued market, beginning with the July 7, 2021, as of date.

7. FR 2004FA—The FHLMC and FNMA implemented the Single Security Initiative in June 2019. This action created a new uniform mortgage-backed security (UMBS) to be issued and guaranteed by either FNMA or FHLMC, to be backed by fixed-rate 30-, 20-, 15-, or 10-year single-family mortgage loans. To reflect this structural market change, modify the column headings for columns 1 and 2 for all sections of the report form from ''FNMA'' to ''FNMA/FHLMC UMBS,'' beginning with the July 2021 as of date. Modify the column headings for columns 3 and 4 for all sections of the report form from ''FHLMC'' to ''FHLMC (non-UMBS),'' beginning with the July 2021 as of date.

8. FR 2004FB—Mirroring the changes on the FR 2004FA, modify the column headings for columns 1 and 2 for all sections of the report form from ''FNMA'' to ''FNMA/FHLMC UMBS,'' effective with the July 2021 as of date. Modify the column headings for columns 3 and 4 for all sections of the report form from ''FHLMC'' to ''FHLMC (non-UMBS),'' beginning with the July 2021 as of date.

9. FR 2004FM—Modify the column headings for columns 1 and 2 for all sections of the report form from ''FNMA'' to ''FNMA/FHLMC UMBS,'' beginning with the July 30, 2021, as of date. Modify the column headings for columns 3 and 4 for all sections of the report form from ''FHLMC'' to ''FHLMC (non-UMBS),'' beginning with the July 30, 2021, as of date.

10. Revise the instructions to provide additional guidance on report consolidation rules for primary dealers when the legal entity serving as a primary dealer is a branch or agency of an FBO.

Legal authorization and confidentiality: The information collected on the FR 2004 series of reports is generally authorized under sections 2A, 12A(c), 14, and 15 of the Federal Reserve Act. Section 2A requires that the Board and the Federal Open Market Committee ''maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates'' (12 U.S.C. 225a). Section 12A(c) further provides that the time, character, and volume of open market operations ''shall be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country'' (12 U.S.C. 263(c)). Additionally, section 14 authorizes the Federal Reserve Banks to engage in open market operations (12 U.S.C. 353–359). Finally, section 15 permits the Federal Reserve Banks, at the direction of the Secretary of the Treasury, to act as fiscal agents of the United States (12 U.S.C. 391). The Board has implicit authority to collect data to carry out the requirements of the foregoing statutory provisions.[1] Filing the FR 2004 series is a condition of obtaining and retaining primary dealer status. Thus, the obligation to respond is ''required to obtain or retain a benefit'' because being a primary dealer allows a firm to act as a trading counterparty of the FRBNY in the implementation of its monetary policy.[2]

While aggregate data from certain of the forms in the FR 2004 series will be published, individually identifying information may be kept confidential under exemption 4 and, in certain circumstances, exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4) and (b)(8)). Individual respondent data collected through the FR 2004 may be considered confidential pursuant to FOIA exemption 4 to the extent these responses contain nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent. Moreover, to the extent that the information is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of [the Board],'' the information may be withheld by the Board under FOIA exemption 8.

Board of Governors of the Federal Reserve System, December 8, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–27373 Filed 12–11–20; 8:45 am]

BILLING CODE 6210–01–P

[1] Additionally, depending upon the survey respondent, a more precise statute may authorize the data collection. For example, the Board is authorized to collect information from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) and from depository institutions under section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)).

[2] See 5 CFR 1320.8(b)(3)(iv).

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 January 13, 2021.

A. *Federal Reserve Bank of Richmond* (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org*:

1. *First Citizens BancShares, Inc., Raleigh, North Carolina;* to acquire CIT Group, Inc., New York, New York, and thereby indirectly acquire CIT Bank, National Association, Pasadena, California.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The First National Bancshares, Inc. Profit Sharing and ESOP Trust, Goodland, Kansas;* to retain additional voting shares of First National Bancshares, Inc., and thereby indirectly retain additional voting shares of FNB Bank, both of Goodland, Kansas.

Board of Governors of the Federal Reserve System, December 9, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–27457 Filed 12–11–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to without revision, the Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks (FR H–5; OMB No. 7100–0261).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks.

Agency form number: FR H–5.

OMB control number: 7100–0261.

Frequency: Policy statement, annually; policy statement (de novo), annually; recordkeeping for loans with loan-to-value (LTV's) that exceed supervisory limits and maintaining a system of review, quarterly.

Respondents: State member banks.

Estimated number of respondents: 754.

Estimated average hours per response: Policy statement, 5; policy statement (de novo), 20; recordkeeping for loans with LTV's that exceed supervisory limits and maintaining a system of review, 5.

Estimated annual burden hours: Policy statement, 3,770; policy statement (de novo), 20; recordkeeping for loans with LTV's that exceed supervisory limits and maintaining a system of review, 15,080.

General description of report: Pursuant to the Board's Regulation H, state member banks (SMBs) must adopt and maintain a written real estate lending policy. Additionally, this information collection includes certain voluntary recordkeeping provisions in the Interagency Guidelines for Real Estate Lending Policies (Guidelines).[1]

Legal authorization and confidentiality: The FR H–5 is authorized by section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA),[2] which provides that ''each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—(A) secured by liens on interests in real estate; or (B) made for the purpose of financing the construction of a building or other improvements to real estate.'' [3] The recordkeeping requirement contained in the Board's Regulation H is mandatory. The recordkeeping provisions in the Guidelines are voluntary, as the Guidelines are nonbinding guidance.

Because these records would be maintained at each banking organization, the Freedom of Information Act (''FOIA'') would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information

[1] *See* 12 CFR part 208, Appendix C.

[2] 12 U.S.C. 1828(o).

[3] 12 U.S.C. 1828(o)(1). The Board also has the authority to require reports from state member banks (12 U.S.C. 248(a) and 324).

contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[4] In addition, the information may also be kept confidential under exemption 4 of the FOIA, which protects ''commercial or financial information obtained from a person [that is] privileged or confidential.'' [5]

Current actions: On August 21, 2020, the Board published an initial notice in the **Federal Register** (85 FR 51716) requesting public comment for 60 days on the extension, without revision, of the FR H–5. The comment period for this notice expired October 20, 2020.The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 8, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020–27372 Filed 12–11–20; 8:45 am]

BILLING CODE 6210–01–P

[4] 5 U.S.C. 552(b)(8).

[5] 5 U.S.C. 552(b)(4).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: December 21, 2020 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–877–446–3914, Code: 2205917.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the November 16, 2020 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Reports
   (b) Investment Performance
   (c) Legislative Report
3. Quarterly Reports
   (d) Vendor Risk Management Update

Closed Session

4. Information covered under 5 U.S.C. 552b(c)(4).

Informational Session

5. Ethics and Fiduciary Training

Authority: 5 U.S.C. 552b(e)(1).

Dated: December 9, 2020.

Dharmesh Vashee,

Acting General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–27401 Filed 12–11–20; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0292; Docket No. 2020–0001; Sequence No. 2]

Submission for OMB Review; FFATA Subaward and Executive Compensation Reporting Requirements

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FFATA Subaward and Executive Compensation Reporting Requirements.

DATES: Submit comments on or before January 13, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nancy Goode, Director, Office of Stakeholder Engagement, Office of the Integrated Award Environment, GSA, at telephone number 703–605–2175; or via email at *nancy.goode@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252), known as FFATA or the Transparency Act requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a),(2),(i),(ii). Beginning October 1, 2010, the currently approved Paperwork Reduction Act submission directed compliance with the Transparency Act to report prime and first-tier sub-award data. Specifically, Federal agencies and prime awardees of grants were to ensure disclosure of executive compensation of both prime and subawardees and sub-award data pursuant to the Transparency Act. This information collection requires reporting of only the information enumerated under the Transparency Act.

B. Annual Reporting Burden

Sub-award Responses: 107,614.
Hours Per Response: 1.
Total Burden Hours: 107,614.
Executive Compensation Responses: 41,298.
Hours Per Response: 1.
Total Burden Hours: 41,298.
Total Annual Burden Hours: 148,912.

C. Public Comments

A 60-day notice published in the **Federal Register** at 85 FR 52351 on August 25, 2020. Two comments were received. However, they did not change the estimate of the burden.

Comment 1: Why is this collection of information necessary and what is the utility? Here are recommendations for improvement.

Response: This Information Collection is specific to the revisions of Title 2 of the Code of Federal Regulations (2 CFR) published in 85 FR 49506 on August 13, 2020 affecting Federal grants and agreements guidance. The information is required by the Federal Funding Accountability and Transparency Act (FFATA) of 2006 (Pub. L.109—282), as amended by the Digital Accountability and Transparency Act (DATA) of 2014 (Pub. L. 113—101). The intent of which is to make information on Federal expenditures more easily accessible and transparent for the public. Exceptions for specific entities and the timing requirement for the reporting cycle for reporting subaward and executive compensation information are provided in 2 CFR part 170, which aligns with the exceptions provided in the statute.

Also, non-Federal entities seeking Federal financial assistance, unless otherwise exempt, are required to attain a unique entity identifier—currently the DUNS—in accordance with 2 CFR part 25.

Comment 2: Coronavirus warning.

Response: Not relevant to this information collection.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence.

Beth Anne Killoran,

Chief Information Officer, General Services Administration.

[FR Doc. 2020–27428 Filed 12–11–20; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10526]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 13, 2021.

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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Cost-sharing Reduction Reconciliation Data Template; *Use:* Under established Department of Health and Human Services (HHS) regulations, although payments are not being advanced to qualified health plan (QHP) issuers at the present time, issuers are still permitted to submit data that compares the CSR-eligible enrollment for each issuer with their actual cost sharing reductions made by the issuer for medical services for each eligible enrollee in a benefit year. HHS will compare this CSR-eligible enrollment with the actual cost sharing reductions provided by the issuers that participate in the optional data submission window to verify the issuer's reporting of cost-sharing reductions provided. This revised collection does not add any data elements, and continues to make optional summary plan level reporting. *Form Number:* CMS–10526 (OMB control number: 0938–1266); *Frequency:* Annually; *Affected Public:* Private Sector: Not-for-profits; *Number of Respondents:* 150; *Total Annual Responses:* 150; *Total Annual Hours:* 2,250. For policy questions regarding this collection contact Alper Ozinal 301–492–4178.

Dated: December 9, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–27461 Filed 12–11–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Refugee Assistance Program Estimates: CMA—ORR–1

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is requesting a 1-year extension of the form ORR–1, Cash and Medical Assistance (CMA) Program Estimates (OMB #0970–0030, expiration 2/28/2021). There are no changes requested to the form or instructions.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* The ORR–1, CMA Program Estimates, is the application for grants under the CMA program. The application is required by ORR program regulations at 45 CFR 400.11(b). The regulation specifies that states must submit, as their application for this program, estimates of the projected costs they anticipate incurring in providing cash and medical assistance for eligible recipients and the costs of administering the program. Under the CMA program, states are reimbursed for the costs of providing these services and benefits for

8 months after an eligible recipient arrives in this country. The eligible recipients for these services and benefits are refugees, Amerasians, Cuban and Haitian Entrants, asylees, Afghans and Iraqi with Special Immigrant Visas, and victims of a severe form of trafficking. States that provide services for unaccompanied refugee minors also provide an estimate for the cost of these services for the year for which they are applying for grants.

Respondents: State agencies, the District of Columbia, and Replacement Designees under 45 CFR 400.301(c) administering or supervising the administration of programs under Title IV of the Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
ORR–1, Cash and Medical Assistance Program Estimates	57	1	0.6	34

Estimated Total Annual Burden Hours: 34.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 412(a)(4).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–27406 Filed 12–11–20; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

Information Collection Request Title: Health Professions Student Loan Program, Loans for Disadvantaged Students, Primary Care Loan Program, and Nursing Student Loan Program Administrative Requirements. OMB No. 0915- 0047- Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 12, 2021.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Health Professions Student Loan Program, Loans for Disadvantaged Students, Primary Care Loan Program, and Nursing Student Loan Program Administrative Requirements, OMB No. 0915- 0047- Revision.

Abstract: This request is for approval of the Health Professions Student Loan (HPSL) Program, Loans for Disadvantaged Students (LDS), Primary Care Loan Program (PCL), and Nursing Student Loan (NSL) Program Administrative Requirements. The form was previously titled as the HPSL Program and NSL Program Administrative Requirements (Regulations and Policy). This request seeks to add the LDS and PCL Program as the forms discussed in this notice are also used for these programs.

The HPSL Program, as authorized by Public Health Service (PHS) Act sections 721–722 and 725–735, provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The LDS Program, as authorized by PHS Act sections 721–722 and 724–735, provides long-term, low interest loans to students attending schools of allopathic medicine, osteopathic medicine, podiatric medicine, dentistry, optometry, pharmacy, and veterinary medicine. The PCL Program, as authorized by PHS Act sections 721–723 and 725–735, provides long-term, low interest loans to students attending schools of allopathic medicine and osteopathic medicine to practice primary health care. The NSL Program, as authorized by PHS Act sections 835–842, provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma degree, an associate degree, a baccalaureate degree, or a graduate degree in nursing. These programs also have a number of recordkeeping and reporting requirements for academic institutions and loan applicants. The applicable requirements for these programs are outlined in 42 CFR 57.201–218 and 57.301–318. HRSA proposes revisions to the Annual Operating Report (AOR)-HRSA Form 501, completed by institutions participating in the HPSL, LDS, PCL, and NSL programs to obtain additional information about those institutions and their student borrowers.

Need and Proposed Use of the Information: Participating HPSL, LDS, PCL, and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. Participating schools include schools that are no longer disbursing loans but are required to report and maintain program records, student

records, and repayment records until all student loans are repaid in full and all monies due to the federal government are returned. The Deferment Form—HRSA Form 519, provides the schools with documentation of a borrower's deferment status, as detailed for the HPSL program under 42 CFR 57.210 and for NSL under 42 CFR 57.310, and is included without revision.

The AOR–HRSA Form 501 provides the Department of Health and Human Services with information from participating schools relating to HPSL, LDS, PCL and NSL program operations and financial activities. The proposed revisions to the AOR include the addition of a part-time option to select questions to allow institutions to report data on their part-time students, who are eligible to receive funding through the NSL program.

Specifically, the ''part-time'' option will be added to the following questions for the NSL program:

- Question 3, page 1A of the non-PCL section of the AOR (total full-time enrollment for the Nursing discipline for the academic year -NSL loan recipients),
- Question 13 (total number of full time graduates -NSL loan recipients at the school during the current reporting period),
- Question 14 (total number of full time NSL graduates -NSL loan recipients during the current reporting period who indicate intent to serve in a rural area),
- Question 15b (of the total graduates reported in question 15a, the number of full-time NSL graduates -NSL loan recipients in academic year 20XX—20XX serving in medically underserved communities),
- Question 15c (of the total graduates reported in question 15a, the number of Full-Time NSL graduates -NSL loan recipients in academic year 20XX—20XX serving in primary care), and
- Question 15d (of the total graduates in question 15a, the number of full-time NSL graduates -NSL loan recipients in Academic Year 20XX–20XX who entered the field for which they received their degree).

HRSA also proposes to revise the AOR–HRSA Form 501 form to include four additional demographic questions at the bottom of Page 1A of all AORs so that HRSA can better categorize the types of institutions participating in the loan programs: 16a. Are you a Community College?

- 16b. Are you a Historically Black College or University?
- 16c. Are you a Tribal college or university? and
- 16d. Are you an institution located in a rural area?

In addition, HRSA proposes to revise Page 4 (the excess cash worksheet) of the AOR–HRSA Form 501 form to limit the grantees' ability to make projections to 1-year rather than the previously required 3-year projection of funding. This proposed revision will allow HRSA to improve the overall management of funding.

Likely Respondents: Institutions participating in the HPSL, LDS, PCL, and/or NSL Programs.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument (HPSL, LDS, PCL, & NSL)	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment—HRSA Form 519	2060	1	2060	.5	1,030
AOR–HRSA—Form 501	726	1	726	12.0	8,712
Total	2786		2786		9,742
Grand Total (instruments and recordkeeping requirements)					327,979

RECORDKEEPING REQUIREMENTS

Data required to be submitted	Number of record keepers	Hours per year	Total burden hours
HPSL, LDS, and PCL Program			
Documentation of Cost of Attendance	432	1.05	454
Promissory Note	432	1.25	540
Documentation of Entrance Interview	432	1.25	540
Documentation of Exit Interview	*475	0.37	176
Program Records	*475	10.00	4,750
Student Records	*475	10.00	4,750
Repayment Records	*475	19.55	9,286
HPSL/LDS/PCL Subtotal	475		20,496
NSL Program			
Documentation of Cost of Attendance	304	0.25	76
Promissory Note	304	0.50	152
Documentation of Entrance Interview	304	0.50	152
Documentation of Exit Interview	*486	0.14	68
Program Records	*486	5.00	2,430
Student Records	*486	1.00	486
Repayment Records	*486	2.51	1,220

RECORDKEEPING REQUIREMENTS—Continued

Data required to be submitted	Number of record keepers	Hours per year	Total burden hours
NSL Subtotal	486		4,584

* Includes active and closing schools

REPORTING REQUIREMENTS

	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden hours
HPSL, LDS, and PCL					
Student Financial Aid Transcript	4,600	1.0	4,600	0.25	1,150
Loan Information Disclosure	325	299.5	97,338	0.63	61,323
Entrance Interview	325	139.5	45,338	0.50	22,669
Exit Interview	*334	113.5	37,909	1.00	37,909
Notification of Repayment	*334	862.5	288,075	0.38	109,469
Notification During Deferment	*333	17.0	5,661	0.63	3,566
Notification of Delinquent Accounts	334	172.5	57,615	1.25	72,019
Credit Bureau Notification	334	6.0	2,004	0.50	1,002
Write-off of Uncollectable Loans	520	1.0	520	3.00	1560
Disability Cancellation	3	1.0	3	1.00	3
Administrative Hearings record retention	0	0.0	0	0.00	0
Administrative Hearings reporting requirements	0	0.0	0	0.00	0
HPSL Subtotal					310,670
NSL					
Student Financial Aid Transcript	4,100	1.0	4,100	0.25	1,025
Entrance Interview	282	17.5	4,935	0.42	2,073
Exit Interview	348	9.0	3,132	0.42	1,315
Notification of Repayment	348	9.0	3,132	0.27	846
Notification During Deferment	348	1.5	522	0.29	151
Notification of Delinquent Accounts	348	42.5	14,790	0.04	592
Credit Bureau Notification	348	709.0	246,732	0.006	1,480
Write-off of Uncollectable Loans	23	1.0	23	3.00	69
Disability Cancellation	16	1.0	16	1.00	16
Administrative Hearings	0	0.0	0	0.00	0
NSL Subtotal					7,567

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–27415 Filed 12–11–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office for Human Research Protections, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS (Secretary), through the Assistant Secretary for Health, on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary on October 1, 2002. OHRP is seeking ≤nominations of qualified candidates to fill four positions on the Committee membership that will be vacated during the 2021 and 2022 calendar years.

DATES: Nominations for membership on the Committee must be received no later than February 12, 2021.

ADDRESSES: Nominations may be emailed to *SACHRP@hhs.gov.* Nominations may also be mailed or delivered to Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Nominations will not be accepted by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP,

Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP website at *www.hhs.gov/ohrp/sachrp,* or requesting via email at *sachrp@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, economically and educationally disadvantaged populations, individuals and populations in international studies, investigator conflicts of interest and populations in which there are individually identifiable samples, data or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The OHRP is requesting nominations to fill four positions for voting members of SACHRP. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: Public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 7, 2020.

Julia Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections, Office for Human Research Protections.

[FR Doc. 2020–27417 Filed 12–11–20; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0617]

Collection of Information under Review by Office of Management and Budget; OMB Control Number 1625–0030

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0030, Oil and Hazardous Materials Transfer Procedures; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before January 13, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0617]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0617], and must be received by January 13, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0030.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 62315, October 2, 2020) required by 44 U.S.C. 3506(c)(2). We received one unrelated comment in response to our 60 day notice. The commenter submitted an advertisement which is unrelated to this collection of information for oil and hazardous materials transfer procedures. No changes have been made to the information collection request. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Oil and Hazardous Materials Transfer Procedures.

OMB Control Number: 1625–0030.

Summary: Vessels with a capacity of 250 barrels or more of oil or hazardous materials must develop and maintain transfer procedures. Transfer procedures provide basic safety information for operating transfer systems with the goal of pollution prevention.

Need: Title 46 U.S.C. 70034 authorizes the Coast Guard to prescribe regulations related to the prevention of pollution. Title 33 CFR part 155 prescribes pollution prevention regulations including those related to transfer procedures.

Forms: Not applicable.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 149 hours to 151 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: December 8, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–27420 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0616]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0017

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0017, Various International Agreement Safety Certificates and Documents; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before January 13, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0616]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0616], and must be received by January 13, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0017.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 62316, October 2, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Various International Agreement Safety Certificates and Documents.

OMB Control Number: 1625–0017.

Summary: These Coast Guard-issued forms are used as evidence of compliance with the International Convention for Safety of Life at Sea, 1974 (SOLAS) by certain U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: SOLAS applies to all mechanically propelled cargo vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. SOLAS and title 46 CFR 2.01–25 list certificates and documents that may be issued to vessels.

Forms:

- CG–967, Exemption Certificate
- CG–968, Passenger Ship Safety Certificate
- CG–968A, Record of Equipment for the Passenger Ship Safety Certificate (Form P)
- CG–969, Notice of Completion of Examination for Safety Certificate
- CG–3347, Cargo Ship Safety Equipment Certificate
- CG–3347B, Record of Equipment for the Cargo Ship Safety Equipment Certificate (Form E)
- CG–4359, Cargo Ship Safety Construction Certificate
- CG–4360, International Ship Security Certificate
- CG–4361, Interim International Ship Security Certificate
- CG–5643, Safety Management Certificate
- CG–5679, High-Speed Craft Safety Certificate
- CG–5679A, Record of Equipment for High-Speed Craft Safety Certificate
- CG–5680, Permit to Operate High-Speed Craft
- CG–6038, Continuous Synopsis Record (CSR) Document Number _____ for the ship with IMO Number: _____
- CG–6038A, Amendments to the Continuous Synopsis Record (CSR) Document Number _____ for the ship with IMO Number: _____
- CG–16170, Polar Ship Certificate
- CG–16170A, Record of Equipment for the Polar Ship Certificate

Respondents: Owners and operators of SOLAS vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 90 hours to 69 hours a year due to a decrease in the estimated annual number of responses

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: December 8, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–27419 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0619]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0057

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0057, Small Passenger Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before January 13, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2020–0619]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2020–0619], and must be received by January 13, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0057.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (85 FR 62315, October 2, 2020) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Small Passenger Vessels—Title 46 CFR Subchapters K and T.

OMB Control Number: 1625–0057.

Summary: The information requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Need: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms:

- CG–841, Certificate of Inspection
- CG–854, Temporary Certificate of Inspection
- CG–948, Permit to Proceed to Another Port for Repairs
- CG–949, Permit to Carry Excursion Party
- CG–5256, U.S. Coast Guard Inspected Small Passenger Vessel [sticker]

Respondents: Owners and operators of small passenger vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 397,124 hours to 404,595 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: December 8, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–27421 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a Whoop Strap Device

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of a device referred to as a Whoop Strap. Based upon the facts presented, CBP has concluded in the final determination that the incomplete Whoop Strap and the programming in the United States would not render the Whoop Strap device to be a product of a foreign country or instrumentality designated for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 10, 2020. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within January 13, 2021.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 10, 2020, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of a Whoop Strap device for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H309761, was issued at the request of Whoop Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the incomplete imported Whoop Strap and the programming in the United States would not render the finished Whoop Strap to be a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: November 24, 2020.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H309761

November 10, 2020

OT:RR:CTF:VS H309761 CMR

Category: Origin

Steven B. Zisser, Esq.
Zisser Group
9355 Airway Road
Suite 1
San Diego, CA 92154

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); subpart B, Part 177, CBP Regulations; Country of Origin of a Whoop Strap Device

Dear Mr. Zisser:

This is in response to your request of February 27, 2020, on behalf of your client, Whoop, Inc., for a final determination concerning the country of origin of a device referred to as a ''Whoop Strap.'' This request is being sought because your client wants to confirm eligibility of the device for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. 2511 *et seq.*). As an importer of the merchandise imported from China that is processed in the United States to become a finished ''Whoop Strap,'' your client may request a final determination pursuant to 19 CFR 177.23(a).

Facts:

You describe the ''Whoop Strap'' as:

> . . . a fitness performance tracker that combines a wrist-worn device with a cloud-based analytics system. It incorporates a sensor that generates data that is to be processed through the analytics system to provide information relating to the fitness of the individual wearing the wrist-worn device.

You indicate ''[t]he products consists of hardware, a sensor, printed circuit board assembly (PCBA) incorporating a radio module, and battery which [are] encased in a polycarbonate housing with clasp and attached to a fabric wristband.'' A memory device on the PCBA is adapted to receive and store proprietary software which is developed by Whoop. The software records and communicates the fitness data and generates the analytics.

The manufacturing of the hardware of the Whoop Strap occurs in China where the sensor, PCBA, battery and housing are assembled. You also indicate that there is a cover that is placed over the case/kit. You state:

> All hardware components are ''designed'' in the USA and produced and assembled in China. In the USA, the hardware is attached to the fabric waistband with a clasp.

After assembly in China and before exportation to the United States, the Whoop Strap is tested to confirm the assembly was properly done. You refer to the test as a ''power on'' test which requires minimal software and equipment. You indicate that the testing software is removed prior to shipment to the United States and ''[a] 'simple' firmware updater is loaded on the device in China [that] will allow further software to be loaded in the USA.'' At the time of shipment from China, you indicate that the Whoop Strap does not function.

After importation into the United States, ''Whoop programs the proprietary communications software, file software, and battery pack communications firmware.'' You state that ''[t]his process is achieved by writing, testing and implementing the necessary code to make the product function as intended.'' The software and firmware codes are developed and written in the United States by Whoop employees. Once programmed in the United States, the device functions as intended, *i.e.,* being able to sense and communicate health data to the user. The programming of the device in the United States greatly increases its value.

Issue:

Whether the Whoop Strap, which is assembled in China and programmed with software and firmware in the United States, is eligible under the Title III of the TAA, as amended (19 U.S.C. 2511–2518).

Law and analysis:

U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case

of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The regulations define a ''designated country end product'' as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A ''WTO GPA country end product'' is defined as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 CFR 25.003.

China is not a WTO GPA country.

The article imported into the United States is the Whoop Strap assembled hardware consisting of a sensor, PCBA, battery and housing with a cover placed over the case/kit. The article, in its condition as imported, is incomplete and non-functional as it lacks the software and firmware necessary for it to function. The incomplete Whoop Strap, at the time of importation, is a product of China. CBP is of the view that programming would not result in a substantial transformation. This is consistent with CBP's prior determination in H284523 dated August 22, 2017, where CBP held that an imported tablet did not undergo a substantial transformation by programming. *See also* H284617 dated February 21, 2018.

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.*

Emphasis added.

Therefore, the Whoop Strap would not be considered to be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). As to whether the Whoop Strap processed in the United States may be considered a ''U.S.-made end product'' is under the jurisdiction of the procuring agency. *See Acetris Health, LLC.* v. *United States,* No. 2018–2399 (Fed. Cir. February 10, 2020).

Holding:

The incomplete Whoop Strap and the programming in the United States would not render it to be a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). You may wish to check the classification of this product to determine if it may be subject to any Section 301 duties upon importation.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2020–26342 Filed 12–11–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold a virtual meeting on Tuesday, January 19 and Wednesday, January 20, 2021. The meeting will be open to the public via a Zoom Video Communications link.

DATES: The TMAC will meet on Tuesday, January 19 and Wednesday January 20, 2021, from 10 a.m. to 4 p.m. Eastern Time (ET). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held virtually using the following Zoom Video Communications link (*https://fema.zoomgov.com/j/16195624614*) and password (875873) to share meeting visuals and audio. Audio is also accessible using a Zoom call in number (1–669–254–5252) along with the Meeting Identification (16195624614) and password. Members of the public who wish to attend the virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attention: Michael Nakagaki) by 5 p.m. ET on Friday, January 15, 2021. For information on services for individuals with disabilities or to request special assistance at the meeting, contact the person listed below by Friday, January 15, 2021.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available at the TMAC website (*https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council*) for review by Friday January 15, 2021. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday January 15, 2021, identified by Docket ID FEMA–2014–0022, and submitted by the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: Address the email to *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Tuesday, January 19, 2021, from 12 p.m. to 12:30 p.m. ET and Wednesday, January 20, 2021, from 12 p.m. to 12:30 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Friday, January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Nakagaki, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20024, (202) 212–2148, *michael.nakagaki@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463).

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to hold a vote to submit the final report to the FEMA Administrator. Any related materials will be posted to the FEMA TMAC site prior to the meeting to provide the public an opportunity to review the materials. The full agenda and related meeting materials will be posted for review by Friday, January 15, 2021, at *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council.*

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency.

[FR Doc. 2020–27374 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Notice of the Renewal of the Critical Infrastructure Partnership Advisory Council Charter

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), DHS.

ACTION: Notice of availability; renewal of the Critical Infrastructure Partnership Advisory Council Charter.

SUMMARY: On November 30, 2020, the Department renewed the Critical Infrastructure Partnership Advisory Council (CIPAC)Charter. Through this notice, the Department is making the renewed CIPAC Charter publicly available and highlighting updated information and guidelines that have been included in the renewed charter.

FOR FURTHER INFORMATION CONTACT: Ginger K. Norris, 202–441–5885, *ginger.norris@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: DHS established the CIPAC on March 24, 2006.[1] (71 FR 14930). The CIPAC facilitates interactions between government officials and representatives of owners and/or operators for each of the critical infrastructure sectors established by Presidential Policy Directive 21 and identified in the current National Infrastructure Protection Plan. Please visit https://*www.cisa.gov/critical-infrastructure-partnership-advisory-council* for more information on CIPAC, activities supported by CIPAC, CIPAC Membership Roster, and Council information.

On November 30, 2020, the Secretary of Homeland Security, renewed the CIPAC Charter for an additional two years. The renewed CIPAC Charter supersedes the CIPAC Charter dated November 30, 2018 and is available on the CIPAC website at *https://www.cisa.gov/critical-infrastructure-partnership-advisory-council.* The renewed CIPAC Charter includes updated information and guidelines concerning: (1) The formation, governance, and responsibilities of councils, working groups, and cross sector activities,(2) ethics and integrity standards applicable to CIPAC participants,(3) information sharing requirements; and (4) provisions authorizing training on new ethics standards and information sharing requirements.

Ginger K. Norris,

Designated Federal Official, Critical Infrastructure Partnership Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2020–27365 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0015]

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, U.S. Department of Homeland Security.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, ''U.S. Department of Homeland Security/ALL–046 Counterintelligence Program System of Records.'' This system of records allows DHS to collect and maintain records as part of the unified

[1] The CIPAC was established consistent with 6 U.S.C. 121 and 6 U.S.C. 451(a). Pursuant to the Cybersecurity and Infrastructure Security Agency Act of 2018, the National Protection and Programs Directorate (NPPD) was re-designated as CISA and the authorities related to the CIPAC under 6 U.S.C. 121 were transferred to 6 U.S.C. 652.

Counterintelligence Program across the Department. ''Counterintelligence'' is defined as information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of Foreign Intelligence Entities. DHS will use the system to facilitate counterintelligence functions including analysis, production, collections, investigative activities, operations, and functional support.

DATES: Submit comments on or before January 13, 2021. This new system will be effective upon publication. New routine uses will be effective January 13, 2021.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0015 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2020–0015. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Robert Hale, (202) 447–3984, *CI.Question@hq.dhs.gov,* Assistant Director, Enterprise Program Management, Counterintelligence Mission Center, Office of Intelligence and Analysis, 3801 Nebraska Avenue, Washington, DC 20528–0655. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, U.S. Department of Homeland Security (DHS) proposes to issue a new DHS system of records titled, ''DHS/ALL–046 Counterintelligence Program System of Records.''

DHS developed the Counterintelligence (CI) Program to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of Foreign Intelligence Entities (FIE). FIEs are known or suspected foreign state or non-state organizations or persons that conduct intelligence activities to acquire information about the United States, block or impair intelligence collection by the United States Government, influence United States policy, or disrupt systems and programs owned or operated by or within the United States, all of which may impact or influence DHS operations and missions. The term includes foreign intelligence and security services, international terrorists, transnational criminal organizations, and drug trafficking organizations conducting intelligence-related activities.

DHS is creating this new CI program system of records to account for the expansion of the Department's CI program beyond the Office of Intelligence and Analysis (I&A) and the United States Coast Guard (USCG) to include Cybersecurity and Infrastructure Security Agency (CISA), Countering Weapons of Mass Destruction Office (CWMD), Federal Emergency Management Agency (FEMA), Federal Protective Service (FPS), Transportation Security Administration (TSA), U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Secret Service (USSS).

Some DHS counterintelligence records previously covered under the DHS/IA–001 Enterprise Records System (ERS) system of records notice (SORN) will now be part of the Department's CI Program SORN. This notice does not rescind, revoke, or supersede the ERS SORN insofar as program offices in I&A will continue to maintain records separate from the CI program within that system of records.

The DHS CI Program derives its authorities from those provided to the Secretary of Homeland Security and to the Under Secretary for Intelligence and Analysis (USIA). The additional counterintelligence authorities provided to the USCG are not further shared with the rest of the DHS CI Program and are not restricted based on the limitations applied to I&A. Other DHS Components and offices in the DHS CI Program also retain their individual authorities and capabilities provided to those Components through statute, executive order, or DHS Delegation (*e.g.* TSA retains its authorities regarding transportation security and these authorities are not impacted by TSA's inclusion in the DHS CI Program).

The DHS CI Program derives its authorities primarily from Executive Order 12333, United States Intelligence Activities, which authorizes all members of the Intelligence Community to collect information concerning, and conduct activities to protect against, amongst other things, intelligence activities directed against the United States. All members of the Intelligence Community are further tasked with protecting the security of intelligence related activities, information, installations, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Intelligence Community elements as are necessary. Pursuant to Executive Order 12333, DHS's I&A is specifically authorized to collect (overtly or through publicly available sources) analyze, produce, and disseminate foreign intelligence and counterintelligence, including defense and defense-related information and intelligence to support national and departmental missions. In addition, Executive Order 12333 authorizes the Commandant of the Coast Guard to conduct counterintelligence activities, including through clandestine means. USCG intelligence authorities are functionally derived from Executive Order 13286, Amendment of Executive Orders, and Other Actions, in Connection with the Transfer of Certain Functions to the Secretary of Homeland Security.

The key distinction between the authorities for I&A and the USCG, specifically as it relates to collection of counterintelligence information, rests in the authority for USCG to collect counterintelligence using clandestine means, while I&A is only permitted to collect from overt or publicly available sources. The USCG is the only DHS component with the authority to conduct clandestine counterintelligence activities.

In addition to Executive Order 12333, the Homeland Security Act of 2002, codified at 6 U.S.C. 121–126, authorizes the USIA's role as the DHS Counterintelligence Executive. Furthermore, 6 U.S.C. 124d authorizes the DHS Intelligence Components (defined in 6 U.S.C. 101(11) as any element or entity (*i.e.,* DHS Component) that collects, gathers, processes, analyzes, produces, or disseminates intelligence information within the scope of the Information Sharing Environment or National Intelligence) to support and implement the intelligence mission of the Department, as led by the

USIA. The DHS CI Program is part of the overall DHS intelligence mission.

Counterintelligence collections within the DHS CI Program (I&A, USCG, and all other Component CI programs) are undertaken as part of an integrated national and departmental effort. The DHS CI Program follows the Intelligence Community model for conducting counterintelligence, as described in Intelligence Community Directive 750—Counterintelligence Program and other National Counterintelligence Security Center guidance. The DHS CI Program performs a variety of functions to fulfill its mission, including investigations, information collections, operations, analysis and production, and supporting functional services.

The DHS CI Program collects personally identifiable information (PII) directly from DHS employees and contractors via in-person interviews, from individuals outside of DHS who may have information relevant to a CI matter, government-controlled and public data aggregators, forensic examination of documents and electronic media, and anonymous tips and leads provided via email, telephone, and written notes or letters. As relates to CI investigations and operations, PII may be used to identify individuals who are involved in, witness to, or knowledgeable of CI-related activities that are the subject of a CI investigation or operation by the DHS CI Program or other federal law enforcement or intelligence agencies where there is a DHS equity. CI analytical products generally contain very limited amounts of PII, with sources and individuals referenced in a finished intelligence product anonymized to the greatest extent possible. Furthermore, the DHS CI Program provides DHS employees with CI awareness training, during which PII is collected directly from DHS employees in order to maintain a record of when CI awareness training was last received.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–046 Counterintelligence Program System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, The JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/ALL–046 Counterintelligence Program System of Records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS) DHS/ALL–046 Counterintelligence Program System of Records.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at several DHS Headquarters and Component locations in Washington, DC and field offices.

SYSTEM MANAGER(S):

Robert Hale, Assistant Director, Enterprise Program Management, (202) 447–3984, *CI.Question@hq.dhs.gov,* Counterintelligence Mission Center, Office of Intelligence and Analysis, U.S. Department of Homeland Security, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II and Title VIII, section 892 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), as amended (6 U.S.C. 121, *et seq.*); Executive Order 12333, United States Intelligence Activities, 46 FR 59941 (December 4, 1981), *reprinted as amended* in 73 FR 45325 (July 30, 2008); Executive Order 13526, Classified National Security Information, 75 FR 707 (January 5, 2010); Executive Order 13556, Controlled Unclassified Information, 75 FR 68675 (November 9, 2010); and Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, 70 FR 62023 (October 27, 2005).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect, store and maintain records related to, and in furtherance of, the counterintelligence collections and activities of the DHS CI Program. DHS will use this system to conduct administrative inquiries to identify, analyze, and neutralize foreign intelligence threats to DHS personnel, facilities, equipment, networks, information and activities; report on foreign contacts and travel, including briefings and debriefings; conduct counterintelligence investigative activities and produce intelligence on foreign intelligence entities; provide counterintelligence awareness training; and other activities relating to the DHS CI Program's responsibilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Current and former DHS employees, contractors, consultants, detailees, interns, applicants for employment, and other individuals provided authorized access to DHS facilities, systems, or sensitive or classified information;
- Individuals who are known, reasonably believed to be, or are suspected of being, involved in or linked to:
- Intelligence activities, or other individuals known or suspected of engaging in intelligence activities, on behalf of FIEs;
- officers or employees of, or otherwise acting for or on behalf of, a foreign government or element thereof, foreign organizations, or foreign persons;
- officers, employees, or members of an organization reasonably believed to be owned or controlled directly or indirectly by a foreign power; or
- clandestine intelligence activities, sabotage, assassinations, or international terrorist activities.
- Individuals reasonably believed to be targets, hostages, or victims of international terrorist organizations, transnational criminal organizations, or drug trafficking organizations;

• Individuals who are closely associated with the above categories (*e.g.,* immediate family members, members of a household, business partners); and

• Individuals who voluntarily request assistance or information, through any means, from the DHS CI Program, or individuals who voluntarily provide information concerning any of the activities above, which may threaten or otherwise affect homeland security.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may collect the following types of information if related to CI:

• Classified and unclassified intelligence (national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, and related law enforcement information, including source records and the reporting and results of any analysis of this information, obtained from all agencies, components and organizations of the Federal government, including the IC; foreign governments, organizations or entities, and international organizations; State, local, tribal and territorial government agencies (including law enforcement agencies); and private sector entities;

• Information provided by record subjects and individual members of the public;

• Information obtained from the Terrorist Screening Center, the National Counterterrorism Center, or from other organizations about individuals known or reasonably suspected of being engaged in conduct constituting, preparing for, aiding, or relating to terrorism;

• Information obtained from the National Counterintelligence Security Center, the Federal Bureau of Investigation, or from other organizations about individuals known or reasonably suspected of being engaged in conduct associated with espionage, other intelligence activities, sabotage, or assassinations;

• Active and historical law enforcement investigative information;

• Information related to lawful DHS security investigations, including authorized physical, personnel, and communications security investigations, and information systems security analysis and reporting;

• Operational and administrative records, including correspondence records;

• Financial information, when relevant to an authorized intelligence, counterterrorism, homeland security, or related law enforcement activity;

• Public source data such as that contained in media, including periodicals, newspapers, broadcast transcripts, and other public reports and commercial databases;

• Publicly available social media handles and aliases, associated identifiable information, and search results; and

• Metadata, which may include but is not limited to transaction date, time, location, and frequency.

Examples of information related to the ''Categories of Individuals'' listed above may include:

• Individual's name and alias(es);
• Date and place of birth;
• Gender;
• Country of citizenship;
• Country of nationality;
• Country of residence;
• A-Number(s);
• Email address;
• SSN;
• Vehicular information;
• Government issued identification information (*i.e.,* passport, driver's license),
  ○ Document type;
  ○ Issuing organization;
  ○ Driver's license;
  ○ Document number; and
  ○ Expiration date.
• Physical characteristics (height, weight, race, eye and hair color, ethnicity, identifying marks like tattoos or birthmarks);
• Biometric information (*e.g.,* fingerprints, photographs) and other information used to conduct background and security checks;
• Physical and mailing addresses (to include U.S. and foreign);
• Phone and fax numbers (including mobile phone numbers);
• Records regarding organization membership(s) or affiliation(s);
• Employment history;
• Results from intelligence analysis related to counterintelligence;
• Background investigative reports and supporting documentation, including criminal background, medical, and financial data;
• Family relationships (*e.g.,* parent, spouse, sibling, child, other dependents);
• Criminal history;
• Flight information;
• Border crossing information;
• Reports on foreign contacts;
• Records and information from government data systems or retrieved from commercial data providers in the course of intelligence research, analysis, and reporting;
• Immigration and visa information; and
• Investigative files containing allegations and complaints; witness statements; transcripts of electronic monitoring; subpoenas and legal opinions and advice; reports of investigation; reports of criminal, civil, and administrative actions taken as a result of the investigation; and other relevant evidence; handwriting exemplars, laboratory analyses of inks and papers; handwriting analyses; information, reports or opinions from the forensic examination of documentary and digital media evidence; polygraph case files; search warrants and search warrant returns; indictments; certified inventories of property held as evidence; sworn and unsworn witness statements; state, local, and foreign criminal investigative information and reports; names and telephone numbers of individuals intercepted by electronic, mechanical, or other device under the provisions of 18 U.S.C. 2510 et seq compiled during the lawful course of a criminal or civil investigation.

Records will also include those relating to:

• Management and coordination of DHS counterintelligence systems and activities;

• analytical, operational, biographic, policy, management, training, administrative matters and operational support related to DHS counterintelligence, force protection, critical infrastructure protection, research and technology protection, threat analysis, counter-narcotics and risk assessments; and

• architecture and operation of DHS counterintelligence information systems.

• reports of investigation, collection, statements of individuals, affidavits, correspondence, and other documentation pertaining to investigative or analytical efforts by DHS and other U.S. government agencies to identify or counter foreign intelligence and international terrorist threats to DHS and to the United States.

• records maintained in ad hoc or temporary databases established to support certain investigations, task forces or analytical projects.

RECORD SOURCE CATEGORIES:

Federal, state, local, territorial, tribal, or other domestic agencies, foreign agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, individuals, commercial data providers, and public sources such as social media, news media outlets, and the internet.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office with information from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate Federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain their advice on any matter that is within their official responsibilities, authorities, and missions, in order to provide support to DHS's CI Program and the purposes of this system.

J. To any Federal, state, local, tribal, territorial, foreign, or multinational government or agency, or appropriate private sector individuals and organizations, with responsibilities relating to homeland security, including responsibilities to counter, deter, prevent, prepare for, respond to, or recover from a natural or manmade threat, including an act of terrorism, or to assist in or facilitate the coordination of homeland security threat awareness, assessment, analysis, deterrence, prevention, preemption, and response.

K. To a Federal, state, local, tribal, or territorial government or agency lawfully engaged in the collection of intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, law enforcement or law enforcement intelligence, and other information, when disclosure is undertaken for intelligence, counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. Law or Executive Order, and in accordance with applicable disclosure policies.

L. To any other agency within the Intelligence Community, as defined in Executive Order 12333, as amended, for the purpose of allowing that agency to determine whether the information is relevant and necessary to its mission-related responsibilities and in accordance with that agency's classified or unclassified implementing procedures promulgated pursuant to such orders and directives, or any other statute, Executive Order or directive of general applicability.

M. To a Federal, state, local, tribal, territorial, foreign, or multinational government or agency, or other entity, including, as appropriate, certain private sector individuals and organizations, when disclosure is in furtherance of the CI Program and DHS information sharing responsibilities under the Homeland Security Act of 2002, as amended, the Intelligence Reform and Terrorism Prevention Act of 2004, the National Security Act of 1947, as amended, Executive Order 12333, as amended, or any successor order, national security directive, intelligence community directive, other directive applicable to DHS, and any classified or unclassified implementing procedures promulgated pursuant to such orders and directives, or any other statute, Executive Order or directive of general applicability, and where such disclosure is otherwise compatible with the purpose for which the record was originally acquired or created by DHS.

N. To an appropriate Federal, State, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

O. To the President's Foreign Intelligence Advisory Board, the Intelligence Oversight Board, any successor organizations, and any intelligence oversight entities established by the President, when disclosure will assist these entities in

the performance of their oversight functions.

P. To foreign persons or foreign government agencies, international organizations, and multinational agencies or entities, under circumstances or for purposes mandated or imposed by Federal statute, treaty, or other international agreement or arrangement.

Q. To any individual, organization, or entity, as appropriate, to notify them of a serious threat to homeland security for the purpose of guarding them against or responding to such a threat, or when there is a reason to believe that the recipient is or could become the target of a particular threat, to the extent the information is relevant to the protection of life, health, or property.

R. To any Federal government agency when documents or other information obtained from that agency are used in compiling the particular record, the record is also relevant to the official responsibilities of that agency, and there otherwise exists a need for that agency to know the information in the performance of its official functions.

S. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name or other identifier, including unique identifying numbers assigned by DHS or other government agencies.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with approved records retentions schedules. Records on U.S. Persons, as defined in Executive Order 12333, are retained so long as there is a mission need, in accordance with N1–563–09–7–1. If DHS determines that U.S. Person record meets the two-part test, as described in N1–563–09–7–1, the records must be reviewed annually to determine whether there is still a mission need to retain the information. The majority of the DHS CI Program has 180 days from the date U.S. Person information is first collected to determine whether it meets the two-part test.

The exception is USCG, where, pursuant to COMDTINST M3820.12, ''Coast Guard Intelligence Activities'', USCG originators of intelligence products have 90 days from the date of collection of USPER data to determine whether the information may be permanently retained within the USCG authorized procedures. USCG is working to update this instruction, and under the new version, will be permitted up to 5 years to determine if the USPER data may be permanently retained. At the anniversary date (or any time beforehand) a record is first certified as U.S. Person information can be reviewed and certified that there is still a mission need to retain the information. The anniversary date will then be set for an additional year out. This can go on for as long as the information is deemed necessary for the mission. Once certification has been removed, such records are temporary and must be destroyed and deleted immediately upon removal of certification. Certified and categorized records reaching the expiration date without review/renewal one year from date of categorization are temporary and must be destroyed and deleted upon that one-year cutoff. Finally, uncategorized records that do not meet the required two-part test are temporary and must be destroyed and deleted within 180 days (90 days for USCG) from the date the information is collected.

Interception, Monitoring and Recording of Wire and Oral Communication Records are retained in accordance with N1–563–08–5, and are temporary. Records are cutoff at the end of the calendar year in which the record was created, and are destroyed 10 years after cutoff.

Clip Reports are non-records, and are destroyed or deleted when no longer needed for reference.

Finished Intelligence Case Files are retained in accordance with N1–563–07–16–4, and are permanent. Records cutoff date is at the end of the calendar year in which the case is closed and are transferred to the National Archives for permanent retention 20 years after such cutoff date.

Raw Reporting Files are retained in accordance with N1–563–07–16–3, and are temporary. Records cutoff date is at end of calendar year such records are collected and are destroyed or deleted 30 years after such cutoff date.

Counterintelligence Case Files are retained in accordance with N1–563–08–4–1, and are temporary. Records cutoff date is the end of the fiscal year of when the case has been closed and are destroyed 20 years after such cutoff date.

Non-Referral Files are retained in accordance with N1–563–08–4–3, and are temporary. Records are destroyed when 5 years old from first collected.

Certification File records are retained in accordance with N1–563–08–11–1, and are temporary. Records cutoff date is the end of the calendar year in which certification was received. Records are to be destroyed when 10 years old or 10 years after completion of a specific training program or upon separation or transfer of employee, whichever is sooner.

Mission-Related Training records are retained in accordance with N1–563–08–11–2, and are temporary. Records cutoff date is at the end of the calendar year in which course or material is superseded and are destroyed or deleted 30 years after cutoff date.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

As described below, this system of records is exempt from the notification, access, and amendment provisions of the Privacy Act, and the Judicial Redress Act if applicable. However, DHS will consider individual requests to determine whether or not information may be released. Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the FOIA Officer for the Office of Intelligence and Analysis, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' If an

individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provides a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under Title 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When this system receives a record from another system exempted in that source system under Title 5 U.S.C. 552a(j)(2), 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

None.

* * * * *

Constantina Kozanas,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2020–27315 Filed 12–11–20; 8:45 am]

BILLING CODE 9110–9N–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2020–0017]

Privacy Act of 1974; System of Records

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notice of Modified Privacy Act System of Records.

SUMMARY: The U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) proposes to modify and reissue an existing system of records titled, ''DHS/CBP–024 CBP Intelligence Records System (CIRS).'' CIRS contains information collected by CBP to support CBP's law enforcement intelligence mission. This information includes raw intelligence information collected by CBP's Office of Intelligence (OI), public source information, and information initially collected by CBP pursuant to its immigration and customs authorities, which is then analyzed and incorporated into intelligence products.

DATES: Submit comments on or before January 13, 2021. This modified system will be effective January 13, 2021.

ADDRESSES: You may submit comments, identified by docket number DHS–2020–0017 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number DHS–2020–0017. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Debra L. Danisek (202) 344–1610, *privacy.cbp@cbp.dhs.gov,* CBP Privacy Officer, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

CBP currently uses the Analytical Framework for Intelligence (AFI) and the Intelligence Reporting System (IRS) to facilitate the development of finished intelligence products. Information collected by CBP for an intelligence purpose that is not covered by an existing DHS System of Records Notice (SORN) and is not incorporated into a finished intelligence product is retained and disseminated in accordance with

this SORN. Finished intelligence products, and the information contained in those products, regardless of the original source system of that information, is also retained and disseminated in accordance with this SORN.

The previously issued Final Rule exempting portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements remains in effect.

This modified system will be included in DHS's inventory of record systems.

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) proposes to modify and reissue an existing DHS system of records titled, ''DHS/CBP–024 CBP Intelligence Records System (CIRS) System of Records.''

The CBP Intelligence Records System (CIRS) system of records is owned by CBP's Office of Intelligence (OI). CIRS contains information collected by CBP to support CBP's law enforcement intelligence mission. This information includes raw intelligence information collected by CBP's OI, public source information, and information initially collected by CBP pursuant to its immigration and customs authorities. This information is analyzed and incorporated into intelligence products. CBP currently uses the Analytical Framework for Intelligence (AFI) and the Intelligence Reporting System (IRS) information technology (IT) systems to facilitate the development of finished intelligence products. These products are disseminated to various stakeholders including CBP executive management, CBP operational units, various government agencies, and the Intelligence Community (IC).

CIRS is the exclusive CBP System of Records Notice for finished intelligence products and any raw intelligence information, public source information, or other information collected by CBP for an intelligence purpose that is not subject to an existing DHS SORN. Information collected by CBP for an intelligence purpose that is not covered by an existing DHS SORN and is not incorporated into a finished intelligence product is retained and disseminated in accordance with this SORN. In addition, finished intelligence products, and the information contained in those products, regardless of the original source system of that information, is retained and disseminated in accordance with this SORN. CIRS records were previously covered by the Automated Targeting System SORN and the Analytical Framework for Intelligence System SORN.

As part of the intelligence process, CBP investigators and analysts must review large amounts of data to identify and understand relationships between individuals, entities, threats, and events to generate law enforcement intelligence products that provide CBP operational units with actionable information for law enforcement purposes. If performed manually, this process can involve hours of analysis of voluminous data. To automate and expedite this process, CBP uses several IT systems to allow for the efficient research and analysis of data from a variety of sources. Existing IT systems that CBP uses to analyze and produce intelligence information include AFI and IRS.

AFI is specifically designed to make the intelligence research and analysis process more efficient by allowing searches of a broad range of data through a single interface. AFI can also identify links (relationships) between individuals or entities based on commonalities, such as identification numbers, addresses, or other information. These commonalities in and of themselves are not suspicious, but in the context of additional information they sometimes help DHS agents and analysts to identify potentially criminal activity and identify other suspicious activities. These commonalities can also form the basis for a DHS-generated intelligence product that may lead to further investigation or other appropriate follow-up action by CBP, DHS, or other federal, state, or local agencies. DHS/CBP has published a Privacy Impact Assessment (PIA) for AFI, which is available on *www.dhs.gov/privacy.* A PIA for IRS is forthcoming.

CBP is updating and reissuing this existing system of records to provide additional transparency regarding the publicly available landowner records CBP receives from state and local jurisdictions or may access via a commercial data provider. Property records are publicly available and often searchable via online databases provided by local municipalities and counties and by commercial providers. As part of its border security mission, DHS/CBP requires accurate information about landowner information along the borders of the United States to seek expedited real estate Rights of Entry (ROE), Right of Way (ROW), and subsequent acquisition of land for the placement of proposed and approved border surveillance technology and infrastructure. DHS/CBP is clarifying that it receives publicly available landowner information from local jurisdictions and commercial providers. CBP is also clarifying that individuals covered by the system may include individuals not implicated in activities in violation of laws enforced or administered by CBP but with pertinent knowledge of some circumstance of a case or record subject. This category was previously limited to only individuals with knowledge of narcotics trafficking or related activities. *Additionally,* DHS/CBP is modifying Routine Use ''E'' and adding Routine Uses ''F'' to conform to OMB Memorandum M–17–12. The previous Routine Use ''F'' has been renumbered as Routine Use ''H,'' and the content of the previous Routine Use ''G'' has been modified to conform with the current DHS template. All subsequent Routine Uses have been renumbered to account for these changes. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Individuals may request information about records pertaining to themselves stored in CIRS as outlined in the ''Notification Procedure'' section below. CBP reserves the right to exempt various records from release pursuant to exemptions 5 U.S.C. 552a(j)(2), (k)(1) and (k)(2) of the Privacy Act.

Consistent with DHS's information sharing mission, information stored in the DHS/CBP–024 CIRS System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this SORN.

The previously issued Final Rule exempting portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements remains in effect. This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.''

A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Similarly, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/CBP–024 Intelligence Records System (CIRS) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-024 CBP Intelligence Records System (CIRS) System of Records.

SECURITY CLASSIFICATION:

Unclassified, Sensitive, For Official Use Only, Law Enforcement-Sensitive, and Classified.

SYSTEM LOCATION:

CBP maintains CIRS records at the CBP Headquarters in Washington, DC and field offices. CBP uses the Analytical Framework for Intelligence (AFI) and the Intelligence Reporting System (IRS) to facilitate the development of finished intelligence products and maintain a repository of intelligence information records. Records may also be stored on paper within the Office of Intelligence (OI), the National Targeting Center, or in CBP field offices.

SYSTEM MANAGER:

Assistant Commissioner for the Office of Intelligence, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458, 118 Stat. 3638); the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125); the Tariff Act of 1930, as amended; the Immigration and Nationality Act (''INA''), 8 U.S.C. 1101, *et seq.;* the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53); the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132, 110 Stat. 1214); the SAFE Port Act of 2006 (Pub. L. 109–347); the Aviation and Transportation Security Act of 2001 (Pub. L. 107–71); 6 U.S.C. 202; and 6 U.S.C. 211.

PURPOSE(S) OF THE SYSTEM:

This system of records describes CBP's collection and consolidation of information from multiple sources, including law enforcement agencies and agencies of the U.S. Intelligence Community, in order to enhance CBP's ability to: Identify, apprehend, or prosecute individuals who pose a potential law enforcement or security risk; aid in the enforcement of the customs and immigration laws, and other laws enforced by DHS at the border; and enhance U.S. border security.

CBP maintains intelligence information to:

(a) Support CBP's collection, analysis, reporting, and distribution of law enforcement, immigration administration, terrorism, intelligence, and homeland security information in support of CBP's law enforcement, customs and immigration, counterterrorism, national security, and other homeland security missions.

(b) Produce law enforcement intelligence reporting that provides actionable information to CBP's law enforcement and immigration administration personnel and to other appropriate government agencies.

(c) Enhance the efficiency and effectiveness of the research and analysis process for DHS law enforcement, immigration, and intelligence personnel through information technology tools that provide for advanced search and analysis of various datasets.

(d) Identify potential criminal activity, violations of federal law, and threats to homeland security; provide overall situational awareness for the CBP enterprise; to uphold and enforce the law; and to ensure public safety.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include the following:

1. Individuals (*e.g.,* subjects, witnesses, associates, informants) associated with border security, immigration or customs enforcement, or other law enforcement investigations/activities conducted by CBP;

2. Individuals associated with law enforcement investigations or activities conducted by other federal, state, tribal, territorial, local, or foreign agencies when there is a potential nexus to national security, CBP's law enforcement responsibilities, or homeland security in general;

3. Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism;

4. Individuals involved in, associated with, or who have reported suspicious activities, threats, or other incidents reported by domestic and foreign government agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, and individuals;

5. Individuals not implicated in activities in violation of laws enforced or administered by CBP, but with pertinent knowledge of some circumstance of a case or record subject. Such records may contain any information, including personal identification data, that may assist CBP in discharging its responsibilities generally (*e.g.,* information which may assist in identifying and locating such individuals);

6. Individuals who are the subjects of or otherwise identified in classified or unclassified intelligence reporting received or reviewed by CBP OI;

7. Individuals identified in law enforcement, intelligence, crime, and incident reports (including financial reports under the Bank Secrecy Act and law enforcement bulletins) produced by DHS and other government agencies;

8. Individuals identified in U.S. visa, border, immigration, and naturalization benefit data, including arrival and departure data;

9. Individuals identified in DHS law enforcement and immigration records;

10. Individuals not authorized to work in the United States;

11. Individuals whose passports have been lost or stolen; and

12. Individuals identified in any publicly available or commercially available information source such as news reports, property records, and social media postings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include information collected by CBP for an intelligence purpose that is not covered by an existing DHS SORN and finished intelligence products. This information may include:

1. Biographic information (*e.g.,* name, date of birth, Social Security number, alien registration number, citizenship/immigration status, passport

information, addresses, phone numbers);

2. Records of immigration enforcement activities or law enforcement investigations/activities;

3. Information (including documents and electronic data) collected by CBP from or about individuals during investigative activities and border searches;

4. Records of immigration enforcement activities and law enforcement investigations/activities that have a possible nexus to CBP's law enforcement and immigration enforcement responsibilities or homeland security in general;

5. Law enforcement, intelligence, crime, and incident reports (including financial reports under the Bank Secrecy Act and law enforcement bulletins) produced by DHS and other government agencies;

6. U.S. visa, border, immigration, and naturalization benefit data, including arrival and departure data;

7. Terrorist watchlist information and other terrorism-related information regarding threats, activities, and incidents;

8. Lost and stolen passport data;

9. Records pertaining to known or suspected terrorists, terrorist incidents, activities, groups, and threats;

10. CBP-generated intelligence requirements, analysis, reporting, and briefings;

11. Information from investigative and intelligence reports prepared by law enforcement agencies and agencies of the U.S. foreign intelligence community;

12. Articles, public-source data (including information from social media), commercially available information, and other published information on individuals and events of interest to CBP;

13. Audio and video records retained in support of CBP's law enforcement, national security, or other homeland security missions;

14. Records and information from government data systems or retrieved from commercial data providers in the course of intelligence research, analysis, and reporting, including records of property ownership;

15. Reports of suspicious activities, threats, or other incidents generated by CBP or third parties;

16. Additional information about confidential sources or informants; and

17. Metadata, which may include but is not limited to transaction date, time, location, and frequency.

RECORD SOURCE CATEGORIES:

Federal, state, local, territorial, tribal, or other domestic agencies, foreign agencies, multinational or non-governmental organizations, critical infrastructure owners and operators, private sector entities and organizations, individuals, commercial data providers, and public sources such as social media, news media outlets, and the internet.

CBP will abide by the safeguards, retention schedules, and dissemination requirements of DHS source system SORNs to the extent those systems are applicable and the information is not incorporated into a finished intelligence product. For additional information, please see the Privacy Impact Assessment for the Analytical Framework for Intelligence and the forthcoming Privacy Impact Assessment for the Intelligence Reporting System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Source data are to be handled consistent with the published system of records notice as noted in ''Source Category Records.'' Source data that is not part of or incorporated into a finished intelligence product, a response to a request for information (RFI), project, or the index shall not be disclosed external to DHS. The routine uses below apply only to finished intelligence products, responses to RFIs, projects, and responsive compilations of the index and only as explicitly stated in each routine use.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To a federal, state, territorial, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

J. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes when the Department requires information or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to the agency's decision concerning the hiring or retention of an individual or the issuance, grant, renewal, suspension, or revocation of a security clearance, license, contract, grant, or other benefit; or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person receiving the information.

L. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health risk.

M. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

N. To a federal, state, tribal, local, or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing, or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

O. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, license, or treaty when DHS determines that the information would assist in the enforcement of civil, criminal, or regulatory laws.

P. To third parties during the course of an investigation by DHS, a proceeding within the purview of the immigration and nationality laws, or a matter under DHS's jurisdiction, to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

Q. To a federal, state, or local agency, or other appropriate entity or individual, or through established liaison channels to selected foreign governments, in order to provide intelligence, counterintelligence, or other information for the purposes of intelligence, counterintelligence, or antiterrorism activities authorized by U.S. law, Executive Order, or other applicable national security directive.

R. To federal and foreign government intelligence or counterterrorism agencies when DHS reasonably believes there to be a threat or potential threat to national or international security for which the information may be useful in countering the threat or potential threat, when DHS reasonably believes such use is to assist in anti-terrorism efforts, and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

S. To an organization or individual in either the public or private sector, either foreign or domestic, when there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

T. To the Department of State in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

U. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

V. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/CBP stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/CBP may retrieve records by personal identifiers such as but not limited to name, alien registration number, phone number, address, Social Security number, or passport number. DHS/CBP may retrieve records by non-personal information such as transaction date, entity/institution name, description of goods, value of transactions, and other information.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

To the extent that CBP accesses and incorporates information from other DHS systems of records as sources of information for finished intelligence products, CBP will abide by the safeguards, retention schedules, and dissemination requirements of those

underlying source systems of record. For additional information, please see the Privacy Impact Assessment for the Analytical Framework for Intelligence and the forthcoming Privacy Impact Assessment for the Intelligence Reporting System.

Consistent with the DHS N1–563–07–016 records schedule, CBP will retain information consistent with the same retention requirements of the DHS Office of Intelligence and Analysis:

1. *Dissemination Files and Lists:* CBP will retain finished and current intelligence report information distributed to support the Intelligence Community, DHS Components, and federal, state, local, tribal, and foreign Governments and includes contact information for the distribution of finished and current intelligence reports for two (2) years.

2. *Raw Reporting Files:* CBP will retain raw, unevaluated information on threat reporting originating from operational data and supporting documentation that are not covered by an existing DHS system of records for thirty (30) years.

3. *Finished Intelligence Case Files:* CBP will retain finished intelligence and associated background material for products such as Warning Products identifying imminent homeland security threats, Assessments providing intelligence analysis on specific topics, executive products providing intelligence reporting to senior leadership, intelligence summaries about current intelligence events, and periodic reports containing intelligence awareness information for specific region, sector, or subject/area of interest as permanent records and will transfer the records to the National Archives and Records Administration (NARA) after twenty (20) years.

4. *Requests for Information/Data Calls:* CBP will retain requests for information and corresponding research, responses, and supporting documentation for ten (10) years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/CBP safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/CBP has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act, and the Judicial Redress Act if applicable, because it is a law enforcement system. However, DHS/CBP will consider individual requests to determine whether or not information may be released. Thus, individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and CBP Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, U.S. Department of Homeland Security, Washington, DC 20528. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or (866) 431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, see ''Record Access Procedures'' above. For records not covered by the Privacy Act or JRA, individuals may submit an inquiry to the DHS Traveler Redress Inquiry Program (DHS TRIP) at *https://www.dhs.gov/dhs-trip* or the CBP INFO CENTER at *www.help.cbp.gov* or (877) 227–5511 (international callers may use (202) 325–8000 and TTY users may dial (866) 880–6582).

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H); (e)(4)(I), and (f). When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(k)(1); (k)(2); or (j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

82 FR 44198 (September 21, 2017).

* * * * *

Constantina Kozanas,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2020–27446 Filed 12–11–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–53]

30-Day Notice of Proposed Information Collection: Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion; OMB Control No. 2528–New

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* January 13, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Friday, September 11, 2020 at 85 FR 56266.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion.

OMB Approval Number: 2528–New.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research (PD&R), at the U.S. Department of Housing and Urban Development (HUD), is proposing the collection of information for the Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion.

Moving to Work (MTW) is a demonstration program that encourages public housing agencies (PHAs) to test ways to achieve three specific objectives: (1) Increase the cost effectiveness of federal housing programs, (2) increase housing choice for low-income families, and/or (3) encourage greater self-sufficiency of households receiving housing assistance. MTW designation gives PHAs relief from many of the regulations and statutory provisions that apply to the public housing and Housing Choice Voucher (HCV) programs. MTW agencies can also merge their public housing and HCV funds into a single block grant and use these funds (if desired) for local activities outside of the typical public housing and HCV programs, such as providing supportive services or developing housing for populations with special needs. In 2016, Congress authorized HUD to expand the MTW program by 100 high performing PHAs.

The MTW expansion statute emphasizes evaluating the MTW program, directing HUD to expand the program in cohorts that would allow for ''one specific policy change to be implemented. . . .'' and rigorously evaluated. The first cohort of the expansion will test the impact of MTW designation on small PHAs, defined for these purposes as PHAs administering no more than 1,000 housing units across their HCV and public housing programs. In Cohort 1, PHAs are free to implement any program and policy changes permissible under the MTW program. Under contract with HUD's Office of Policy Development and Research, Abt Associates Inc. will conduct an evaluation of Cohort 1 that includes a study of how PHAs use their MTW flexibility to meet the MTW program's goals and a study of the impact of MTW designation on cost effectiveness, self-sufficiency, and housing choice.

The Evaluation of Cohort 1 of the Moving to Work Demonstration Program Expansion will be implemented as a randomized control trial. To carry out the study, HUD randomly assigned the 43 eligible PHAs that submitted a Letter of Interest to HUD for Cohort 1 into one of two groups: A treatment group (33 PHAs) that is invited to complete the application for MTW designation and a control group (10 PHAs) that is not invited to complete the application for MTW designation and therefore is not permitted to receive MTW designation under Cohort 1.

The evaluation will compare the outcomes of the treatment group PHAs to the outcomes of the control group PHAs over a five-year period. To the extent possible, this evaluation will rely on analysis of secondary data that PHAs already prepare and submit to HUD, however, some primary data collection will be required.

This **Federal Register** Notice provides an opportunity to comment on the information collection for the evaluation. The evaluation will use the data described in this information collection request to clarify and expand on information provided in the existing data sources and to capture qualitative information about the experiences of study PHAs implementing activities related to cost effectiveness, self-sufficiency, or housing choice without MTW flexibility. The proposed information collection consists of: (1) Interviews with MTW (treatment group) PHAs; (2) online surveys to non-MTW (control group) PHAs; and (3) interviews with non-MTW (control group) PHAs.

ANNUALIZED BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Interviews with MTW (Treatment Group) PHAs	99.00	1	99.00	1.00	99.00	$52.14	$5,161.86
Online Surveys to Non-MTW (Control Group) PHAs	10.00	1	10.00	0.50	5.00	52.14	260.70

ANNUALIZED BURDEN TABLE—Continued

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Interviews with Non-MTW (Control Group) PHAs	20.00	1	20.00	1.00	20.00	52.14	1,042.80
Total	129.00				124.00		6,465.36

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–27429 Filed 12–11–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–52]

30-Day Notice of Proposed Information Collection: 2021 American Housing Survey; OMB Control No. 2528–0017

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: Comments Due Date: January 13, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Friday August 4, 2020 at 85 FR 47981.

A. Overview of Information Collection

Title of Information Collection: 2021 American Housing Survey.

OMB Approval Number: 2528–0017.

Type of Request: Revision of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The purpose of the American Housing Survey (AHS) is to supply the public with detailed and timely information about housing quality, housing costs, and neighborhood assets, in support of effective housing policy, programs, and markets. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

Like the previous surveys, the 2021 AHS will collect ''core'' data on subjects, such as the amount and types of changes in the housing inventory, the physical condition of the housing inventory, the characteristics of the occupants, housing costs for owners and renters, including a redesigned mortgage section, the persons eligible for and beneficiaries of assisted housing, remodeling and repair frequency, reasons for moving, the number and characteristics of vacancies, and characteristics of resident's neighborhood. In addition to the ''core'' data, HUD plans to collect supplemental data on the renter housing search process, intent to move, housing characteristics that increase wildfire risk, household pets, delinquent payments and notices for mortgage, rent, or utility bills, and smoking.

In 2015, the AHS began a new longitudinal panel. The sample design has two components: an integrated longitudinal national sample, and an independent metropolitan areas longitudinal sample. The integrated longitudinal national sample includes three parts: (1) 35,731 national cases representative of the US and 9 Census Divisions outside the top 15 metropolitan areas; (2) 12,060 HUD-assisted oversample cases; and (3) 47,175 sample cases of the top 15 metropolitan areas in the US. The total integrated longitudinal national sample for 2021 will consist of 94,966 housing units. In addition to the integrated national longitudinal sample, HUD plans to conduct 10 additional metropolitan area longitudinal samples, each with approximately 3,000 housing units (for a total 30,000 metropolitan area housing units). The 10 additional metropolitan area longitudinal samples were last surveyed in 2017.

To help reduce respondent burden on households in the longitudinal sample, the 2021 AHS will make use of dependent interviewing techniques,

which will decrease the number of questions asked. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

HUD needs the AHS data for the following two reasons:

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

HUD intends to test the use of incentives to reduce nonresponse bias in the AHS. The proposed incentive project will test whether offering incentives to respondents in units both at high risk of nonresponse and likely to introduce bias can successfully increase responses from groups that would contribute to nonresponse bias. The incentive study will compare the sample characteristics of respondents randomly selected to receive incentives according to their predicted risk of nonresponse and likelihood of introducing bias to the sample characteristics of respondents randomly selected to receive incentives at random. Additionally, the incentive amounts will be randomly varied among respondents selected to receive incentives. Conditions will be compared to determine sensitivity to the amount of the incentive in motivating response compared to a no-incentive control.

The incentive project will address the following research questions:

1. Can incentives reduce non-response bias in the AHS?

2. Where is the inflection point for diminishing marginal returns for monetary incentives?

3. What are the effects of introducing incentives into a panel survey on responses in later survey waves?

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Occupied Interviews	86,962.00	1.00	86,962.00	.66	57,395.00	$0.00	$0.00
Vacant Interviews	12,788.00	1.00	12,788.00	.33	4,220.00	0.00	0.00
Non-interviews	24,298.00	1.00	24,298.00	.00	0.00	0.00	0.00
Ineligible	3837.00	1.00	3,837.00	.00	0.00	0.00	0.00
Subtotal	127,885.00	1.00	127,885.00	.00	.00	0.00	0.00
Reinterviews	8,952.00	1.00	8,952.00	.17	1,522.00	0.00	0.00
Total	136,837.00		136,837.00		63,137.00		

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–27427 Filed 12–11–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7025–N–10]

60-Day Notice of Proposed Information Collection: Continuum of Care (CoC) Program Homeless Assistance Grant Application OMB Control No: 2506–0112

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 12, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Sherri Boyd, Senior Program Specialist, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email Sherri Boyd at *Sherri.L.Boyd@hud.gov* telephone 202–402–6070. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Boyd.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Continuum of Care (CoC) Homeless Assistance Grant Application

OMB Approval Number: 2506–0112

Type of Request: Extension of currently approved collection

Form Number: None

Description of the need for the information and proposed use: This submission is to request an extension of an existing collection in use without an OMB Control Number for the Recordkeeping for HUD's Continuum of Care Program. Continuum of Care program recipients will be expected to implement and retain the information collection for the recordkeeping requirements. The statutory provisions and implementing interim regulations govern the Continuum of Care Program recordkeeping requirements for recipient and subrecipients and the standard operating procedures for ensuring that Continuum of Care Program funds are used in accordance with the program requirements. To see the regulations for the new CoC program and applicable supplementary documents, visit HUD's Homeless Resource Exchange at *https://www.onecpd.info/resource/2033/hearth-coc-program-interim-rule/.* .

Respondents (*i.e.* affected public): Nonprofit organizations, states, local governments, and instrumentalities of state and local governments. Includes Public Housing Agencies (PHAs), as such term is defined in 24 CFR 5.100.

Estimated Number of Respondents: 400

Estimated Number of Responses: 400

Frequency of Response: Annually

Average Hours per Response: See chart

Total Estimated Burdens: See chart

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
CoC Consolidated Application.	400	1	400	84	33,600	$41.37	$1,390,032
Project Applications.	8,592	1	8,592	8.3	8,302	$41.37	$343,454
Total	8,992	1	8,992	92.3	41,902	$41.37	$1,773,486

*Responses to UFA and HPC designations are subsets of the total 400 basic registration numbers as the basic CoC Registration is completed by all Collaborative Applicants to register the CoCs. On average there are 20 requests for UFA designation and to date no requests for HPC designation.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

John Gibbs,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2020–27410 Filed 12–11–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7024–N–54]

30-Day Notice of Proposed Information Collection: Family Self-Sufficiency Program (FSS) Long-Term Follow-Up Survey; OMB Control No. 2528–NEW

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* January 13, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Tuesday March 24, 2020 at 85 FR 16649.

A. Overview of Information Collection

Title of Information Collection: Family Self-Sufficiency program (FSS) long-term follow-up Survey.

OMB Approval Number: 2506-New.

Type of Request: New.

Form Number: N/A

Description of the Need for the Information and Proposed Use: In 2012, HUD commissioned the national Family Self-Sufficiency (FSS) Study. MDRC was selected to lead this evaluation. As part of the longer-term follow-up, which HUD authorized in 2018—and extends through 2021, MDRC will conduct a long-term follow-up survey with a sample of individuals who enrolled in the study and were randomly assigned to a program group (offered the opportunity to enroll in FSS and receive services) or a control group. The survey will allow us to understand the FSS program's long-term effects on indicators of economic self-sufficiency (employment and income, for example) and well-being (health, financial, material, housing, for example). The survey will also provide an opportunity to understand the program participation experiences of FSS participants in the study who continue to be enrolled in FSS and those who exited for a variety of reasons, including graduation from FSS. No other comprehensive data source exists to provide the type of information that will be collected by this follow-up survey.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Total	1,300.00	1 .00	1,300.00	0.33 [1]	429.00	$9.87 [2]	$4,234.23 [3]

[1] Based on HUD feedback and suggestions on the instrument, the survey might run between 18–20 minutes, slightly longer than the 15-minute estimate in the Federal notice.

[2] To compute the hourly cost per response, MDRC used the weighted average state minimum wage of the 18 study sites, as of October 1, 2020. The state minimum wages were weighted by the number of study participants in each state. State minimum wage rates were found on the DOL website (*https://www.dol.gov/agencies/whd/minimum-wage/*). The minimum wages in 7 states are: California ($12.00), Florida ($8.56), Maryland ($11.00), Missouri ($9.45), New Jersey ($11.00), Ohio ($7.25), and Texas ($7.25).

[3] To compute the total estimated annual cost, the total estimated annual burden hours were multiplied by the hourly cost per response. The calculation assumes 429 total annual burden hours if all 1,300 study participants respond to the survey.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of

information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2020–27432 Filed 12–11–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[15XD5141GM DGM000000.000000 6100.241A0 DN18000000]

Proposed Appointment to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the Chair, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed appointment of Jeannie Hovland as an associate member of the National Indian Gaming Commission for a term of 3 years.

DATES: Submit comments on or before January 13, 2021.

ADDRESSES: Send comments to the Director, Office of the Executive Secretariat and Regulatory Affairs, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 7328, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hoenig, National Indian Gaming Commission, c/o Department of the Interior, 1849 C Street NW, Mail Stop 1621, Washington, DC 20240; telephone (202) 632–7003; facsimile (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et. seq.,* established the National Indian Gaming Commission (Commission), composed of three full-time members. Commission members serve for a term of 3 years. The Chair is appointed by the President with the advice and consent of the Senate. The two associate members are appointed by the Secretary of the Interior. Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and . . . allow a period of not less than thirty days for receipt of public comments.'' See 25 U.S.C. 2704(b)(2)(B).

The Secretary proposes to appoint Jeannie Hovland as an associate member of the Commission for a term of 3 years. Ms. Hovland is well qualified to be a member of the National Indian Gaming Commission by virtue of her extensive background and experience in a broad spectrum of Native American issues.

Ms. Hovland is an enrolled member of the Flandreau Santee Sioux Tribe of South Dakota and currently serves as Commissioner of the Administration for Native Americans and Deputy Assistant Secretary for Native American Affairs at the Department of Health and Human Services (HHS). As Commissioner, Ms. Hovland provides effective oversight of a $57milllion annual operating budget to promote self-sufficiency for Native

Americans. She provides executive leadership of a diverse staff of 30 employees and four regional training and technical assistant centers. During her time at HHS, Ms. Hovland created a $1 million funding opportunity designed to strengthen internal governance structures and capacity for tribes and tribal organizations. She also reestablished and Chairs the HHS Secretary's Intradepartmental Council on Native American Affairs, comprised of leadership across the Department.

In her role as Deputy Assistant Secretary for Native American Affairs for the Administration for Children and Families (ACF), a large and diverse program office with an $8 billion annual operating budget, over 1700 employees, and 10 regional offices, Ms. Hovland provides expert and culturally appropriate advice to the Assistant Secretary in the formulation of policy views, positions, and strategies affecting Native Americans. She serves as the key liaison and representative of all ACF program and staff offices on behalf of the Assistant Secretary related to tribal and Native American Affairs.

Prior to her appointment at HHS, Ms. Hovland served as senior advisor to the Assistant Secretary for Indian Affairs at the Department of the Interior. Ms. Hovland has also served as the tribal affairs advisor to Senator John Thune for more than 12 years. She played a key role in advocating for legislation at the request of Indian tribes on such issues as agriculture, services for law enforcement and veterans, and quality access to healthcare. She worked to develop legislation, such as the Tribal Law and Order Act of 2010 and the Code Talker Recognition Act of 2008.

Prior to her time in public service, Hovland was CEO of Wanji Native Nations Consultants, which offered training services for Tribal programs and Tribal governments.

Ms. Hovland does not have any financial interests that would make her ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on the proposed appointment of Jeannie Hovland may submit written comments to the address listed above. Comments must be received by January 13, 2021.

Dated: December 8, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–27464 Filed 12–11–20; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF010000 L13100000.PP0000 212L1109AF]

Notice of Public Meeting, Northern New Mexico Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: Due to public health restrictions, the RAC will meet virtually on January 19, 2021, from 9:00 a.m. to 3:45 p.m. MST. To register to participate virtually in the RAC meeting, please visit: *https://blm.zoomgov.com/j/1607413707?pwd=SEtMTlFhTGNMdW94cWl6cVV4QjlVUT09.*

ADDRESSES: The meeting will be held via the Zoom Webinar Platform.

Written comments may be submitted in advance of the meeting to the BLM address listed below or via email to *jgaragon@bmm.gov.* Please include ''RAC Comment'' in your submission.

FOR FURTHER INFORMATION, CONTACT: Jillian Aragon, Farmington District Office, Bureau of Land Management, 6251 College Boulevard, Suite A, Farmington, New Mexico 87402; 505–564–7722; *jgaragon@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 12-member Northern New Mexico RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the RAC's area of jurisdiction.

Planned agenda items include: member training; nominations of Chair and Vice Chair; an overview of the BLM Farmington, Taos, and Rio Puerco Field Offices major actions; and the Federal Lands Recreation Enhancement Act and updates from the U.S. Forest Service (USFS) for the Cibola and Santa Fe National Forests. In addition, the USFS would like to seek recommendations for two site fee proposals for the Aldo Leopold House and Amole Canyon Group Shelter in the Carson National Forest. The final agenda will be available online two weeks prior to the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/northern-rac.*

Public Comment Procedures

The BLM welcomes comments from all interested parties. There will be a half-hour public comment period in the afternoon for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

Authority: 43 CFR 1784.4–2.

Alfred M. Elser,

BLM Farmington District Manager.

[FR Doc. 2020–27447 Filed 12–11–20; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212.LLMTC03200.L13200000.EM0000 MO # 4500149507]

Notice of Lease Sale BNI Coal, Ltd. Center Mine Lease-by-Application NDM 105513, Oliver County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease sale.

SUMMARY: Notice is hereby given that Federal coal resources in lands in Oliver County, North Dakota, will be offered by the Bureau of Land Management (BLM) for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10:00 a.m. Mountain Standard Time (MST) on January 15, 2020.

ADDRESSES: The lease sale will be held in the Main Conference Room of the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669. Sealed bids must be submitted to the Cashier, BLM Montana State Office, at this same address. Social Distancing and limited seating will be applied during the sale due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Greg Fesko, by telephone at 406–896–5080, or by email at *gfesko@blm.gov.* Persons

who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Fesko during normal business hours. 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: This sale is being held in response to a Lease-by-Application filed by BNI Coal, Ltd. (BNI). The Federal coal resources to be offered are located on the following described lands:

Fifth Principal Meridian, North Dakota

T. 141 N., R. 83 W.,
sec. 8, S½NE¼NE¼.
T. 141 N., R. 84 W.,
sec. 14, E½NE¼, S½SW¼ and SE¼
T. 142 N., R. 84 W.,
sec. 20, NE¼, E½SW¼, SE¼NW¼, and SE¼NE¼NW¼.
The areas described aggregate 630.00 acres.

The coal in the tracts has one or two minable coal beds, which are designated as the Kinneman Creek and Hagel beds. The Kinneman Creek bed is present only on the section 20 tract and averages approximately 6.9 feet thick. The underlying Hagel bed is present in all three lease tracts and ranges in thickness from 7.1 feet to approximately 11.4 feet. The tracts are located adjacent to BNI's current mining operation and contain approximately 11.21 million tons of coal. The composite coal quality of both coal beds is as follows:
Heat Content (Btu/lb.): 6,784 Btu/lb.
Moisture: 38.35%
Ash Content: 6.05%
Sulfur Content: 0.77%

The tracts will be leased to the qualified bidder of the highest cash amount, provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tracts. The minimum bid for the tract is $100 per acre or fraction thereof. The minimum bid is not intended to represent FMV. The authorized officer will determine if the bids meet FMV.

The sealed bids should be sent by certified mail, return receipt requested, or be hand delivered to the Public Room, BLM Montana State Office (see ADDRESSES), and clearly marked ''Sealed Bid for NDM 105513 Coal Sale—Not to be opened before 10:00 a.m. MST on January 15, 2020.'' The Public Room representative will issue a receipt for each hand-delivered bid. Bids received after 9:30 a.m. MST will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received.

Prior to lease issuance, the high bidder, if other than the applicant, must pay the BLM the cost recovery fee in the amount of $50,963.02, in addition to all processing costs incurred by the BLM after the date of this sale notice (43 CFR 3473.2(f)).

A lease issued as a result of this offering will require payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods.

Bidding instructions for the tracts offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale, with copies available at the BLM Montana State Office (see **ADDRESSES**). Documents in case file NDM 105513 are available for public inspection at the BLM Montana State Office Public Room.

Authority: 43 CFR 3422.3–2.

John J. Mehlhoff,
Montana/Dakotas State Director.

[FR Doc. 2020–27413 Filed 12–11–20; 8:45 am]
BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1212]

Certain Electronic Candle Products and Components Thereof; Commission Determination Not to Review an Initial Determination Terminating the Investigation Due to a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 11) of the presiding administrative law judge (''ALJ'') granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 17, 2020, the Commission instituted this investigation based on a complaint filed by complainants The Sterno Group Companies, LLC of Corona, California, and Sterno Home, Inc. of Coquitlam, British Columbia, Canada (collectively, ''Sterno''). 85 FR 50048–49 (Aug. 17, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic candle products and components thereof by reason of infringement of one or more of the asserted claims of Sterno's U.S. Patent Nos. 9,068,706; 10,024,507; 10,352,517; and 10,578,264. *Id.* at 50048. The complaint alleges a domestic industry exists. *Id.* The Commission's notice of institution identified the following respondents: Shenzhen Liown Electronics Co. of Shenzhen, Guangdong, China; Luminara Worldwide, LLC of Eden Prairie, Minnesota; and L&L Candle Co. of Brea, California (collectively, ''Respondents''). *Id.* at 50049. The Office of Unfair Import Investigations (''OUII'') was also named as a party to this investigation. *Id.*

On November 12, 2020, Sterno and Respondents filed a joint motion to terminate the present investigation based on a settlement agreement, pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)). The parties included a public version of their settlement agreement in their joint motion and filed a confidential version of their agreement on November 13, 2020. On November 18, 2020, OUII filed a statement in support of the joint motion to terminate.

On November 23, 2020, the ALJ issued the subject ID (Order No. 11) granting the joint motion to terminate the investigation. Order No. 11 at 1, 3 (Nov. 23, 2020). The ID finds that the joint motion complied with the requirements of Commission Rule 210.21(b). *Id.* at 1–2. The ID also finds that the settlement agreement serves the public interest, which generally favors settlement of disputes, without adversely affecting public health or welfare, competitive conditions in the

U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. *Id.* at 2–3.

No party filed a petition for review of the subject ID. The Commission has determined not to review the subject ID.

The present investigation is hereby terminated.

The Commission vote for this determination took place on December 8, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: December 8, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–27379 Filed 12–11–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1180]

Certain Wireless Communication Devices, and Related Components Thereof

Commission Determination Not to Review; an Initial Determination Terminating the Investigation as to Respondents HTC Corporation and HTC America, Inc.; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 48) of the presiding administrative law judge (''ALJ''), terminating the investigation as to respondents HTC Corporation and HTC America, Inc. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 17, 2019, the Commission instituted this investigation based on a complaint filed by complainant Innovation Sciences LLC of Plano, Texas (''Innovation''). 84 FR 55583. The complaint (and supplement thereto) alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communication devices, and related components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,136,179 and 10,104,425. *Id.* The Commission's notice of investigation named as respondents HTC Corporation of Taiwan, HTC America, Inc. of Seattle, Washington (collectively, ''HTC''), and Resideo Technologies, Inc. of Austin, Texas (''Resideo''). *Id.* at 55584. The Office of Unfair Import Investigations (''OUII'') was also named as a party to this investigation. *Id.*

On October 21, 2020, this investigation was terminated as to Resideo. Order No. 45 (Oct. 6, 2020), *unreviewed,* Notice (Oct. 21, 2020).

On November 10, 2020, and pursuant to Commission Rule 210.21(b), Innovation and HTC filed a joint motion to terminate the investigation as to HTC based upon a settlement agreement. A corrected version of the motion was filed on November 16, 2020. On November 19, 2020, OUII filed a response supporting that motion.

On November 24, 2020, the ALJ issued Order No. 48, which granted the motion. The ID found that the joint motion complied with Commission Rules 210.21(a)(1) and 210.21(b)(1), and that terminating the investigation as to HTC was not contrary to the public interest. Because the HTC respondents were the only remaining respondents, the ID would result in the termination of the investigation in its entirety. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID.

The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on December 8, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: December 8, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–27378 Filed 12–11–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–076 (Extension)]

Large Residential Washers: Extension of Action

Determination

On the basis of the information in this investigation, the United States International Trade Commission (''Commission'') determines, pursuant to section 204(c) of the Trade Act of 1974 (''the Act'') (19 U.S.C. 2254(c)), that action under section 203 of the Act with respect to imports of large residential washers continues to be necessary to prevent or remedy serious injury and that there is evidence that the domestic large residential washers industry is making a positive adjustment to import competition.

Background

Following receipt of a petition filed on behalf of Whirlpool Corporation, Benton Harbor, Michigan, the Commission, effective August 3, 2020, instituted Investigation No. TA–201–076 (Extension) under section 204(c) of the Act to determine whether the action taken by the President under section 203 of the Act with respect to large residential washers and covered parts, provided for in subheadings 8450.20.00, 8450.11.00, 8450.90.60, and 8450.90.20 of the Harmonized Tariff Schedule of the United States (HTS), continues to be necessary to prevent or remedy serious injury and whether there is evidence that the domestic industry is making a positive adjustment to import competition.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing notice in the **Federal Register** on August 12, 2020 (85 FR 48724). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the

Commission conducted its hearing by video conference on November 5, 2020. All persons who requested the opportunity were permitted to participate.

The Commission transmitted its determination in this investigation to the President on December 8, 2020. The views of the Commission are contained in USITC Publication 5144 (December 2020), entitled *Large Residential Washers: Extension of Action, Investigation No. TA–201–076 (Extension).*

By order of the Commission.

Issued: December 8, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–27380 Filed 12–11–20; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1220]

Certain Filament Light-Emitting Diodes and Products Containing Same (II); Commission Decision Not To Review an Initial Determination Granting a Motion To Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) of the presiding administrative law judge (''ALJ'') granting a motion to intervene filed by non-party Global Value Lighting LLC (''GVL'').

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* 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: On October 5, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by The Regents of the University of California (''Complainant''). *See* 85 FR 62761–62 (Oct. 5, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain filament light-emitting diodes and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,240,529; 9,859,464; 10,593,854; 10,644,213; and 10,658,557. *See id.* The notice of investigation names the following respondents: Home Depot Product Authority, LLC; Home Depot U.S.A., Inc.; and The Home Depot, Inc. of Atlanta, Georgia (collectively, ''Home Depot''); General Electric Company of Boston, Massachusetts; Consumer Lighting (U.S.) LLC, d/b/a GE Lighting of Cleveland, Ohio; Savant Systems, Inc. of Hyannis, Massachusetts; Feit Electric Company, Inc. of Pico Rivera, California; Satco Products, Inc. of Brentwood, New York; IKEA Supply AG of Pratteln, Switzerland; IKEA U.S. Retail LLC of Conshohocken, Pennsylvania; and IKEA of Sweden AB of Almhult, Sweden. *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

On November 5, 2020, the ALJ issued an ID (Order No. 14) granting non-party Signify North America Corp.'s motion to intervene in this investigation. *See* Order No. 14 (Nov. 5, 2020), *unreviewed by* Comm'n Notice (Nov. 30, 2020).

On November 4, 2020, GVL filed a motion to intervene in this investigation pursuant to Commission Rule 210.19 (19 CFR 210.19). GVL argued that its motion is timely and that ''[i]ntervention is appropriate where, as here, the Complaint seeks to directly exclude the intervenor's products.'' *See* Mot. at 4–6. No party opposed the motion to intervene except that Complainant argued that GVL should coordinate all aspects of the investigation with the Home Depot respondents. *See* Complainant's Resp. at 2 (Nov. 9, 2020). On November 16, 2020, OUII filed a response in support of the motion to intervene. No other responses were received.

On November 16, 2020, the ALJ issued the subject ID (Order No. 15) granting GVL's motion to intervene. The ID notes that ''[n]o party disputes that GVL should be allowed to intervene.'' *See* ID at 1. The ID finds that ''GVL may fully participate as a party in the investigation, including with respect to all claims and defenses at issue in the investigation.'' *See id.* The ID also finds that ''GVL shall coordinate to the extent possible with [Home Depot] and other respondents.'' *See id.* at 1–2.

No petition for review of the subject ID was filed. The Commission has determined not to review the subject ID. GVL is granted intervenor status.

The Commission's vote for this determination took place on December 8, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 8, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–27381 Filed 12–11–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

[Agency Docket Number DOL–2020–0007]

Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries and Efforts by Certain Foreign Countries To Eliminate the Worst Forms of Child Labor, and Business Practices To Reduce the Likelihood of Forced Labor or Child Labor in the Production of Goods

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Notice; request for information and invitation to comment.

SUMMARY: This notice is a request for information and/or comment on three reports issued by the Bureau of International Labor Affairs (ILAB) regarding child labor and forced labor in certain foreign countries. Relevant information submitted by the public will be used by the Department of Labor (DOL) in preparing its ongoing reporting as required under Congressional mandates and a Presidential directive. The 2019 Findings on the Worst Forms of Child Labor report (TDA report), published on September 30, 2020, assesses efforts of 131 countries to eliminate the worst forms of child labor in 2019 and reports whether countries made significant, moderate, minimal, or no advancement during that year. It also suggests actions foreign countries can take to eliminate the worst forms of child labor through legislation,

enforcement, coordination, policies, and social programs. The 2020 edition of the List of Goods Produced by Child Labor or Forced Labor (TVPRA List), also published on September 30, 2020, makes available to the public a list of goods from countries that ILAB has reason to believe are produced by child labor or forced labor in violation of international standards. Finally, the List of Products Produced by Forced or Indentured Child Labor (E.O. List), most recently updated on March 25, 2019, provides a list of products, identified by country of origin, that DOL, in consultation and cooperation with the Departments of State (DOS) and Homeland Security (DHS), has a reasonable basis to believe might have been mined, produced, or manufactured with forced or indentured child labor. Relevant information submitted by the public will be used by DOL in preparing the next edition of the TDA report, to be published in 2021; the next edition of the TVPRA List, to be published in 2022; and for possible updates to the E.O. List, as needed.

DATES: Submitters of information are requested to provide their submission to DOL's Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) at the email or physical address below by 5:00 p.m. EST, January 18, 2020.

ADDRESSES:

To Submit Information: Information should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor. Comments, identified as Docket No. DOL–2020–0007, may be submitted by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.

Facsimile (fax): OCFT at 202–693–4830.

Mail, Express Delivery, Hand Delivery, and Messenger Service (1 copy): Austin Pedersen and Chanda Uluca at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue NW, Room S–5315, Washington, DC 20210.

Email: Email submissions should be addressed to Matthew Fraterman (*Fraterman.Matthew@dol.gov*).

FOR FURTHER INFORMATION CONTACT: Matthew Fraterman at 202–693–4833. Please see contact information above.

SUPPLEMENTARY INFORMATION:

This notice is also a request for information and/or comment on Comply Chain: Business Tools for Labor Compliance in Global Supply Chains (Comply Chain). ILAB is seeking information on current practices of firms, business associations, and other private sector groups to reduce the likelihood of child labor and forced labor in the production of goods. This information and/or comment is sought to fulfill ILAB's mandate under the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA) to work with persons who are involved in the production of goods made with forced labor or child labor. Comply Chain seeks to address this mandate through the creation of a standard set of practices that will reduce the likelihood that such persons will produce goods using child labor. Comply Chain also achieves a much broader purpose by actively supporting the efforts of companies that seek to address these issues within their own supply chains. Relevant information and/or comments submitted to ILAB will be used to improve and update Comply Chain to better meet the evolving mandates of the TVPRA and help companies and industry groups seeking to develop robust social compliance systems for their global production.

I. The Trade and Development Act of 2000 (TDA), Public Law 106–200 (2000), established eligibility criteria for receipt of trade benefits under the Generalized System of Preferences (GSP). The TDA amended the GSP reporting requirements of Section 504 of the Trade Act of 1974, 19 U.S.C. 2464, to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.''

The TDA Conference Report clarifies this mandate, indicating that the President should consider the following when considering whether a country is complying with its obligations to eliminate the worst forms of child labor: (1) whether the country has adequate laws and regulations proscribing the worst forms of child labor; (2) whether the country has adequate laws and regulations for the implementation and enforcement of such measures; (3) whether the country has established formal institutional mechanisms to investigate and address complaints relating to allegations of the worst forms of child labor; (4) whether social programs exist in the country to prevent the engagement of children in the worst forms of child labor, and to assist with the removal of children engaged in the worst forms of child labor; (5) whether the country has a comprehensive policy for the elimination of the worst forms of child labor; and (6) whether the country is making *continual progress* toward eliminating the worst forms of child labor.'' DOL fulfills this reporting mandate through annual publication of the U.S. Department of Labor's Findings on the Worst Forms of Child Labor with respect to countries eligible for GSP. To access the 2019 TDA report please visit *https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/.*

II. Section 105(b) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), 22 U.S.C. 7112 (b), as amended by Section 133 of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Public Law 115–425, directs the Secretary of Labor, to ''develop and make available to the public a list of goods from countries that ILAB has reason to believe are produced by forced labor or child labor in violation of international standards, including, to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor'' (TVPRA List).

Pursuant to this mandate, DOL published in the **Federal Register** a set of procedural guidelines that ILAB follows in developing the TVPRA List (72 FR 73374). The guidelines set forth the criteria by which information is evaluated, established procedures for public submission of information to be considered by ILAB, and identified the process ILAB follows in maintaining and updating the List after its initial publication.

ILAB published its first TVPRA List on September 30, 2009, and issued updates in 2010, 2011, 2012, 2013, 2014, 2016, 2018, and 2020. (In 2014, ILAB began publishing the TVPRA List every other year, pursuant to changes in the law (See 22 U.S.C. 7112(b)). The next TVPRA List will be published in 2022. For a copy of previous editions of the TVPRA List and other materials relating to the TVPRA List,

see ILAB's TVPRA web page at *https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods.*

III. Executive Order No. 13126 (E.O. 13126) declared that it was ''the policy of the United States Government. . . that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to E.O. 13126, and following public notice and comment, DOL published in the January 18, 2001, **Federal Register,** a final list of products (''E.O. List''), identified by country of origin, that the Department, in consultation and cooperation with the Departments of State (DOS) and Treasury [relevant responsibilities are now within the Department of Homeland Security (DHS)], had a reasonable basis to believe might have been mined, produced, or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provides for maintaining, reviewing, and, as appropriate, revising the E.O. List (66 FR 5351).

Pursuant to Sections D through G of the Procedural Guidelines, the E.O. List may be updated through consideration of submissions by individuals or through OCFT's own initiative. ILAB has officially revised the E.O. List seven times, most recently on March 25, 2019, each time after public notice and comment as well as consultation with DOS and DHS. The current E.O. List, Procedural Guidelines, and related information can be accessed at *https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products.*

Information Requested and Invitation to Comment: Interested parties are invited to comment and provide information regarding these reports. DOL requests comments on or information relevant to updating the findings and suggested government actions for countries reviewed in the TDA report, assessing each country's individual advancement toward eliminating the worst forms of child labor during the current reporting period compared to previous years, and maintaining and updating the TVPRA and E.O. Lists. Materials submitted should be confined to the specific topics of the TDA report, the TVPRA List, and the E.O. List. DOL will generally consider sources with dates up to five years old (*i.e.,* data not older than January 1, 2016). DOL appreciates the extent to which submissions clearly indicate the time period to which they apply. In the interest of transparency in our reporting, classified information will not be accepted. Where applicable, information submitted should indicate its source or sources and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. Please see the TDA report, TVPRA List, and the E.O. List for a complete explanation of relevant terms, definitions, and reporting guidelines employed by DOL. Per our standard procedures, submissions will be published on the ILAB web page at *https://www.dol.gov/agencies/ilab/public-submissions-child-labor-forced-labor-reporting.*

IV. Section 105(b)(2)(D) of The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 mandates that ILAB ''work with persons who are involved in the production of goods on [ILAB's List of Goods Produced by Child Labor or Forced Labor] to create a standard set of practices that will reduce the likelihood that such persons will produce goods using [forced and child labor].''

Many firms have policies, activities, and/or systems in place to monitor labor rights and remediate violations in their supply chains. Such policies, activities, and systems vary depending on location, industry, and many other factors. ILAB seeks to identify practices that have been effective in specific contexts, analyze their replicability, and disseminate those that have the potential to be effective on a broader scale through Comply Chain.

Information Requested and Invitation to Comment: In addition to general comments on the existing publication of Comply Chain, ILAB is seeking information on current practices of firms, business associations, and other private sector groups to reduce the likelihood of child labor and forced labor in the production of goods. ILAB welcomes any and all input. Examples of materials include (1) codes of conduct; (2) sets of standards used for implementation of codes in specific industries, locations, or among particular labor populations; (3) auditing/monitoring systems or components of such systems, as well as related systems for enforcement of labor standards across a supply chain; (4) strategies for monitoring sub-tier suppliers, informal workplaces, home work, and other challenging environments; (5) training modules and other mechanisms for communicating expectations to stakeholders which incorporate worker input; (6) traceability models or experiences; (7) remediation strategies for children and/or adults found in conditions of forced or child labor; (8) reporting-related practices and practices related to independent review; (9) projects at the grassroots level which address underlying issues or root causes of child labor or forced labor; and (10) any other relevant practices.

In addition, ILAB is seeking information on current practices of governments to collaborate with private sector actors through public-private partnerships to reduce the likelihood of child labor and forced labor in the production of goods. Submissions may include policy documents, reports, statistics, and case studies, among others. In addition, ILAB welcomes submissions of reports, analyses, guidance, toolkits, and other documents in which such practices have been compiled or analyzed by third-party groups. Information should be submitted to the addresses and within the time period set forth above. DOL seeks information that can be used to inform the development of tools and resources to be disseminated publicly on the DOL website and/or in other publications. However, in disseminating information, DOL will conceal, to the extent permitted by law, the identity of the submitter and/or the individual or company using the practice in question, upon request. Internal, confidential documents that cannot be shared with the public will not be used. Submissions containing confidential or personal information may be redacted by DOL before being made available to the public, in accordance with applicable laws and regulations. DOL does not commit to responding directly to submissions or returning submissions to the submitters, but DOL may communicate with the submitter regarding any matters relating to the submission.

This notice is a general solicitation of comments from the public.

(Authority: 22 U.S.C. 7112(b)(2)(C) & (D); 19 U.S.C. 2464; and Executive Order 13126.)

Signed at Washington, DC, this seventh day of December, 2020.

Mark A. Mittelhauser,

Associate Deputy Undersecretary for International Affairs.

[FR Doc. 2020–27359 Filed 12–11–20; 8:45 am]

BILLING CODE 4510–28–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection Requests: 2022–2024 IMLS Grant Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB Review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments about this assessment process, instructions, and data collections.

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 **FOR FURTHER INFORMATION CONTACT** section below on or before January 13, 2021.

OMB is particularly interested in 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 submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316.

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 or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: 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 work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: The purpose of this collection is to facilitate the administration of the IMLS application and review processes for its discretionary grants and cooperative agreements. IMLS uses standardized application forms for eligible libraries, museums, and other organizations to apply for its funding. The forms submitted for public review in this Notice are the IMLS Museum Program Information Form, the IMLS Library-Discretionary Program Information Form, and the IMLS Supplementary Form, each of which is included in one or more of the *Grants.gov* packages associated with IMLS grant programs.

This action is to seek approval for the information collection for the IMLS Museum Program Information Form, the IMLS Library-Discretionary Program Information Form, and the IMLS Supplementary Form for the next three years.

The 60-day notice for the IMLS Grant Application Forms was published in the **Federal Register** on October 7, 2020, (85 FR 63299–63300). No comments were received.

Agency: Institute of Museum and Library Services.

Title: Grant Application Forms.

OMB Number: 3137–0092.

Frequency: Annual.

Affected Public: Library and Museum grant applicants.

Number of Respondents: 2,928.

Estimated Average Burden per Response: 12 minutes.

Estimated Total Annual Burden: 512 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual costs: $14,913.86.

Total Federal Costs: $60,316.80.

Dated: December 9, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–27405 Filed 12–11–20; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 12, 2021 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *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, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION: *Title of Collection:* ''National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide.''

OMB Approval Number: 3145–0058.

Expiration Date of Approval: January 31, 2023.

Type of Request: Intent to seek approval to extend with revision an information collection for three years. The primary purpose of this revision is

to update the NSF Proposal and Award Policies and Procedures Guide (PAPPG) to incorporate a number of policy-related changes and clarifications of language. The draft NSF PAPPG is now available for your review and consideration on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* To facilitate review, revised text has been highlighted in yellow throughout the document to identify significant changes. A brief comment explanation of the change also is provided.

Proposed Project: The National Science Foundation Act of 1950 (Public Law 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 50,000 proposals are expected during the course of one year for a total of 6,000,000 public burden hours annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 9, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–27448 Filed 12–11–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0256]

Plant-Specific, Risk-Informed Decisionmaking for Inservice Inspections of Piping

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is re-issuing for public comment draft regulatory guide (DG), DG–1288 (Revision 1), ''Plant-Specific, Risk-Informed Decisionmaking for Inservice Inspection of Piping.'' This proposed guide is Revision 2 of regulatory guide (RG) 1.178, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking for Inservice Inspection of Piping.'' It incorporates information to be consistent with the terminology and defense-in-depth philosophy provided in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' as well as to endorse the American Society of Mechanical Engineers (ASME) Code Case N–716–1, ''Alternative Classification and Examination Requirements, Section XI, Division 1.''

DATES: Submit comments by January 13, 2021. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0256. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Zeechung Wang, telephone: 301–415–1686, email: *Zeechung.Wang@nrc.gov,* or Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0256 when contacting the NRC about

the availability of information regarding this action. You may obtain publicly available information related to this action, by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0256.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

• Attention: The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website: *https://www.regulations.gov.* Please include Docket ID NRC–2020–0256 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

This DG, identified by its task number, DG–1288, titled, ''Plant-Specific, Risk-Informed Decisionmaking for Inservice Inspections of Piping,'' (ADAMS Accession No. ML20210M047) is a proposed Revision 2 of RG 1.178 This revision of RG 1.178 (Revision 2) describes an approach that is acceptable to the staff of the NRC for developing risk-informed inservice inspections of piping (RI–ISI) programs and supplements the guidance provided in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.'' It updates the defense-in-depth philosophy to be consistent with the philosophy described in RG 1.174. RG 1.174 was revised in 2018 to expand the meaning of, and the process for, assessing defense-in-depth considerations. Specifically, this revision of RG 1.178 references the defense-in-depth guidance in RG 1.174 in several staff regulatory positions.

Additionally, the NRC staff revised this guide to (1) update Section C.2.2, ''Evaluation of Risk Impact,'' of this RG to be consistent with Section C.2.3 in RG 1.174, which provides specific considerations with respect to determining the acceptability of the probabilistic risk assessment used in risk-informed decisionmaking, and (2) add the reference to ASME Code Case N–716–1, ''Alternative Classification and Examination Requirements, Section XI, Division 1,'' dated January 27, 2013, which describes an RI–ISI process as approved in RG 1.147.

A previous version of DG–1288 (ADAMS Accession No. ML12017A076) was issued for public comment on June 29, 2012 (77 FR 38856) under Docket ID NRC–2012–0110. The staff did not fully consider the public comments received at that time due to the extent of the changes for RG 1.174. However, the staff has reviewed and addressed some comments on this DG. Commenters on the previous version are encouraged to review and comment on this version.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML20210M044). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

DG–1288, if finalized, would revise RG 1.178, Revision 2, which describes methods acceptable to the NRC staff for complying with the NRC's regulations for developing RI–ISI programs and supplements the guidance provided in RG 1.174.

Issuance of DG–1288, if finalized, would not constitute backfitting as defined in section 50.109 of the *Code of Federal Regulation* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. As explained in DG–1288, applicants and licensees would not be required to comply with the positions set forth in DG–1288.

Dated: December 8, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–27382 Filed 12–11–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. EA–20–006 and EA–20–007; ASLBP No. 21–969–01–EA–BD01]

In the Matter of Tennessee Valley Authority; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Tennessee Valley Authority

(Enforcement Action)

This Board is being established pursuant to a referral from the NRC Office of the Secretary of two hearing requests, one from the Tennessee Valley Authority (TVA), and another from Erin Henderson, challenging an order imposing a civil penalty on TVA. The challenged order, issued on October 29, 2020, by the NRC Office of Enforcement, was published in the **Federal Register** on November 4, 2020. *See* 85 FR 70203 (Nov 4, 2020).

The Board is comprised of the following Administrative Judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission. Washington, DC 20555–0001

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Dated December 8, 2020.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel, Rockville, Maryland.

[FR Doc. 2020–27362 Filed 12–11–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the December 17, 2020, public meeting scheduled to be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW, Washington, DC. The original **Federal Register** notice announcing this meeting was published Monday, December 23, 2019, at 84 FR 70580.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2858, or email *pay-leave-policy@opm.gov.*

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–27430 Filed 12–11–20; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90590; File No. SR–PEARL–2020–32]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Equities Fee Schedule

December 8, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the ''Fee Schedule'').[3] The proposed changes are scheduled to become operative on December 2, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1901.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule applicable to MIAX PEARL Equities to provide pricing for securities priced below $1.00 that are executed on MIAX PEARL Equities.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. More specifically, the Exchange is only one of several equities venues (including both registered exchanges and various alternative trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently dispersed across 16 exchanges,[4] 31 alternative trading systems,[5] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.[6] Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, the Exchange currently represents a very small percentage of the overall market.

The purpose of this proposed fee change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted a fee structure that provided that orders in securities priced below $1.00 would be free that executed at MIAX PEARL Equities, regardless of whether they add or remove liquidity to encourage market participants to submit orders to the Exchange. The Exchange now proposes to charge a standard fee of 0.30% of the total dollar value of any transaction in securities priced below $1.00 that removes liquidity from MIAX PEARL Equities. The Exchange also proposes to provide a standard rebate of 0.30% of the total dollar value of any transaction in securities priced below

[4] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[5] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[6] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

$1.00 that adds displayed or non-displayed liquidity to MIAX PEARL Equities.

The proposed rebate for executed orders that add liquidity in securities priced below $1.00 is intended to increase order flow in securities priced below $1.00 to MIAX PEARL Equities by incentivizing Equity Members [7] to increase the liquidity-providing orders in securities priced below $1.00 they submit to MIAX PEARL Equities, which would support price discovery on MIAX PEARL Equities and provide additional liquidity for incoming orders. The proposed fee for executed orders that remove liquidity from MIAX PEARL Equities is intended to be a direct offset of the rebate provided for executed orders that add liquidity in securities priced below $1.00 so that MIAX PEARL Equities may remain revenue neutral with respect to such transactions while attempting to compete with other venues to attract this order flow.

The proposed fee change will become effective on December 2, 2020. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the Fee Schedule reflects a simple and competitive pricing structure, which is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange. The Exchange believes the proposed rebate and fee structure for orders that add or remove liquidity in securities priced below $1.00 would incentivize submission of additional liquidity in securities priced below $1.00, thereby promoting price discovery and deepen liquidity, enhancing order execution opportunities for all Equity Members and investors.

In particular, the Exchange believes that the proposed rebate for orders that add liquidity in securities priced below $1.00 is reasonable because it would incentivize Equity Members to direct more order flow in securities priced below $1.00 to the Exchange. The Exchange notes that one other exchange provides the same rebate as proposed herein,[10] and other exchanges provide rebates for liquidity-adding transactions in securities priced below $1.00, but that these are denominated in dollar amounts per share rather than a percentage of the total dollar amount of the transaction.[11] The Exchange expects that the proposed rebate for orders that add liquidity in securities priced below $1.00 would typically result in a higher overall credit for a given transaction than the rebates offered by other exchanges, although the Exchange notes that it may also result in a lower overall credit for such transactions depending on the number of shares traded and the total dollar value of the transaction. The Exchange also believes that the proposed fee for orders that remove liquidity in securities priced below $1.00 is reasonable because it is in line with the fees charged by other exchanges for liquidity-removing transactions in securities priced below $1.00.[12]

The Exchange believes that, given the competitive environment in which MIAX PEARL Equities currently operates, the proposed pricing structure, with an offsetting fee and rebate for executions of transactions in securities priced below $1.00 is a reasonable attempt to increase liquidity in securities priced below $1.00 on MIAX PEARL Equities and improve the MIAX PEARL Equities' market share relative to its competitors while remaining revenue neutral with respect to such transactions.

The Exchange also believes that the proposed fee and rebate structure applicable to executions of transactions in securities priced below $1.00 is equitably allocated and not unfairly discriminatory because it applies equally to all Equity Members and is reasonably related to the value of MIAX PEARL Equities' market quality associated with higher volume. A number of Equity Members currently transact in securities priced below $1.00 and they, along with additional Equity Members that choose to direct order flow in securities priced below $1.00 to the Exchange, would all qualify for the proposed fee and rebate. The Exchange believes that maintaining or increasing the proportion of transactions in securities priced below $1.00 that are executed on MIAX PEARL Equities would benefit all investors by deepening the MIAX PEARL Equities' liquidity pool, which would support price discovery, promote market transparency and improve investor protection, further rendering the proposed changes reasonable and equitable.

Further, the Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [14] Indeed, equity trading is currently dispersed across 16 exchanges,[15] 31 alternative trading systems,[16] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on

[7] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* SR–MEMX–2020–14 (filed November 30, 2020), *available at https://info.memxtrading.com/wp-content/uploads/2020/11/SR-MEMX-2020-14.pdf.*

[11] *See, e.g.,* the Cboe EDGX equities trading fee schedule on its public website (available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a rebate of $0.00009 per share for liquidity-adding transactions in securities priced below $1.00 per share; the NYSE Arca equities trading fee schedule on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nysearca/NYSE_Arca_Marketplace_Fees.pdf*), which reflects a rebate of $0.00004 per share for liquidity-adding transactions in securities priced below $1.00 per share.

[12] *See supra* note 10.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (''Regulation NMS'').

[14] *See* Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks).

[15] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[16] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[17] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations on September 25, 2020, and thus has a market share of approximately less than 1% of executed volume of equities trading.

The Exchange has designed its proposed pricing structure for securities priced below $1.00 to balance the need to attract order flow as a new exchange entrant with the desire to continue to provide a simple pricing structure to market participants. The Exchange believes its proposed pricing structure for securities priced below $1.00 structure enables the Exchange to compete for order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to nonmarketable orders which provide liquidity on an exchange, Equity Members can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed pricing structure for securities priced below $1.00 represents a reasonable attempt to attract order flow to a new exchange entrant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Equity Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [18]

The Exchange does not believe that the proposed pricing structure for securities priced below $1.00 will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. As a new exchange, the Exchange faces intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading.

Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its proposed pricing structure for securities priced below $1.00 could impose any burden on competition is extremely limited, and does not believe that such pricing structure would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed pricing structure for securities priced below $1.00 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed pricing structure for securities priced below $1.00 will apply equally to all Equity Members. The proposed pricing structure for securities priced below $1.00 is intended to encourage market participants to add liquidity to the Exchange by providing a rebate that is comparable to those offered by other exchanges, which the Exchange believes will help to encourage Equity Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed pricing structure for securities priced below $1.00 are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2) [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2020–32 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–PEARL–2020–32. This file number should be included on the subject line if email is used. To help the

[17] *See supra* note 6.

[18] *See supra* note 13.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–32, and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27385 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90603; File No. SR–OCC–2020–015]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Implementation of New Sufficiency Scenarios in The Options Clearing Corporation's Stress Testing Inventory

December 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 2, 2020, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would implement additional stress test scenarios designed to test the sufficiency of OCC's prefunded financial resources. The proposed changes to OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description (''Methodology Description'') are included in Exhibit 5 of filing SR–OCC–2020–015. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All terms with initial capitalization that are not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

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

Background

OCC performs daily stress testing using a wide range of scenarios, both hypothetical and historical,[4] designed to serve multiple purposes.[5] OCC's stress testing inventory contains scenarios designed to: (1) Determine whether the financial resources collected from all Clearing Members collectively are adequate to cover OCC's risk tolerance (''Adequacy Scenarios''); (2) establish the monthly size of the Clearing Fund at an amount necessary to cover losses arising from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure as a result of a 1-in-80 year hypothetical market event (''Sizing Scenarios''); (3) measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions (''Sufficiency Scenarios''); and (4) monitor and assess the size of OCC's prefunded financial resources against a wide range of stress scenarios that may include newly developed stress scenarios for evaluation as well as extreme but implausible scenarios (''Informational Scenarios''). Adequacy and Informational Scenarios are not used directly to size the Clearing Fund or drive calls for additional financial resources from OCC's Clearing Members.

Pursuant to OCC Rule 609 and OCC's Clearing Fund Methodology Policy, if any of OCC's Sufficiency Scenarios identifies exposures that exceed 75% of the current Clearing Fund requirement less deficits, OCC may require additional margin deposits from the Clearing Member Group(s) driving the breach. Additionally, pursuant to Rule 1001(c) and the Clearing Fund Methodology Policy, if a Sufficiency

[3] 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.*

[4] OCC's historical scenarios are intended to replicate historical events in current market conditions, which includes the set of currently existing securities, their prices, and volatility levels. These scenarios provide OCC with information regarding pre-defined reference points determined to be relevant benchmarks for assessing OCC's exposure to Clearing Members and the adequacy of its financial resources. OCC's hypothetical scenarios represent events in which market conditions change in ways that have not yet been observed. These hypothetical scenarios are derived using statistical methods (*e.g.,* draws from estimated multivariate distributions) or created based on a mix of statistical techniques and expert judgment (*e.g.,* a 15% decline in market prices and 50% increase in volatility).

[5] On July 26, 2018, the Commission issued a Notice of No Objection to an advance notice by OCC concerning the adoption of a new stress testing and Clearing Fund methodology. *See* Securities Exchange Act Release No. 83714 (July 26, 2018), 83 FR 37570 (August 1, 2018) (SR–OCC–2018–803) (Notice of No Objection to Advance Notice, as Modified by Amendments No. 1 and 2, Concerning Proposed Changes to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology). On July 27, 2018, the Commission approved a proposed rule change by OCC concerning the same proposal. *See* Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (August 2, 2018) (SR–OCC–2018–008) (Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology).

Scenario identifies a Clearing Fund draw for any one or two Clearing Member Groups that exceeds 90% of the current Clearing Fund size (after subtracting any monies deposited as a result of a margin call in accordance with a breach of the 75% threshold), OCC has the authority to reset the size of the Clearing Fund on an intra-month basis to ensure that it continues to maintain sufficient prefunded financial resources.

Proposed Change

OCC proposes to elevate four of its current Informational Scenarios to Sufficiency Scenarios. The proposed Sufficiency Scenarios are historical scenarios designed to represent recent market events from March 2020. Specifically, the proposed scenarios would include price shocks representing the most extreme market decline and rally moves in March 2020 and would include variations on these scenarios designed to account for specific-wrong way risk exposures arising from cleared positions on issued exchange traded notes (''ETNs'').[6] In their current status as Informational Scenarios, the March 2020 scenarios do not drive the size of the Clearing Fund or calls for additional resources. However, as Sufficiency Scenarios, they would be used to measure the exposure of OCC's Clearing Fund to the portfolios of individual Clearing Member Groups and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources in the form of margin or an intra-month re-sizing of the Clearing Fund. The proposed rule change would enable OCC to test the sufficiency of its financial resources under a wider range of relevant stress scenarios and respond quickly when OCC believes additional financial resources are necessary. The proposed rule change would thereby improve OCC's ability to measure, monitor and manage its credit exposures to its participants and enhance OCC's ability to manage risks in its role as a systemically important financial market utility.

(2) *Statutory Basis*

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act[7] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Exchange Act[8] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and, in general, protect investors and the public interest. The proposed rule change would enhance OCC's framework for measuring, monitoring, and managing its credit risks. Specifically, the proposed rule change would enable OCC to test the sufficiency of its prefunded financial resources under a wider range of stress scenarios and respond quickly when OCC believes the collection of additional financial resources is necessary. The ability to appropriately size and test the sufficiency of prefunded financial resources is critical to ensuring that OCC can continue to provide prompt and accurate clearance and settlement of securities and derivatives transactions in the event of a Clearing Member default and manage the risks associated with its role as a systemically important financial market utility. Accordingly, OCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[9]

Rule 17Ad–22(e)(4)(iii)[10] requires, in part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources (beyond those collected as margin) at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. Rule 17Ad–22(e)(4)(vi)(A)[11] further requires, in part, that such policies and procedures are reasonably designed to test the sufficiency of the covered clearing agency's total financial resources available to meet the minimum financial resource requirements under Rule 17Ad–22(e)(4)(iii)[12] by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions. As described above, the proposed rule change would enable OCC to test the sufficiency of its prefunded financial resources under a wider range of stress scenarios and respond quickly to collect additional financial resources from its Clearing Members if the Sufficiency Scenario exposures breach the predetermined thresholds established in OCC's Rules and Clearing Fund Methodology Policy. Moreover, the proposed Sufficiency Scenarios were constructed in accordance with OCC's existing Methodology Description using standard predetermined parameters and assumptions. As a result, OCC believes the proposed rule change is designed to further OCC's compliance with the requirements of Rules 17Ad–22(e)(4)(iii) and (vi)(A).[13]

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act[14] 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 Exchange Act. While the proposed rule change could have an impact on certain Clearing Members, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC's analysis to date indicates that the proposed Sufficiency Scenarios generate stress test exposures that are generally in line with its current, most impactful Sufficiency Scenarios.[15] OCC notes, however, that the results of these proposed scenarios may vary depending on the composition of each individual Clearing Member's portfolio at a given point in time. As a result, the proposed scenarios could from time to time result in more frequent or larger sufficiency stress test margin calls.

The implementation of the new Sufficiency Scenarios would enable OCC to test the sufficiency of its

[6] *See* Securities Exchange Act Release No. 87673 (December 6, 2019), 84 FR 67981 (December 12, 2019) (SR–OCC–2019–807) (Notice of No Objection To Advance Notice Related to Proposed Changes to The Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk) and Securities Exchange Act Release No. 87718 (December 11, 2019), 84 FR 68992 (December 17, 2019) (SR–OCC–2019–010) (Order Approving Proposed Rule Change Related to Proposed Changes to the Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] 17 CFR 240.17Ad–22(e)(4)(iii).

[11] 17 CFR 240.17Ad–22(e)(4)(vi)(A).

[12] 17 CFR 240. 17Ad–22(e)(4)(iii).

[13] 17 CFR 240.17Ad–22(e)(4)(iii) and (vi)(A).

[14] 15 U.S.C. 78q-1(b)(3)(I).

[15] OCC has provided data and analysis concerning the proposed rule change in Confidential Exhibit 3 to SR–OCC–2020–015.

financial resources under a wider range of relevant stress scenarios and respond quickly when OCC believes additional financial resources are required. The proposed changes are designed to improve OCC's ability to measure, monitor and manage its credit exposures to its participants consistent with its regulatory requirements under Rule 17Ad–22(e)(4) [16] and to enhance OCC's ability to manage risks in its role as a systemically important financial market utility. Moreover, the proposed Sufficiency Scenarios were constructed in accordance with OCC's approved stress testing methodology using standard predetermined parameters and assumptions.[17] The proposed Sufficiency Scenarios are historical scenarios designed to represent recent market events from March 2020, which constitute a significant and relevant period of market stress and volatility. As noted above, OCC's analysis to date indicates that the proposed Sufficiency Scenarios generate stress test exposures that are generally in line with expectations and with OCC's current, most impactful Sufficiency Scenarios based on a reflection of current Clearing Member portfolio exposures.[18] However, these scenarios provide diversification in terms of the shocks applied to individual names, which may result in meaningful differences if Clearing Member exposures change, and would help capture risks that OCC's current inventory of Sufficiency Scenarios might not capture in different market conditions. Accordingly, OCC believes that any impact on competition or OCC's Clearing Members would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

[16] 17 CFR 240.17Ad–22(e)(4).

[17] *See supra* note 5.

[18] *See supra* note 15.

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 Exchange 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–2020–015 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–2020–015. 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–2020–015 and should be submitted on or before December 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27394 Filed 12–11–20; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90600; File No. SR–EMERALD–2020–17]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees and Increase Certain Network Connectivity Fees

December 8, 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 November 25, 2020, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) Adopt Port fees; and (2) increase the Exchange's network connectivity fees for its 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members [3] and non-Members (collectively, the ''Proposed Access Fees''). On September 15, 2020, the Exchange issued a Regulatory Circular which announced, among other things, that the Exchange would adopt Port fees, thereby terminating the Waiver Period [4] for such fees, and increase the fees for its 10Gb ULL connection for Members and non-Members, beginning October 1, 2020.[5]

The Exchange initially filed this proposal on October 1, 2020.[6] The First Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020.[7] The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on November 25, 2020 and resubmitted this proposal.[8]

Port Fees

The Exchange proposes to adopt fees for ''Ports'', which are used by Members and non-Members to access the Exchange. MIAX Emerald provides four Port types: (i) The Financial Information Exchange (''FIX'') Port,[9] which allows Members to electronically send orders in all products traded on the Exchange; (ii) the MIAX Emerald Express Interface (''MEI'') Port,[10] which allows Market Makers [11] to submit electronic orders and quotes to the Exchange; (iii) the Clearing Trade Drop Port (''CTD'') Port,[12] which provides real-time trade clearing information to the participants to a trade on MIAX Emerald and to the participants' respective clearing firms; and (iv) the FIX Drop Copy (''FXD'') Port,[13] which provides a copy of real-time trade execution, correction and cancellation information through a FIX Port to any number of FIX Ports designated by an Electronic Exchange Member (''EEM'') [14] to receive such messages. The Exchange also proposes to increase the monthly fee for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports, as described below.

Since the launch of the Exchange, all Port fees have been waived by the Exchange in order to incentivize market participants to connect to the Exchange, except for additional Limited Service MEI Ports. However, also at launch, the Exchange introduced the structure of Port fees on its Fee Schedule (without proposing the actual fee amounts), in order to indicate to market participants that Port fees would ultimately apply upon expiration of the Waiver Period. The Exchange now proposes to assess monthly Port fees for Members and non-Members in each month the market participant is credentialed to use a Port in the production environment and based upon the number of credentialed Ports that a user is entitled to use. MIAX Emerald has Primary and Secondary Facilities and a Disaster Recovery Facility. Each type of Port provides access to all Exchange facilities for a single fee. The Exchange notes that, unless otherwise specifically set forth in the Fee Schedule, the Port fees include the information communicated through the Port. That is, unless otherwise specifically set forth in the Fee Schedule, there is no additional charge for the information that is communicated through the Port apart from what the user is assessed for each Port.

FIX Port Fees

Since the launch of the Exchange, fees for FIX Ports have been waived for the Waiver Period. The Exchange now proposes to assess a monthly FIX Port fee to Members in each month the Member is credentialed to use a FIX Port in the production environment and

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[5] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[6] *See* Securities Exchange Act Release No. 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12) (the ''First Proposed Rule Change'').

[7] *See id.*

[8] *See* Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw the First Proposed Rule Change.

[9] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[10] MIAX Emerald Express Interface is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

[11] ''Market Maker'' refers to ''Lead Market Maker'' (''LMM''), ''Primary Lead Market Maker'' (''PLMM'') and ''Registered Market Maker'' (''RMM''), collectively. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[12] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions Section of the Fee Schedule.

[13] The FIX Drop Copy (''FXD'') Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* Fee Schedule, Section 5)d)iv).

[14] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

based upon the number of credentialed FIX Ports, as follows: $550 for the first FIX Port; $350 for FIX Ports two through five; and $150 for each FIX Port over five.

Below is the proposed table showing the FIX Port fees:

FIX port fees	*MIAX Emerald monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers*
1st FIX Port	*$550.00*
FIX Ports 2 through 5	*350.00*
Additional FIX Ports over 5	*150.00*

MEI Port Fees

MIAX Emerald offers different options of MEI Ports depending on the services required by Market Makers. Since the launch of the Exchange, fees for MEI Ports have been waived for the Waiver Period. The Exchange now proposes to assess monthly MEI Port Fees to Market Makers based upon the number of classes or class volume accessed by the Market Maker. Market Makers are allocated two (2) Full Service MEI Ports [15] and two (2) Limited Service MEI Ports [16] per Matching Engine [17] to which they connect. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center.

Specifically, the Exchange proposes to adopt MEI Port fees assessable to Market Makers based upon the number of classes or class volume accessed by the Market Maker. The Exchange proposes to adopt the following MEI Port fees: (i) $5,000 for Market Maker Assignments in up to 5 option classes or up to 10% of option classes by volume; (ii) $10,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by volume; (iii) $14,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by volume; (iv) $17,500 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (v) $20,500 for Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald.

The Exchange also proposes to adopt new footnote "■" for its MEI Port fees that will apply to the Market Makers who fall within the following MEI Port fee levels, which represent the 4th and 5th levels of the fee table: Market Makers who have (i) Assignments in up to 100 option classes or up to 50% of option classes by volume and (ii) Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald. Specifically, the Exchange proposes for these monthly MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald–listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

The purpose of this proposed lower monthly MEI Port fee is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option industry marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fixed cost. The Exchange notes that other options exchanges assess certain of their fees at different rates, based upon a member's participation on that exchange,[18] and, as such, this concept is not novel. The proposed changes to the MEI Port fees for Market Makers who fall within the 4th and 5th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

For the calculation of the monthly MEI Port Fees that apply to Market Makers, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.[19] Newly listed option classes are excluded from the calculation of the monthly MEI Port Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange proposes to assess Market Makers the monthly MEI Port Fees based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange currently charges $50 per month for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI Ports per matching engine that are allocated with the Full Service MEI Ports. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's Primary and Secondary data centers and its Disaster Recovery center. Currently, footnote "*" in the MEI Port Fee table provides that the fees for Additional Limited Service MEI Ports are not subject to the Waiver Period. Accordingly, in connection with this proposal, the Exchange proposes to delete footnote "*" since the Exchange proposes to begin assessing MEI Port fees, which will no longer be subject to the Waiver Period. The Exchange also proposes to increase the monthly fee from $50 to $100 for each additional Limited Service MEI Port per matching engine for Market Makers over and above the two (2) Limited Service MEI

[15] *See supra* note 10.

[16] *See id.*

[17] A "matching engine" is a part of the MIAX Emerald electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines. *See* the Definitions Section of the Fee Schedule.

[18] *See, e.g.,* Cboe BZX Options Exchange ("BZX Options") assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under "Membership Fees". The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts.

[19] The Exchange will use the following formula to calculate the percentage of total national average daily volume that the Market Maker assignment is for purposes of the MEI Port Fee for a given month:

Market Maker assignment percentage of national average daily volume = [total volume during the prior calendar quarter in a class in which the Market Maker was assigned]/[total national volume in classes listed on MIAX in the prior calendar quarter].

Ports per matching engine that are allocated with the Full Service MEI Ports.

Below is the proposed table showing the MEI Port fees:

Monthly MIAX Emerald MEI Fees	Market maker assignments (the lesser of the applicable measurements below)	
	Per class	% of National Average Daily Volume.
.....	.	
$5,000.00	Up to 5 Classes	Up to 10% of Classes by volume.
10,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
14,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
17,500.00 ▪	Up to 100 Classes	Up to 50% of Classes by volume.
20,500.00 ▪	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX Emerald.

▪ For these Monthly MIAX Emerald MEI Port tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $14,500 instead of the fee otherwise applicable to such level.

Purge Port Fees

The Exchange also offers Market Makers the ability to request and be allocated two (2) Purge Ports [20] per Matching Engine to which it connects. Purge Ports provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. Since the launch of the Exchange, fees for Purge Ports have been waived for the Waiver Period. The Exchange now proposes to amend its Fee Schedule to adopt fees for Purge Ports. For each month in which the MIAX Emerald Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange proposes to assess the MIAX Emerald Market Maker a flat fee $1,500, regardless of the number of Purge Ports allocated to the MIAX Emerald Market Maker.

CTD Port Fees

The Exchange proposes to assess a CTD Port fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to the proposed CTD Port Fees.[21] Since the launch of the Exchange, CTD Port Fees have been waived for the Waiver Period. CTD provides Exchange members with real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); (v) Exchange Member Participant Identifier (''MPID'') for each side of the transaction, including Clearing Member MPID; and (vi) strategy specific information for complex transactions. CTD Port fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment. The Exchange proposes to assess a CTD Port fee of $450 per month. Below is the proposed table for the CTD Port fees:

Description	Monthly fee
Real-Time CTD Information	$450.00

FXD Port Fee

The Exchange proposes to assess an FXD Port Fee as a monthly fixed amount, not tied to transacted volume of the Member. This fixed fee structure is the same structure in place at Nasdaq PHLX with respect to FXD Port Fees.[22] Since the launch of the Exchange, FXD Port Fees have been waived for the Waiver Period. FXD is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. The Exchange proposes to assess an FXD Port fee of $500 per month. Below is the proposed table for the FXD Port fees:

Description	MIAX Emerald monthly port fees includes connectivity to the primary, secondary and disaster recovery data centers
FIX Drop Copy Port	$500.00

10Gb ULL Connectivity Fee

The Exchange proposes to amend Sections (5a) and (b) of the Fee Schedule to increase the monthly network connectivity fees for the 10Gb ULL fiber connection, which is charged to both Members and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange offers to both Members and non-Members two bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange now proposes to increase its monthly network connectivity fee for its 10Gb ULL connection to $10,000 for Members and non-Members.

* * * * *

MIAX Emerald believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. MIAX Emerald believes this high standard is especially

[20] ''Purge Ports'' provide Market Makers with the ability to send quote purge messages to the MIAX Emerald System. Purge Ports are not capable of sending or receiving any other type of messages or information. *See* the Definitions Section of the Fee Schedule.

[21] *See* Nasdaq PHLX Pricing Schedule, Options 7, Section 9, Other Member Fees, B. Port Fees.

[22] *Id.*

important when an exchange imposes various access fees for market participants to access an exchange's marketplace. MIAX Emerald deems Port fees and Connectivity fees to be access fees. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability (before the proposed changes), and the Exchange's revenues, costs, and profitability (following the proposed changes) for the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs associated with providing the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the services included in the Proposed Access Fees. The sum of all such portions of expenses represents the total cost of the Exchange to provide the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with providing the Proposed Access Fees, the Exchange analyzed the number of Members and non-Members currently utilizing the Exchange's services associated with the Proposed Access Fees during 2020, and, utilizing a recently completed monthly billing cycle, extrapolated annualized revenue on a going-forward basis.

The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2019. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2019 or for the first three quarters of 2020, the Exchange believes its 2019 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 (actual for the first 9 months and projected for the final 3 months) revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

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On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[23] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[24] On December 20, 2019, the Exchange adopted Connectivity Fees in a filing utilizing a cost-based justification framework that is substantially similar to the cost-based justification framework utilized for the instant Proposed Access Fees.[25] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they do not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange to establish Connectivity Fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[26] in general, and furthers the objectives of Section 6(b)(4) of the Act[27] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[28] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Exchange launched trading on March 1, 2019. As of October 2020, the Exchange had only a 3.60% market share of the U.S. options industry.[29] The Exchange is not aware of any evidence that a market share of approximately 3% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would join or connect, and existing market participants would disconnect.

Separately, the Exchange is not aware of any reason why market participants

[23] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[24] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[25] *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 84 FR 738 (January 7, 2020) (SR–EMERALD–2019–39).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

could not simply drop their connections to an exchange (or not connect to an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense for such market participant to connect to such exchange. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on non-transaction fee pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[30] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' [31] Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or other non-transaction fees for its relevant marketplace, market participants can choose to disconnect from such exchange.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Access Fees will not result in excessive or supra-competitive profit. The costs associated with providing access to Exchange Members and non-Members, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year, and are projected to increase year-over-year in the future. In particular, the Exchange has experienced a material increase in its costs in 2020, in connection with a project to make its network environment more transparent and deterministic, based on customer demand. This project will allow the Exchange to enhance its network architecture with the intent of ensuring a best-in-class, transparent and deterministic trading system while maintaining its industry leading latency and throughput capabilities. In order to provide this greater amount of transparency and higher determinism, MIAX Emerald has made significant capital expenditures (''CapEx''), incurred increased ongoing operational expenditures (''OpEx''), and undertaken additional engineering research and development (''R&D'') in the following areas: (i) Implementing an improved network design to ensure the minimum latency between multicast market data signals disseminated by the Exchange across the extranet switches, improving the unicast jitter profile to reduce the occurrence of message sequence inversions from Members to the Exchange quoting gateway processors, and introducing a new optical fiber network infrastructure that ensures the optical fiber path for participants within extremely tight tolerances; (ii) introducing a re-architected and engineered participant quoting gateway that ensures the delivery of messages to the match engine with absolute determinism, eliminating the message processing inversions that can occur with messages received nanoseconds apart; and (iii) designing an improved monitoring platform to better measure the performance of the network and systems at extremely tight tolerances and to provide Members with reporting on the performance of their systems. The CapEx associated with only phase 1 of this project in 2020 was approximately $1.85 million. This expense does not include the significant increase in employee time and other resources necessary to maintain and service this network, which expense is captured in the operating expense discussed below. This project, which results in a material increase in expense of the Exchange, is a primary driver for the increase in network connectivity fees proposed by the Exchange.

The Exchange believes the proposed increase to the 10Gb ULL connection is an equitable allocation of reasonable fees because 10Gb ULL purchasers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. Further, the Exchange believes the Proposed Access Fees are equitably allocated because of customer demand for an even more transparent and deterministic network, as described above, which has resulted in higher CapEx, increasingly higher OpEx, and increased costs to engineering R&D. The Proposed Access Fees are equitably allocated in this regard because the majority of customer demand is coming from purchasers of the 10Gb ULL connections, which Member and non-Member firms transact the vast majority of volume on the Exchange. Accordingly, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to recoup the majority of its costs associated with the project to make the network more transparent and deterministic from market participants utilizing 10Gb ULL connections on the Exchange.

The Exchange believes that the proposed increase to the 10Gb ULL fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of those, users of the 10Gb ULL connections generate approximately 3 billion messages, and users of the 1Gb connections generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the

[30] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[31] *See id.*

overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 98% of the volume on the Exchange for the month of October 2020. This overall volume percentage (98% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (99% of total Exchange connectivity revenue). For example, utilizing the same recently completed billing cycle described above, Exchange Members and non-Members that purchased 10Gb ULL connections accounted for approximately 99% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and (ii) Members and non-Members that purchased 1Gb connections accounted for approximately 1% of the revenue collected by the Exchange from all connectivity alternatives [sic]

The Exchange further believes that the increased fee for the 10Gb ULL connection is an equitable allocation of reasonable fees as the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb ULL network connection. Pursuant to its extensive cost review described above and in connection with the Exchange's new project to increase transparency and determinism, the Exchange believes that the average cost to provide a 10Gb ULL network connection is approximately 8 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb ULL connection are not 8 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb ULL connection which cause it to be 8 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

The Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of R&D effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

In order to provide more detail and to quantify the Exchange's costs associated with providing access to the Exchange in general, the Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the services associated with the Proposed Access Fees increase. For example, new 10Gb ULL connections and Ports require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. Further, as the total number of all connections and Ports increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not fixed. The Exchange believes the Proposed Access Fees are reasonable in order to offset the costs to the Exchange associated with providing access to its network infrastructure.

Further, because the costs of operating its own data center are significant and not economically feasible for the Exchange at this time, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that other competing exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. The Proposed Access Fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

The Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance and improvement of existing tools and the development of new tools.

Additionally, certain Exchange-developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset those costs through the Proposed Access

Fees. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the Proposed Access Fees that must be charged to access it, in order to recover those costs.

The Exchange only has four primary sources of revenue: transaction fees, access fees (of which the Proposed Access Fees constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX Emerald associated with providing these services versus the total projected annual revenue that the Exchange projects to collect. For 2020, the total annual expense for providing the services associated with the Proposed Access Fees for MIAX Emerald is projected to be approximately $9.3 million. The $9.3 million in projected total annual expense is comprised of the following, all of which are directly related to the services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees. As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 (actual for the first 9 months and projected for the final 3 months) revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[32] The $9.3 million in projected total annual expense is directly related to the services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the Proposed Access Fees.

For 2020, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide the services associated with the Proposed Access Fees, is projected to be $1,932,519. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI'')[33], which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 73% of the total Equinix expense (68% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, MIAX and MIAX PEARL, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would

[32] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-part expense described in this filing is attributed to the same line item for the Exchange's 2020 Form 1 Amendment, which will be filed in 2021.

[33] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

not be able to operate and support the network and provide the services associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 66% of the total Zayo expense (62% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 94% of the total SFTI and other service providers' expense (89% allocated towards the cost of providing the provision of network connectivity and 5% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 57% of the total hardware and software provider expense (54% allocated towards the cost of providing the provision of network connectivity and 3% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

For 2020, total projected internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees, is projected to be $7,367,259. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those items to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing the services associated with the Proposed Access Fees is projected to be $4,489,924, which is only a portion of the $9,354,009 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 48% of the total employee compensation and benefits expense (39% allocated towards the cost of providing the provision of network connectivity and 9% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $2,630,687, which is only a portion of the $3,812,590 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching

infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 69% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment (65% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $246,648, which is only a portion of the $474,323 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the Proposed Access Fees. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 52% of the total occupancy expense (48% allocated towards the cost of providing the provision of network connectivity and 4% allocated towards the cost of providing ports). The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review [sic]

The Exchange's monthly projected revenue for the Proposed Access Fees is based on the following projected purchases by Members and non-Members, which is based on a recent billing cycle: (i) 63 10Gb ULL connections; (ii) 14 CTD Ports; (iii) 8 FXD Ports; (iv) 113 FIX Ports; (v) 352 Limited Service MEI Ports; (vi) 37 Full Service MEI Ports;[34] and (vii) 10 Purge Ports. As described above, the fee charged to each Market Maker for MEI Ports can vary from month to month depending on the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, and upon certain class volume percentages. The Exchange also provides a further discount for a Market Maker's MEI Port fees if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month. Further, the projected revenue from FIX Port fees is subject to change from month to month depending on the number of FIX Ports purchased. Accordingly, based on current assumptions and approximations, the Exchange projects total monthly Port revenue of approximately $251,600 and total 10Gb ULL connectivity of approximately $630,000.

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, for 2020, the Exchange's total revenue associated with the Proposed Transaction Fees for the first 9 months of 2020, was approximately $3.9 million. Total projected revenue associated with the Proposed Access Fees for the remaining three months of 2020 is approximately $2.5-$2.6 million. Therefore, total projected revenue for the Exchange for 2020 for the provision of the Proposed Access Fees is approximately $6.5 million. Total projected expense for the Exchange for 2020 for the provision of the Proposed Access Fees is approximately $9.3 million. Accordingly, the provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit (rather, it will result in a loss of $2.8 million for 2020).

On a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the services associated with the Proposed Access Fees would be approximately $10.2 million per annum, based on a most recently completed billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees would be approximately $9.3 million per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 9% profit margin on the Proposed Access Fees ($10.2 million − 9.3 million = $900,000 per annum). This profit margin does not take into account the cost of the CapEx the Exchange is projected to spend in 2020 of $1.85 million, or the amounts the Exchange is projected to spend each year on CapEx going forward.

For the avoidance of doubt, none of the expenses included herein relating to the services associated with the Proposed Access Fees relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice.

[34] The Exchange's projections included 9 firms or their affiliates purchasing Full Service MEI Ports. Of those firms, the Exchange projects that 6 firms will achieve the highest tier in the MEI Port fee table, 2 firms will achieve the lowest tier in the MEI Port fee table, and 1 firm will achieve the middle tier in the MEI Port fee table.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the Proposed Access Fees to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. The Proposed Access Fees are intended to recover the Exchange's costs of operating and supporting the network. Accordingly, the Exchange believes that the Proposed Access Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from the Proposed Access Fees, including the increased amount.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Access Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. The Exchange had one of its member firms cancel its membership with the Exchange as a direct result of the Proposed Access Fees. The Exchange also notes that it has far less Members as compared to the much greater number of members at other options exchanges. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect, as described above.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of October 2020, the Exchange had a market share of approximately 3.60% of executed multiply-listed equity options [35] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[36] and Rule 19b–4(f)(2) [37] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2020–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2020–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[35] *See supra* note 29.

[36] 15 U.S.C. 78s(b)(3)(A)(ii).

[37] 17 CFR 240.19b–4(f)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2020–17 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27392 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90593; File No. SR–CBOE–2020–050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend Rules 5.37 and 5.73 Related to the Solicitation of Market Makers for SPX Initiating Orders in the Automated Improvement Mechanism and FLEX Automated Improvement Mechanism

December 8, 2020.

On June 3, 2020, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit orders for the accounts of market makers with an appointment in S&P 500® Index Options (''SPX'') to be solicited for the initiating order submitted for execution against an agency order into an Automated Improvement Mechanism (''AIM'') auction or a FLEX AIM auction. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 2, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 22, 2020, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On July 27, 2020, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] On August 21, 2020, the Commission published notice of Amendment Nos. 1 and 2 and instituted proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[9]

Section 19(b)(2) of the Act[10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was June 18, 2020. December 15, 2020, is 180 days from that date, and February 13, 2021, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates February 13, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 (File No. SR–CBOE–2020–050).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27388 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89062 (June 12, 2020), 85 FR 36907. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050.htm.*

[4] In Amendment No. 1, the Exchange: (1) Limited the scope of its original proposal, which would have permitted orders for the accounts of market makers with an appointment in any class to be solicited for the initiating order in an AIM or FLEX AIM auction in that class, to only allow market makers with an appointment in SPX to be solicited for the initiating order in an AIM or FLEX AIM auction in SPX; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7382058-218888.pdf.*

[5] In Amendment No. 2, the Exchange: (1) Provided additional data, justification, and support for its proposal; and (2) made technical corrections and clarifications to the description of the proposal. The full text of Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-050/srcboe2020050-7464399-221161.pdf.*

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 89398, 85 FR 46197 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 89635, 85 FR 53051 (August 27, 2020).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90607; File No. SR–BX–2020–034]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 4613, 4702, and 4703

December 8, 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 November 25, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 4613, 4702, and 4703 in light of planned changes to the System, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [3] and Order Attributes [4] that are currently only available via the RASH Order entry protocol.[5] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [6] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocols.[7] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.

To support and prepare for these upgrades and enhancements, the Exchange now proposes to amend its Rules governing Order Types and Order Attributes, at Rules 4702 and 4703, respectively. In particular, the Exchange proposes to adjust the current functionality of the Market Maker Peg Order [8] and Reserve Size Order Attribute,[9] as described below, so that they align with how the System, once upgraded, will handle these Orders going forward. The Exchange also proposes to make several associated clarifications and corrections to these Rules, and to Rule 4613, as it prepares to enhance its order handling processes.

The Exchange notes that the Exchange's affiliate, the Nasdaq Stock Market, LLC, recently filed a proposal for immediate effectiveness to make changes that are materially identical to those proposed herein.[10]

Changes to Market Maker Peg Order

A Market Maker Peg Order is an Order Type that exists to help a Market Maker to meet its obligation to maintain continuous two-sided quotations (the ''Two-Sided Obligation''), as set forth in Rule 4613(a)(2).[11] The Exchange proposes to make four changes related to the Market Maker Peg Order.

First, the Exchange proposes to amend Rule 4702(b)(7) to correct the conditions under which a Market Maker Peg Order will be sent back to a Participant. Rule 4702(b)(7) currently states that a Market Maker Peg Order will be sent back to the Participant if: (1) Upon entry of the Order, the limit price of the Order is not within the Designated Percentage;[12] or (2) after the Order has been posted to the Exchange Book, the Reference Price [13] shifts to reach the Defined Limit,[14] such that the Order is subject to re-pricing at the Designated Percentage away from the shifted Reference Price, but the limit price of the Order would then fall

[3] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Rule 4701(e).

[4] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[5] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[6] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. *See https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[7] The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[8] *See* Rule 4702(b)(7).

[9] *See* Rule 4703(h).

[10] *See* Securities Exchange Act Release No. 34–90389 (November 10, 2020), 85 FR 73304 (November 17, 2020) (SR–NASDAQ–2020–71).

[11] *See* Rule 4613(a)(2).

[12] *See* Rule 4702(b)(7). The ''Designated Percentage'' is 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1. *See* Rule 4613(a)(2)(D). As discussed below, the Exchange proposes to amend this definition.

[13] The ''Reference Price'' for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including the Exchange), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. *See* Rule 4702(b)(7).

[14] The term ''Defined Limit'' means 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1. *See* Rule 4613(a)(2)(E).

outside of the Defined Limit (which would now be measured by the difference between the re-priced Order and the shifted Reference Price).[15]

The Exchange proposes to correct the second of these two conditions because it inadvertently allows for a circumstance in which a Market Maker Peg Order will be automatically re-priced by the System to a limit price that is outside of the Designated Percentage but inside of the Defined Limit. Such an outcome is inconsistent with a Market Maker's obligations to price or reprice its bid (offer) quotations not more than the Designated Percentage away from the then National Best Bid (Offer), as set forth in Rule 4613(a)(2).[16] In order for Rule 4702(b)(7) to be consistent with Rule 4613(a)(2), Rule 4702(b)(7) cannot permit the System to re-price a Market Maker Peg Order to a limit price that is outside of the Designated Percentage. In any circumstance in which the Order would be re-priced to a limit that is outside of the Designated Percentage, the Rule must require the System to return the Order to the Participant. The Exchange proposes to amend Rule 4702(b)(7) accordingly.[17]

Second, the Exchange proposes to amend Rule 4702(b)(7) to no longer allow entry of a Market Maker Peg Order entered with an offset. The Rule presently permits a Market Maker to enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but not a less aggressive offset. The Exchange has reviewed usage of offsets with Market Maker Peg Orders and found that no Market Maker assigned an offset to their Market Maker Peg Orders since January 2019. The Exchange does not believe that there is value in keeping offsets as an option for Market Maker Peg Orders. Accordingly, the Exchange proposes to delete text from Rule 4702(b)(7)(A) that discusses offsets and replace it with text stating that Market Maker Peg Orders entered with pegging offsets will not be accepted. The Exchange also makes conforming changes to Rule 4702(b)(7) where the text refers to offsets.

Third, the Exchange proposes to delete ''Trade Now'' [18] from the list of Order Attributes that may be associated with Market Maker Peg Orders under Rule 4702(b)(7). As noted above, Market Maker Peg Orders allow Market Makers to maintain continuous two-sided quotations at displayed prices that are compliant with the Market Makers' obligations under Rule 4613. By their nature, Market Maker Peg Orders are always Displayed Orders, while Orders with Trade Now are Non-Displayed Orders.[19] Consequently, there are no circumstances in which a Market Maker Peg Order could have Trade Now associated with it; the Exchange proposes to delete text from Rule 4702(b)(7)(B) that incorrectly suggests otherwise. For the same reason, the Exchange also proposes to delete Trade Now from the list of Order Attributes that may be associated with Price to Display Orders;[20] again, Price to Display Orders are Displayed Orders, whereas Trade Now is applicable to Non-Displayed Orders.[21]

Fourth, the Exchange proposes to amend Rule 4702(b)(7) to account for a scenario where, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (Offer). The Exchange proposes to state that the Exchange will not reprice the Market Maker Peg Order in this scenario until a new Reference Price is established that is more aggressive than the displayed price of the Order. By specifying that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, the Exchange will ensure that it does not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

Change to Rule 4613

Next, the Exchange proposes to clarify the definitions of ''Designated Percentage'' in Rule 4613(a)(2)(D) and ''Defined Limit'' in Rule 4613(a)(2)(E), which presently are as follows:

(D) For purposes of this Rule, the ''Designated Percentage'' shall be 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1.

(E) For purposes of this Rule, the ''Defined Limit'' shall be 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell

[15] *See* Rule 4702(b)(7).

[16] Rule 4613(a)(2) states that for a Market Maker to satisfy its Two-Sided Obligation, the Market Maker must price bid (offer) interest not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if there is no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor). Moreover, Rule 4613(a)(2) states that if the National Best Bid (Offer) or reported sale increases (decreases) to a level that would cause the bid (offer) interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (offer) or last reported sale, or if the bid (offer) is executed or cancelled, then the Market Maker must enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) or last reported sale.

[17] The Exchange also proposes to amend this condition to state that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price exceeds, rather than merely reaches, the Defined Limit. Currently, the Rule uses the term ''reaches,'' but this is inconsistent with the example that follows it (''In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increases to $10.17, such that the displayed price of the Market Maker Peg Order would be *more than* 9.5% away, the Order will be repriced to $9.36, or 8% away from the National Best Bid.'') (emphasis added). The Exchange proposes to reconcile this inconsistency in a manner that reflects the stated example as well as the manner in which the Exchange's System presently applies the Rule. It would also render the Rule consistent with Market Maker obligations under Rule 4613.

[18] ''Trade Now'' is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the BX Book with the same priority. *See* Rule 4703(l).

[19] ''Display'' is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as ''Non-Displayed Orders.'' An Order with a Display Order Attribute may be referred to as a ''Displayed Order.'' *See* Rule 4703(k).

[20] ''Price to Display'' is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. *See* Rule 4702(b)(2).

[21] The Exchange also proposes to amend its discussion of Price to Display Orders, in Rule 4702(b)(2), to correct an erroneous reference to a ''Price to Comply Order'' that should read ''Price to Display Order.''

1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than $1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than $1.

The Exchange is concerned that these two provisions could be misinterpreted to suggest that prior to 9:30 a.m., when Rule 4120(a)(11) is not in effect, the Exchange applies a narrower Designated Percentage and Defined Limit than it does between 9:30 and 9:45 a.m., under the same conditions. In fact, the Exchange applies the same wider Designated Percentage and Defined Limit prior to 9:30 a.m. as it does between 9:30 and 9:45 a.m. To avoid confusion (and without changing existing market maker obligations), the Exchange therefore proposes to clarify both of these provisions of Rule 4613(a)(2) to read that ''prior to 9:45 a.m.'' and between 3:35 p.m. and the close of trading, the Designated Percentage and Defined Limit (including for Market Maker Peg Orders) shall be as stated. Furthermore, throughout Rule 4613(a)(2)(D), in defining the term ''Designated Percentage,'' the Exchange proposes to replace references to securities subject to Rule 4120(a)(11) with the following: (i) The Designated Percentage shall be 8% for all Tier 1 NMS Stocks under the LULD Plan,[22] (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1, and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than $1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage shall be: (i) 20% for Tier 1 NMS Stocks under the LULD Plan; (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1; and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than $1. Similarly, in Rule 4613(a)(2)(E), in defining the term ''Defined Limit,'' the Exchange proposes to replace references to securities subject to Rule 4120(a)(11)(A), (B), and (C) [sic] with the following: (i) 9.5% for all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than $1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit shall be: (i) 21.5% all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than $1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than $1. The Exchange proposes this change because references to Rule 4120(a)(11) are obsolete.

The Exchange also proposes to add to Rule 4613(a)(2)(D) that the Designated Percentage for rights and warrants shall be 30% and to Rule 4613(a)(2)(E) that the Defined Limit for rights and warrants shall be 31.5%. The Exchange mistakenly omitted the Designated Percentage and Defined Limit for such securities from prior filings.

Changes to Reserve Size

As set forth in Rule 4703(h), ''Reserve Size'' is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.[23] The Exchange proposes three changes to the rule text describing the Reserve Size Order Attribute.

First, the Exchange proposes to amend a paragraph of Rule 4703(h) which begins as follows: ''Whenever a Participant enters an Order with Reserve Size, the System will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.'' The Exchange proposes to amend this language because it does not describe precisely how the Exchange processes Orders with Reserve Size. The Exchange proposes to state instead that whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in compliance with Regulation NMS and that thereafter, unexecuted portions of the Order will be processed as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. The Exchange also proposes to delete the following sentence: ''Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.'' The proposed re-formulation reflects that it is possible that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it clarifies that the System will present the Order for immediate execution (provided that it does not trade through a protected quotation, in accordance with Regulation NMS) without complying with underlying characteristics of the Order Type that might otherwise require an adjustment to the price of the Order before the System attempts to execute it.[24] The proposed language is consistent with the following example set forth in the existing rule text:

> For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

The proposed language eliminates confusion that might otherwise arise from perceived inconsistencies between the above example and existing rule text. Again, the existing rule text states that whenever a participant enters an Order with Reserve Size, the System will process the Reserve Order as two orders upon entry and also, upon entry, the full size of an Order with Reserve will be presented for potential execution in accordance with the parameters applicable to the Order Type.

When there is, in fact, an unexecuted portion of the Order, then the Exchange will continue to process the unexecuted

[22] Tier 1 NMS Stocks under the LULD Plan comprise all NMS Stocks included in the S&P 500® Index, Russell 1000® Index, and a list of Exchange Traded Products identified as Schedule 1 to the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934 (the ''LULD Plan'').

[23] An Order with Reserve Size may be referred to as a ''Reserve Order.''

[24] This clarification is needed due to the fact that pursuant to Rule 4702(b)(2)(A), a Price to Display Order would automatically reprice upon entry if its entered limit price would lock or cross a protected quotation.

portion as two Orders: A Displayed Order and a Non-Displayed Order.

Second, the Exchange proposes to delete text from Rule 4703(h) which states that ''[a] Participant may stipulate that the Displayed Order should be replenished to its original size.'' The Exchange proposes to delete this text because it is redundant of text elsewhere in the Rule that describes how a Displayed Order with Reserve Size replenishes.[25]

Third, the Exchange proposes to amend text from Rule 4703(h) that allows participants to designate that the original and subsequent displayed sizes of the Displayed Order are amounts randomly determined based upon factors they select (''Random Reserve''). The amendments also state that when Participants stipulate use of a Random Reserve, they would select a nominal (rather than a ''theoretical'') displayed size, which is a more precise term. Furthermore, the amendment adds a reminder that the actual displayed size will be randomly determined by the System from a range of ''normal trading units.'' Lastly, the amendments include other changes that do not change the substantive meaning of the text, but simply improve its readability.

The Exchange intends to implement the foregoing changes during the First Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 30 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that it is consistent with the Act to amend Rule 4702(b)(7), which describes the Market Maker Peg Order Type, to correct one of the stated conditions under which a Market Maker Peg Order will be sent back to a Participant. As presently stated, this condition provides for Market Maker Peg Orders to be repriced automatically at limit prices that are within the Defined Limit, but outside of the Designated Percentage, which places them in conflict with Rule 4613(a)(2), which requires Market Makers to price and re-price bid and offer interest at the Designated Percentage. It is just and in the interests of the investors and the public for the Exchange to correct Rule 4702(b)(7) to ensure that Market Maker Peg Orders operate in a manner that helps rather than hinders Market Makers from complying with Rule 4613.

It is also consistent with the Act for the Exchange to amend Rule 4702(b)(7) to clarify that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price ''exceeds,'' rather than merely ''reaches,'' the Defined Limit, as the Rule states presently. The proposed change would ensure that the Rule text is internally consistent, as the example set forth in the text suggests that the Rule should be read to mean exceeds. It would also render the Rule consistent with Market Maker obligations under Rule 4613. The Exchange believes that it is in the interest of investors and the public to eliminate such inconsistencies.

Meanwhile, the Exchange believes that it is consistent with the Act to eliminate the option for Participants to enter offsets from the Market Maker Peg Orders. The proposal is consistent with the Act because Market Makers do not actively employ such offsets. As noted above, the Exchange has reviewed usage of offsets with Market Maker Peg Orders and found that no Market Maker has assigned an offset with their Market Maker Peg Orders since January 2019. Moreover, elimination of the option to enter offsets would simplify the Exchange's efforts to improve processing.

The Exchange's proposal to eliminate Trade Now as an Order Attribute that may be associated with the Market Maker Peg and Price to Display Order Types is consistent with the Act because there are no instances in which Trade Now actually may be associated with a Market Maker Peg Order or a Price to Display Order. Eliminating the reference to Trade Now in 4702(b)(2) and (7) will serve to avoid market Participant confusion that may otherwise arise from associating an incompatible Order Attribute with these Order Types.

The Exchange believes that it is consistent with the Act to clarify Rule 4702(b)(7) so that it specifies how the System will react when, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (National Best Offer). Specifically, the Exchange believes that it is just and in the interests of investors to specify that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, because doing so ensures that the Exchange will not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

The Exchange's proposal to amend the definitions of ''Designated Percentage'' and ''Defined Limit,'' as set forth in Rule 4613(a)(2)(D) and (E), is consistent with the Act because the amendment is necessary to correct obsolete cross-references and to avoid confusion about which particular percentage or limit will apply to orders prior to 9:30 a.m. The proposal clarifies the Rule by stating expressly that the same sets of bands that apply between 9:30–9:45 a.m. and between 3:35 p.m. and the close of trading also apply prior to 9:30 a.m. The proposal also specifies a Designated Percentage and a Defined Limit for rights and warrants, which were mistakenly omitted from prior filings.

It is also consistent with the Act to amend Rule 4703(h) to clarify that when a Participant enters an Order with Reserve Size, the full size of the Order will first be presented for potential execution in compliance with Regulation NMS, and only if there is an unexecuted portion of the Order will it be processed as a Displayed Order and a Non-Displayed Order. This clarification describes the behavior of the System more precisely than the existing Rule language. It also reflects the possibility that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it eliminates inconsistency between rule text which presently suggests that the System will process the Order with Reserve Size for potential immediate execution consistent with the characteristics of its underlying Order Type, and an example in the rule text in which the Exchange provides that the System will process the Order for potential immediate execution regardless of the parameters applicable to the Order Type. The proposed amendment will resolve this inconsistency by making clear that the System will present an order for

[25] The Exchange proposes to clarify a portion of Rule 4703(h) which states that if an execution against a Displayed Order causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the ''level'' stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. In describing the entry of the new Displayed Order in this instance, the Exchange proposes to replace the word ''level'' with ''limit price and size,'' which is a more precise phrase.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

potential immediate execution regardless of the characteristics of the underlying Order Type, with the caveat that the Order will not trade-through a protected quotation as required by Regulation NMS.

It is consistent with the Act to amend Rule 4703(h) to state that when participants stipulate use of a Random Reserve, they would select a ''nominal''—rather than a ''theoretical'' displayed size. The proposed term ''nominal'' is more precise than the existing Rule text. Improving the precision of the Exchange's Rules improves the ability of the public and investors to comprehend them and account for and comply with them. For similar reasons, proposed non-substantive amendments to other text in Rule 4703(h) are consistent with the Act because they would improve the readability of the Rule.

Finally, the Exchange believes that various proposed non-substantive clarifications and corrections to the text of the Rule will improve its readability, which is in the interests of market participants and investors, and would promote a more orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that clarify and correct the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will burden intra-market competition among various Exchange Participants. Proposed changes to the Market Maker Peg Order Type, at Rule 4702(b)(7), and to Rule 4613, will apply equally to all Market Makers. Market Makers will experience no competitive impact from proposals to eliminate their ability to use offsets with Market Maker Peg Orders or the Trade Now functionality for Market Maker Peg Orders and Price to Display Orders because Market Makers do not actually utilize offsets and cannot, by definition, apply Trade Now to Market Maker Peg Orders or Price to Display Orders. Likewise, Market Makers will feel no competitive effects from proposed corrections and clarifications to the manner in which the Exchange prices and re-prices their Market Maker Peg Orders, except that the changes will benefit Market Makers by ensuring that the Exchange always processes those Orders in a manner that complies with their Market Maker pricing obligations under Rule 4613. Proposed changes to Rule 4613 are intended to update obsolete references and to correct inadvertent errors and should have no competitive impact on Market Makers. Proposed clarifications and amendments to the Reserve Order Attribute Rule, at Rule 4703(h), are intended to improve the precision and readability of the Rule text and will not have any competitive impact on participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and Rule 19b–4(f)(6) thereunder.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–BX–2020–034 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–BX–2020–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–034 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27397 Filed 12–11–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90596; File No. SR–ISE–2020–40]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Market Maker Plus Program Under Options 7, Section 3, Regular Order Fees and Rebates

December 8, 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 November 24, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Market Maker Plus program under Options 7, Section 3, ''Regular Order Fees and Rebates.''

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR–ISE–2020–36). On November 12, 2020, the Exchange withdrew SR–ISE–2020–36 and submitted SR–ISE–2020–35 on November 13, 2020. On November 24, 2020 the Exchange withdrew SR–ISE–2020–35 and submitted this replacement filing.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Maker Plus program under Options 7, Section 3, ''Regular Order Fees and Rebates.'' The purpose of the proposed rule change is to amend certain qualifications for Market Makers to achieve Market Maker Plus status in order to continue to incentivize Market Makers to add liquidity on ISE.

Background

As set forth in Options 7, Section 3 of the Pricing Schedule, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols[3] and Non-Select Symbols[4] that provides the below tiered rebates to Market Makers[5] based on time spent quoting at the National Best Bid or National Best Offer (''NBBO''). This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select and Non-Select Symbols.

SELECT SYMBOLS OTHER THAN SPY, QQQ, IWM, AMZN, FB, AND NVDA

Market maker plus tier (specified percentage)	Maker rebate
Tier 1 (80% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	(0.18)
Tier 3 (95% or greater)	(0.22)

SPY, QQQ, AND IWM

Market maker plus tier (specified percentage)	Regular maker rebate	Linked maker rebate (9) (12)
Tier 1a (50% to less than 65%)	($0.00)	N/A
Tier 1b (65% to less than 80%)	(0.05)	N/A
Tier 2 (80% to less than 85%)	(0.18)	(0.15)
Tier 3 (85% to less than 90%)	(0.22)	(0.19)
Tier 4 (90% or greater)	(0.26)	(0.23)

AMZN, FB, AND NVDA

Market maker plus tier (specified percentage)	Maker rebate (14)
Tier 1 (70% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	(0.18)

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. *See* Options 7, Section 1.

[4] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. *See* Options 7, Section 1.

[5] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(20).

AMZN, FB, AND NVDA—Continued

Market maker plus tier (specified percentage)	Maker rebate (14)
Tier 3 (95% or greater)	(0.22)

NON-SELECT SYMBOLS (EXCLUDING INDEX OPTIONS) (7)

Market maker plus tier (specified percentage)	Maker fee/rebate
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	0.30
Tier 3 (98% or greater)	(6) (0.40)

Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive 30 calendar day periods, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.[6]

A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate.[7]

Proposal

The Exchange proposes to amend Tiers 1b, 2, 3 and Tier 4 of the Market Maker Plus qualifications for options overlying SPY, QQQ and IWM. Today, a Market Maker that is on the NBBO 65% to less than 80% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 1b. Today, a Market Maker that is on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 2. Today, a Market Maker that is on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 3. Today, a Market Maker that is on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 4.

The Exchange proposes to amend the SPY, QQQ and IWM Market Maker Plus qualifications for Tiers 1b, 2, 3 and Tier 4 by adding an alternative means to qualify for these tiers. The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume[8] may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume[9] may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume[10] may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume[11] may also qualify for the SPY, QQQ and IWM Tier 4.[12] The Exchange believes that these alternative qualifications for SPY, QQQ and IWM Tiers 1b, 2, 3 and 4 will provide greater depth of liquidity

[6] Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers—*i.e.,* badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

[7] In addition, the Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. *See* Options 7, Section 1(a)(2) for the definition of ''Unanticipated Event.''

[8] 0.10% of Customer Total Consolidated Volume is approximately 22,000 contracts per day. Customer Total Consolidated Volume means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. *See* Options 7, Section 1(b).

[9] 0.20% of Customer Total Consolidated Volume is approximately 44,000 contracts per day.

[10] 0.25% of Customer Total Consolidated Volume is approximately 55,000 contracts per day.

[11] 0.50% of Customer Total Consolidated Volume is approximately 110,000 contracts per day.

[12] For example, if a Market Maker adds 40,000 contracts of liquidity in SPY on ISE and the average Customer Total Consolidated Volume for the month is 20,000,000 per day, then the Market Maker would have a percentage of 0.20% (40,000 divided by 20,000,000) of Customer Total Consolidated Volume and would qualify for Tier 2 in SPY and would be entitled to the $0.18 per contract Regular Maker Rebate and the $0.15 per contract Linked Maker Rebate. The Exchange arrives at 40,000 contracts by accumulating all executed volume that added liquidity (including quotes and orders) by a particular Market Maker Participant in SPY.

in SPY, QQQ and IWM, and, in turn, attract additional volume on ISE.

No rate changes are proposed for SPY, QQQ and IWM Tiers 1b, 2, 3 or 4 for the Regular Maker Rebate or the Linked Maker Rebate.

The Exchange also proposes to add a period at the end of Options 7, Section 3 after note 18 in the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . ..'' [15]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means [17] to qualify for these tiers is reasonable. With respect to SPY, QQQ and IWM, Market Makers may continue to qualify for Tier 1b, by being on the NBBO 65% to less than 80% of the time, on average for the month based on daily performance in the qualifying series. Likewise, Market Makers may continue to qualify for SPY, QQQ and IWM Tier 2, by being on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series. Market Makers may continue to qualify for SPY, QQQ and IWM Tier 3 by being on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series. Finally, Market Makers may continue to qualify for SPY, QQQ and IWM Tier 4 by being on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series. In summary, Market Makers that met the SPY, QQQ and IWM Tier 1b, 2, 3 or 4 qualifications last month would continue to qualify for those tiers, provided each trading day they continued to spend the same percentage of time on the NBBO for qualifying series. With this proposal, the Exchange believes that these alternative qualifications for SPY, QQQ and IWM in Tiers 1b, 2, 3 and 4 will provide an opportunity for Market Makers to contribute greater depth of liquidity in SPY, QQQ and IWM on ISE, and, in turn, attract additional customer volume on ISE. The Exchange notes that the alternative qualifications, which require that Market Makers add liquidity in Customer volume, will incentivize Marker Makers to tighten their quotes to execute against an increased number of orders, which benefits all Members who may interact with that interest on ISE's Order Book.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means to qualify for these tiers is equitable and not unfairly discriminatory. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting [18] and are subject to additional requirements and obligations (such as quoting obligations) [19] that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 4.

[18] *See* Options 2, Section 5.

[19] *See* Options 2, Section 4 and Options 3, Section 8(c).

incentivize additional liquidity in these three names, which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange and, will benefit all market participants in the quality of order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means [20] to qualify for these tiers does not impose an undue burden on competition. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting [21] and are subject to additional requirements and obligations (such as quoting obligations [22]) that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will incentivize additional liquidity in these three names which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [23] and Rule 19b–4(f)(2) [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–ISE–2020–40 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–ISE–2020–40.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[20] *See* note 17 above.

[21] *See* Options 2, Section 5.

[22] *See* Options 2, Section 4 and Options 3, Section 8(c).

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

Number *SR–ISE–2020–40* and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27390 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90606; File No. SR–NSCC–2020–020]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Implementation Date of National Securities Clearing Corporation's Enhancements to the Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Making Certain Other Changes to Procedure XV

December 8, 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 December 7, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and subparagraph (f)(4)[4] of Rule 19b–4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the NSCC Rules & Procedures (the ''Rules'')[5] in order to establish order to establish the implementation date of rule changes submitted pursuant to rule filing SR–NSCC–2020–003 (''Rule Filing'')[6] and advance notice SR–NSCC–2020–802 (''Advance Notice'').[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 6, 2020, the Securities and Exchange Commission (the ''Commission'') issued a notice of no objection to the Advance Notice,[8] which was filed with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010[9] and Rule 19b–4(n)(1)(i) of the Act.[10] The Commission also issued an order approving the Rule Filing on November 24, 2020,[11] which was filed by NSCC pursuant to Section 19(b)(2) of the Act.[12]

The purpose of the Rule Filing and the Advance Notice is to amend the Rules to enhance the calculation of certain components of the Clearing Fund formula.

NSCC is filing this proposed rule change to establish the rule changes submitted pursuant to the Rule Filing and the Advance Notice will be implemented by February 28, 2021. NSCC would add a legend to Rule 1 (Definitions and Descriptions) of the Rules (''Rule 1'')[13] and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules (''Procedure XV'')[14] to state that the rule changes submitted pursuant to the Rule Filing and the Advance Notice have been approved and not objected to, respectively, but are not yet implemented. The legends would provide that these rule changes would be implemented by February 28, 2021 and include the file numbers of the Rule Filing and the Advance Notice. The legends would also state that when the rule changes are implemented, NSCC will announce the implementation by important notice and the legends would automatically be removed from Rule 1 and Procedure XV.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) promote the prompt and accurate clearance and settlement of securities transactions and (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[15] The proposed rule change would establish the implementation date of rule changes described above and provide Members with an understanding of when these rule changes will begin to affect them. Knowing when the rule changes will begin to affect Members would enable them to timely fulfill their obligations to NSCC, which would in turn ensure NSCC's processes work as intended. Therefore, NSCC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions as well as remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act cited above.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change to establish an implementation date for the rule changes described above would have any impact, or impose any burden, on competition because the proposed rule change is intended to provide additional clarity in the Rules with respect to when these rule changes would be implemented. As such, the proposed rule change would not affect the rights or obligations of the Members or NSCC other than establishing when the rule

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, available at *http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[6] *See* Securities Exchange Act Release No. 88474 (March 25, 2020), 85 FR 17910 (March 31, 2020) (SR–NSCC–2020–003).

[7] *See* Securities Exchange Act Release No. 88615 (April 9, 2020), 85 FR 21037 (April 15, 2020) (SR–NSCC–2020–802).

[8] *See* Securities Exchange Act Release No. 90367 (November 6, 2020) 85 FR 73099 (November 16, 2020) (SR–NSCC–2020–802).

[9] 12 U.S.C. 5465(e)(1).

[10] 17 CFR 240.19b–4(n)(1)(i).

[11] *See* Securities Exchange Act Release No. 90502 (November 24, 2020) (SR–NSCC–2020–003).

[12] 15 U.S.C. 78s(b)(2).

[13] Rule 1, *supra* note 5.

[14] Procedure XV, *supra* note 5.

[15] 15 U.S.C. 78q–1(b)(3)(F).

changes described above would begin to impact the Members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [16] of the Act and paragraph (f) [17] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–NSCC–2020–020 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–NSCC–2020–020. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2020–020 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27396 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90594; File No. SR–CBOE–2020–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Automated Price Improvement Auction Rules in Connection With Agency Order Size Requirements

December 8, 2020.

On June 11, 2020, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change permitting the Exchange to impose a maximum size requirement for an agency order submitted into the Automated Price Improvement Mechanism (''AIM'') and the Complex Automated Price Improvement Mechanism (''C–AIM'') in S&P 500® Index Options (''SPX''). The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 23, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 27, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On August 21, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8]

Section 19(b)(2) of the Act [9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was June 18, 2020. December 15, 2020, is 180 days from that date, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89058 (June 12, 2020), 85 FR 36918. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-051/srcboe2020051.htm.*

[4] In Amendment No. 1, the Exchange: (1) Amended its proposal to modify the proposed maximum size requirement for AIM and C–AIM agency orders in SPX to ten contracts rather than a size determined by the Exchange of up to 100 contracts, specify that this size requirement would apply to all agency orders in SPX, and make related conforming changes to its proposed rule text; and (2) provided additional data, justification, and support for its modified proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-051/srcboe2020051-7470738-221292.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 89399, 85 FR 46202 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 89636, 85 FR 53029 (August 27, 2020).

[9] 15 U.S.C. 78s(b)(2).

February 13, 2021, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates February 13, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–CBOE–2020–051).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27389 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90608; File No. SR–NYSEArca–2020–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of the Teucrium Water Fund Under NYSE Arca Rule 8.200–E, Commentary .02

December 8, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 25, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200–E, Commentary .02 (''Trust Issued Receipts''): Teucrium Water Fund. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: Teucrium Water Fund (the ''Fund'').[4]

The Fund is a series of Teucrium Commodity Trust (the ''Trust''), a Delaware statutory trust.[5] The Fund is managed and controlled by Teucrium Trading, LLC (''Teucrium Trading'' or the ''Sponsor''). Teucrium Trading is registered as a commodity pool operator (''CPO'') and a commodity trading adviser (''CTA'') with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA''). Foreside Fund Services, LLC will be the Fund's distributor (''Distributor''). In its capacity as the Custodian for the Fund, U.S. Bank, N.A. (''U.S. Bank'') may hold the Fund's securities and cash and/or cash equivalents pursuant to a custodial agreement (the ''Custodian''). U.S. Bancorp Fund Services, LLC, (''U.S. Bancorp'') will be the Fund's ''Transfer Agent.'' In addition, in its capacity as Administrator for the Fund, U.S. Bancorp (the ''Administrator'') will perform certain administrative and accounting services for the Fund and prepare certain Commission and CFTC reports on behalf of the Fund.

The Fund's Investment Objective and Strategy

The investment objective of the Fund is for changes in the Shares' Net Asset Value (''NAV'') to reflect the changes of the price of water rights in the state of California, as measured by the Fund's Benchmark (as defined below). The Benchmark is a weighted average of the closing settlement prices for three equally weighted Nasdaq Veles California Water index futures contracts (''Benchmark Component Futures Contracts'') that are traded on the Chicago Mercantile Exchange Inc. (''CME'').[6] Nasdaq Veles California Water index futures contracts will be financially settled and will trade eight consecutive quarterly contracts (March, June, September and December) plus the two nearest serial months which are not included in the quarterly contracts. Settlement for each futures contract will occur the third Wednesday of the expiration month.

The Benchmark will have three components, consisting of equally weighted Nasdaq Veles California Water index futures contracts selected from the following contract months: May, June, July, August and September. The Benchmark will always hold a June contract month. The Benchmark will roll upon the expiration of the February, May, June, July and August contract months. See grid below for the full futures rolls and holdings. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[5] On September 21, 2020, the Trust filed with the Commission a registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') relating to the Fund (File No. 333–248948) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

[6] According to the Registration Statement, futures contracts are agreements between two parties that are executed on a designated contract market (''DCM''), *i.e.,* a commodity futures exchange, and that are cleared and margined through a derivatives clearing organization (''DCO''), *i.e.,* a clearing house. One party agrees to buy a commodity such as water from the other party at a later date at a price and quantity agreed upon when the contract is made. In market terminology, a party who purchases a futures contract is long in the market and a party who sells a futures contract is short in the market. The contractual obligations of a buyer or seller may generally be satisfied by taking or making physical delivery of the underlying commodity or by making an offsetting sale or purchase of an identical futures contract on the same or linked exchange before the designated date of delivery. The difference between the price at which the futures contract is purchased or sold and the price paid for the offsetting sale or purchase, after allowance for brokerage commissions, constitutes the profit or loss to the trader.

Benchmark is not designed to track the spot price of water or water rights.

ANNUAL ROLL SCHEDULE

Roll month	Old contract	New contract	Holdings post roll
February	September	May	May, June (1st to expire), June (2nd to expire)*.
May	May	July	June (1st to expire), July, June (2nd to expire).
June	June	August	July, August, June (2nd to expire).
July	July	September (2nd to expire)	August, June (1st to expire), September (2nd to expire).
August	August	June (2nd to expire)	June (1st to expire), September, June (2nd to expire).

* 1st to expire—The contract month available for investment that is going to expire first; 2nd to expire—The contract month available for investment that is going to expire second.

According to the Registration Statement, the Nasdaq Veles California Water Index was designed to provide water market participants with a price for water through verifiable price discovery. The index sets a weekly benchmark spot price of water rights in California, based on the volume-weighted average of the transaction price in California's five largest and most actively traded water markets.

In seeking to achieve the Fund's investment objective, the Sponsor will employ a ''neutral'' investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down. According to the Registration Statement, the Fund will endeavor to trade in Benchmark Component Futures Contracts so that the Fund's average daily tracking error against the Benchmark will be less than 10 percent over any period of 30 trading days. According to the Registration Statement, the Fund's ''neutral'' investment strategy is designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in the California water market. Such investors may include participants in the agricultural industry and other industries seeking to hedge the risk of losses in their water related transactions, as well as investors seeking exposure to the water market.

The Fund will seek to achieve its investment objective by investing in Benchmark Component Futures Contracts. Under normal market conditions,[7] the Fund expects that 100% of the Fund's assets will be invested in Benchmark Component Futures Contracts and in cash and cash equivalents, such as short-term Treasury Bills, money market funds, demand deposit accounts and commercial paper. The Fund may, to a lesser extent, obtain exposure to the Benchmark through investment in over-the-counter (''OTC'') swap agreements, OTC forward contracts, both exchange-listed and OTC options, exchange-listed futures and exchange-listed options on futures. Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded futures contracts or exchange-traded options on futures shall consist of futures contracts or options on futures whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement (''CSSA'').[8]

According to the Registration Statement, the price of water, over time, fluctuates based on a number of market factors, including demand for water relative to its supply. The value of Benchmark Component Futures Contracts likewise will fluctuate in reaction to a number of market factors. Because the Fund seeks to maintain its holdings in Benchmark Component Futures Contracts with a roughly constant expiration profile, the Fund's positions are changed or ''rolled'' on a regular basis in order to track the changing nature of the Benchmark by closing out soon to expire contracts that are no longer part of the Benchmark and entering into subsequent to expire contracts. One factor determining the total return from investing in futures contracts is the price relationship between soon to expire contracts and later to expire contracts.

According to the Registration Statement, if the futures market is in a state of backwardation (*i.e.,* when the price of water in the future is expected to be less than the current price), the Fund will buy later to expire contracts for a lower price than the sooner to expire contracts that it sells. Hypothetically, and assuming no changes to either prevailing water prices or the price relationship between soon to expire contracts and later to expire contracts, the value of a contract will rise as it approaches expiration. Over time, if backwardation remained constant, the differences would continue to increase. If the futures market is in contango, the Fund will buy later to expire contracts for a higher price than the sooner to expire contracts that it sells. Hypothetically, and assuming no other changes to either prevailing water prices or the price relationship between the spot price, soon to expire contracts and later to expire contracts, the value of a contract will fall as it approaches expiration. Over time, if contango remained constant, the difference would continue to increase. Frequently, whether contango or backwardation exists is a function, among other factors, of the seasonality of the underlying market and government policy.

Overview of the Water Market

According to the Registration Statement, water is the natural resource required to sustain all life on the planet, arguably making it the most important commodity on Earth. U.S. water usage falls into three major categories: residential, agricultural and industrial use. Therefore, a primary challenge confronting the United States, particularly the Western States, is water scarcity which can be attributed to increased demand from population growth, economic expansion, agricultural production, and climate change resulting in rapidly changing and variable weather patterns.

The U.S. ranks first globally in per capita water consumption and second globally in total water consumption behind only China. California ranks first

[7] The term ''normal market conditions'' includes, but is not limited to, the absence of: trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. *See* NYSE Arca Rule 8.600–E(c)(5).

[8] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

in U.S. demand. Competition continues to increase between domestic use, agriculture, and industrial use. Food production and urban expansion could both be threatened by water scarcity, and it is becoming increasingly difficult and expensive to balance the water needs of farmers growing crops in many parts of the country with water demands created by expanding urban population centers. As water availability becomes increasingly variable, state and local governments will have increasing roles in rationing and disbursing water.

California is one of the most active water trading markets in the U.S. Water prices tend to trade in cycles generally tied to rain/snowfall patterns. Western States receive most annual precipitation from winter storms. Beyond that they must rely on spring rainstorms. Western statewide precipitation occurs from November through March. Approximately half occurs from December through February, coinciding with winter storms. A few storms during the winter season can determine if the year will be wet or dry. Droughts occur when dry conditions persist long enough to impact natural water levels. Water trading has become a fast-growing activity throughout the Western United States; California, Washington, Arizona, Colorado, and Texas are among the most active places where water rights are transacted. As climate change continues to impact the planet, urban, industrial and agricultural expansion will likely increase the demand for water, increasing the need for the most efficient allocation of water possible among competing users. The trading of water rights is a practical and effective tool available to all participants in their continued efforts at securing water.

Net Asset Value

According to the Registration Statement, the Fund's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.

The Administrator of the Fund will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Standard Time (EST).

To determine the value of Benchmark Component Futures Contracts, the Fund's Administrator will use the Benchmark Component Futures Contract settlement price on the exchange on which the contract is traded, except that the ''fair value'' of Benchmark Component Futures Contracts (as described in more detail below) may be used when Benchmark Component Futures Contracts close at their price fluctuation limit for the day. The Fund's Administrator will determine the value of all other Fund investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. EST. The value of over the counter water interests will be determined based on the value of the commodity or futures contract underlying such water interest, except that a fair value may be determined if the Fund's Sponsor believes that the Fund is subject to significant credit risk relating to the counterparty to such water interest. The Fund's NAV will include any unrealized profit or loss on open water interests and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

The fair value of a water interest will be determined by the Fund's Sponsor in good faith and in a manner that assesses the water interest's value based on a consideration of all available facts and all available information on the valuation date. When a Benchmark Component Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such Benchmark Component Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to the price of comparable water interests trading in the over the counter market. The fair value of a water interest may not reflect such security's market value or the amount that the Fund might reasonably expect to receive for the water interest upon its current sale.

Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated ''Indicative Fund Value'' (''IFV''). The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updated throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the Fund's water interests during the trading day.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.[9]

Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by Authorized Purchasers and only in blocks of 10,000 Shares called ''Creation Baskets.'' The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only Authorized Purchasers may redeem Shares and only in blocks of 10,000 Shares called ''Redemption Baskets.'' The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Fund.

''Authorized Purchasers'' will be the only persons that may place orders to create and redeem Creation Baskets. Authorized Purchasers must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) DTC Participants. An Authorized Purchaser is an entity that has entered into an Authorized Purchaser Agreement with the Sponsor.

Creation Procedures

On any ''Business Day'', an Authorized Purchaser may place an order with the Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a ''Business Day'' means any day other than a day when any of the NYSE Arca, the CME, or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 12:00 p.m. EST or the close of regular trading on the New York Stock Exchange, which is earlier. The day on which the Distributor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

[9] Several major market data vendors display and/or make widely available IFVs taken from the CTA or other data feeds. In addition, the normal trading hours for Water Futures Contracts on CME are generally shorter than those of NYSE Arca. As a result, there is a gap in time at the beginning and the end of each day during which the Fund's Shares are traded on NYSE Arca, but real-time CME trading prices for Water Futures Contracts are not available. During such gaps, there will be no update to the IFV.

By placing a purchase order, an Authorized Purchaser generally agrees to deposit cash with the Custodian.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Purchaser can redeem one or more Creation Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an Authorized Purchaser may place an order with the Transfer Agent to redeem one or more Creation Baskets.

The redemption procedures allow Authorized Purchasers to redeem Creation Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an Authorized Purchaser agrees to deliver the Creation Baskets to be redeemed through DTC's book entry system to the Fund by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day.

Determination of Redemption Distribution

The redemption distribution from the Fund will consist of an amount of cash, cash equivalents and/or commodity futures that is in the same proportion to the total assets of the Fund on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Delivery of Redemption Distribution

An Authorized Purchaser who places a purchase order will transfer to the Custodian the required amount of cash, cash equivalents and/or commodity futures by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the Authorized Purchaser and the Custodian when the purchase order is placed (the ''Purchase Settlement Date''). Upon receipt of the deposit amount, the Custodian will direct DTC to credit the number of Creation Baskets ordered to the Authorized Purchaser's DTC account on the Purchase Settlement Date.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices of the Benchmark Component Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors.

Complete real-time data for the Benchmark Component Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Benchmark Component Futures Contracts will also be available on such websites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Quotation information for cash equivalents and commodity futures may be obtained from brokers and dealers who make markets in such instruments. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The Benchmark value will be disseminated once every 15 seconds. The IFV will be available through on-line information services.

In addition, the Funds' website, *www.teucrium.com,* will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) The prior Business Day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the ''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of Benchmark Component Futures Contracts, (ii) the counterparty to and value of swap agreements, forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Fund's portfolio, if applicable.

The Fund's website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[10] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. The Benchmark value will be disseminated once every 15 seconds. If the interruption to the dissemination of the IFV, or the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. With respect to the

[10] *See* NYSE Arca Rule 7.12–E.

application of Rule 10A–3 [11] under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[12] A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[13] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, the Benchmark Component Futures Contracts and certain other futures, and options on futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, the Benchmark Component Futures Contracts and certain other futures, and options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, the Benchmark Component Futures Contracts and certain other futures, and options on futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying the futures contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG.

Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded futures contracts or exchange-traded options on futures shall consist of futures contracts or options on futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios of the Funds or Benchmark, (b) limitations on portfolio holdings or the Benchmark, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [14] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Benchmark Component Futures Contracts and certain other futures, and options on futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, Benchmark Component Futures Contracts and certain other futures, and options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Benchmark Components Futures Contracts and certain other futures, and options on futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying futures contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in Benchmark Component Futures Contracts) occurring on US futures exchanges, which are members of the ISG. Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded futures contracts or exchange-traded options on futures shall consist of futures contracts or options on futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. The intraday, closing prices, and settlement prices of the Benchmark Component Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or

[11] 17 CFR 240.10A–3.

[12] See Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

[13] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[14] 15 U.S.C. 78f(b)(5).

major market data vendors website or online information services.

Complete real-time data for the Benchmark Component Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Fund's website. The specific contract specifications for Benchmark Component Futures Contracts will also be available on such websites, as well as other financial informational sources. Information regarding options will be available from the applicable exchanges or major market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of Benchmark Component Futures Contracts, (ii) the counterparty to and value of swap agreements and forward contracts, and (iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Fund's portfolio, if applicable.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Issued Receipts based on water that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of Trust Issued Receipts based on water and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or 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–NYSEArca–2020–105 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–NYSEArca2020–105. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–105, and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27398 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, December 16, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings; and

Disclosure of non-public information.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: December 9, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–27499 Filed 12–10–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90591; File No. SR–PEARL–2020–34]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Equities Fee Schedule

December 8, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the ''Fee Schedule'').[3] The proposed changes are scheduled to become operative on December 4, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule applicable to MIAX PEARL Equities to amend pricing for securities priced below $1.00 that are executed on MIAX PEARL Equities.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. More specifically, the Exchange is only one of several equities venues (including both registered exchanges and various alternative trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently dispersed across 16 exchanges,[4] 31 alternative trading systems,[5] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.[6] Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, the Exchange currently represents a very small percentage of the overall market.

The purpose of this proposed fee change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted a fee structure that provided that orders in securities priced below $1.00 would be free that executed at MIAX PEARL Equities, regardless of whether they add or remove liquidity to encourage market participants to submit orders to the Exchange. In response to competitive forces,[7] the Exchange recently adopted fees and rebates for securities priced below $1.00 where it charges a standard fee of 0.30% of the total dollar value of any transaction in securities priced below $1.00 that removes liquidity from MIAX PEARL Equities and provides a standard rebate of 0.30% of the total dollar value of any transaction in securities priced below $1.00 that adds displayed or non-displayed liquidity to MIAX PEARL Equities.[8]

Again in response to competitive forces,[9] the Exchange proposes herein to lower both the fee and rebate for securities priced below $1.00. Specifically, the Exchange now

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1901.

[4] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[5] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[6] *See supra* note 4.

[7] *See* Securities Exchange Act Release No. 90555 (December 3, 2020) (SR–MEMX–2020–14) (filed November 30, 2020).

[8] *See* SR–PEARL–2020–32 (filed December 2, 2020), *available at https://www.miaxoptions.com/sites/default/files/filing-files/SR_PEARL_2020_32.*

[9] *See* Members Exchange, LLC (''MEMX'') Trader Alert 20–13: Fee Schedule Updates Effective December 4, 2020 *available at https://info.memxtrading.com/trader-alert-20-13-fee-schedule-updates-effective-december-4-2020/.*

proposes to charge a standard fee of 0.05% of the total dollar value of any transaction in securities priced below $1.00 that removes liquidity from MIAX PEARL Equities. The Exchange also now proposes to provide a standard rebate of 0.05% of the total dollar value of any transaction in securities priced below $1.00 that adds displayed or non-displayed liquidity to MIAX PEARL Equities.

The rebate proposed herein for executed orders that add liquidity in securities priced below $1.00 continues to be intended to increase order flow in securities priced below $1.00 to MIAX PEARL Equities by incentivizing Equity Members [10] to increase the liquidity-providing orders in securities priced below $1.00 they submit to MIAX PEARL Equities, which would support price discovery on MIAX PEARL Equities and provide additional liquidity for incoming orders. However, the Exchange now seeks to lower the fee to remove liquidity in securities priced below $1.00 on MIAX PEARL Equities to attract additional incoming orders that seek to remove liquidity with a corresponding change to similarly lower the rebate to add liquidity in securities priced below $1.00. As a result, the lower fee proposed herein for executed orders that remove liquidity from MIAX PEARL Equities continues to be intended to directly offset the newly proposed rebate provided for executed orders that add liquidity in securities priced below $1.00 so that MIAX PEARL Equities may continue to remain revenue neutral with respect to such transactions while attempting to compete with other venues to attract this order flow.

The proposed fee change will become effective on December 4, 2020. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the Fee Schedule reflects a simple and competitive pricing structure, which is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange. The Exchange believes the proposed rebate and fee structure for orders that add or remove liquidity in securities priced below $1.00 would continue to incentivize submission of additional liquidity in securities priced below $1.00, thereby promoting price discovery and deepen liquidity, enhancing order execution opportunities for all Equity Members and investors.

In particular, the Exchange believes that the proposed rebate for orders that add liquidity in securities priced below $1.00 is reasonable because it would continue to incentivize Equity Members to direct more order flow in securities priced below $1.00 to the Exchange. The Exchange notes that one other exchange provides the same rebate as proposed herein,[13] and other exchanges provide rebates for liquidity-adding transactions in securities priced below $1.00, but that these are denominated in dollar amounts per share rather than a percentage of the total dollar amount of the transaction.[14] The Exchange expects that the proposed rebate for orders that add liquidity in securities priced below $1.00, albeit lower than that previously in place, would continue to typically result in a higher overall credit for a given transaction than the rebates offered by other exchanges, although the Exchange notes that it may also result in a lower overall credit for such transactions depending on the number of shares traded and the total dollar value of the transaction. The Exchange also believes that the proposed lower fee for orders that remove liquidity in securities priced below $1.00 is reasonable because it is in line with the fees charged by at least one other exchange [15] while also seeking to attract an increased number of liquidity-removing transactions in securities priced below $1.00 on MIAX PEARL Equities. The Exchange believes an increase in liquidity removing orders may lead to a corresponding increase in liquidity adding orders, thereby increasing the depth of the MIAX PEARL Equities' Book and improving price discovery.

The Exchange believes that, given the competitive environment in which MIAX PEARL Equities currently operates, the proposed pricing structure, with an offsetting fee and rebate for executions of transactions in securities priced below $1.00 continues to be a reasonable attempt to increase liquidity in securities priced below $1.00 on MIAX PEARL Equities and improve the MIAX PEARL Equities' market share relative to its competitors while remaining revenue neutral with respect to such transactions.

The Exchange also believes that the proposed fee and rebate structure applicable to executions of transactions in securities priced below $1.00 continues to be equitably allocated and not unfairly discriminatory because it applies equally to all Equity Members and is reasonably related to the value of MIAX PEARL Equities' market quality associated with higher volume. A number of Equity Members currently transact in securities priced below $1.00 and they, along with additional Equity Members that choose to direct order flow in securities priced below $1.00 to the Exchange, would all continue to qualify for the proposed fee and rebate. The Exchange believes that maintaining or increasing the proportion of transactions in securities priced below $1.00 that are executed on MIAX PEARL Equities would benefit all investors by deepening the MIAX PEARL Equities' liquidity pool, which would support price discovery, promote market transparency and improve investor protection, further rendering the proposed changes reasonable and equitable.

Further, the Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized

[10] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. *See* Exchange Rule 1901.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See supra* note 9.

[14] *See, e.g.,* the Cboe EDGX equities trading fee schedule on its public website (available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a rebate of $0.00009 per share for liquidity-adding transactions in securities priced below $1.00 per share; the NYSE Arca equities trading fee schedule on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nysearca/NYSE_Arca_Marketplace_Fees.pdf*), which reflects a rebate of $0.00004 per share for liquidity-adding transactions in securities priced below $1.00 per share.

[15] *See supra* note 9.

that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [17] Indeed, equity trading is currently dispersed across 16 exchanges,[18] 31 alternative trading systems,[19] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[20] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations on September 25, 2020, and thus has a market share of approximately less than 1% of executed volume of equities trading.

The Exchange has designed its proposed rates for securities priced below $1.00 to balance the need to attract order flow as a new exchange entrant with the desire to continue to provide a simple pricing structure to market participants. The Exchange believes its proposed rates for securities priced below $1.00 structure continues to enable the Exchange to compete for order flow. In fact, this proposal and its predecessor [21] are direct competitive responses to recent changes made by another exchange.[22] The Exchange believes that the ever-shifting market share among the exchanges demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an exchange, Equity Members can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed rates for securities priced below $1.00 represents a reasonable attempt to attract order flow to a new exchange entrant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Equity Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [23]

The Exchange does not believe that the proposed rates for securities priced below $1.00 will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rates will continue to increase competition and they are intended to draw volume to the Exchange. As stated above, this proposal and its predecessor [24] are direct competitive responses to recent changes made by another exchange.[25] The Exchange believes that the ever-shifting market share among the exchanges demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. As a new exchange, the Exchange faces intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading.

Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its proposed rates for securities priced below $1.00 could impose any burden on competition is extremely limited, and does not believe that such rates would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rates for securities priced below $1.00 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rates for securities priced below $1.00 will continue to apply equally to all Equity Members. The proposed rates for securities priced below $1.00 continue to be intended to encourage market participants to both remove and add liquidity to the Exchange by providing a rates that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Equity Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed pricing structure for securities priced below $1.00 are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[26] and Rule 19b–4(f)(2) [27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (''Regulation NMS'').

[17] *See* Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks).

[18] *See supra* note 4.

[19] *See supra* note 5.

[20] *See supra* note 4.

[21] *See supra* note 8.

[22] *See supra* notes 7 and 9.

[23] *See supra* note 16.

[24] *See supra* note 8.

[25] *See supra* notes 7 and 9.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2020–34 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–PEARL–2020–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2020–34, and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90592; File No. SR–CBOE–2020–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 5.37, 5.38, and 5.73 Related to Auction Notification Messages and Index Combo Orders in SPX in the Automated Improvement Mechanism, Complex Automated Improvement Mechanism, and FLEX Automated Improvement Mechanism

December 8, 2020.

On June 3, 2020, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 5.37, 5.38, and 5.73 to (1) allow the Exchange to determine to disseminate the stop price in auction notification messages for Automated Improvement Mechanism (''AIM''), Complex Automated Improvement Mechanism (''C–AIM''), and FLEX AIM auctions in S&P 500® Index options (''SPX''); and (2) modify the minimum increment for C–AIM and FLEX AIM auction responses for Index Combo Orders in SPX. The proposed rule change was published for comment in the **Federal Register** on June 18, 2020.[3] On July 22, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[4] On July 27, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On August 21, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was June 18, 2020. December 15, 2020, is 180 days from that date, and February 13, 2021, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates February 13, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–CBOE–2020–052).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89063 (June 12, 2020), 85 FR 36923. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-052/srcboe2020052.htm.*

[4] In Amendment No. 1, the Exchange amended the proposal to: (1) To add that, when the proposed stop price dissemination in auction notification messages is enabled for AIM, C–AIM, or FLEX AIM auctions in SPX, it would apply to all such AIM, C–AIM, or FLEX AIM auctions; (2) specify that the proposed minimum increment modification would apply to Index Combo Orders in SPX, and to correct an internal cross-reference in the proposed rules; (3) provide additional detail to the description and examples of the proposed modification to the minimum increment for Index Combo Orders in SPX; and (4) provide additional justification and support for the proposed rule change. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-052/srcboe2020052-7464403-221166.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 89400, 85 FR 46202 (July 31, 2020). The Commission designated September 16, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 89638, 85 FR 53045 (August 27, 2020).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90601; File No. SR–EMERALD–2020–18]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule To Adopt a Monthly Trading Permit Fees

December 8, 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 November 27, 2020, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to establish monthly Trading Permit[3] fees for Exchange Members.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt monthly Trading Permit fees (the ''Proposed Access Fees'') depending on the Member's status as either an Electronic Exchange Member (''EEM'')[5] or as a Market Maker.[6] MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act[7] on March 1, 2019.[8] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15.[9] In that filing, the Exchange expressly waived, among other fees, the Proposed Access Fees, to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. Accordingly, since the launch of the Exchange, all such membership fees have been waived for the Waiver Period.[10] When the Exchange adopted the framework for its fees, it stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period for the Proposed Access Fees. Accordingly, on September 15, 2020, the Exchange issued a Regulatory Circular which announced that the Exchange would be ending the Waiver Period for the Proposed Access Fees, among other non-transaction fees, beginning October 1, 2020.[11]

The Exchange initially filed its proposal to establish the Proposed Access Fees on October 1, 2020.[12] The First Proposed Rule Change was published for comment in the **Federal Register** on October 21, 2020.[13] On November 25, 2020, the Exchange withdrew the First Proposed Rule Change and refiled its proposal to establish monthly Trading Permit fees.[14]

Trading Permits are issued to Members who are either EEMs or Market Makers. The Exchange proposes to assess the Proposed Access Fees depending upon the category of Member that is issued a Trading Permit. Members issued Trading Permits during a calendar month will be assessed monthly Trading Permit Fees. The Exchange notes that the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''), charges a similar, fixed trading permit fee to its EEMs, and a similar, varying trading permit fee to its Market Makers, based upon the number of assignments of option classes or the percentage of volume in option classes.[15]

The Exchange proposes that monthly Trading Permit fees will be assessed, with respect to the calculation of such fee to EEMs (other than clearing firms), in any month the EEM is certified in the membership system and is credentialed to use one or more Financial Information Exchange (''FIX'')[16] ports

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[6] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[9] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

[10] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[11] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[12] *See* Securities Exchange Act Release Nos. 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees) (the ''First Proposed Rule Change''). The Exchange notes that it will refile its proposal to establish the one-time membership application fee in a separate filing.

[13] *See id.*

[14] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Change.

[15] *See* the MIAX Fee Schedule, Section 3)b).

[16] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

in the production environment. Further, the Exchange proposes that monthly Trading Permit fees will be assessed with respect to EEM clearing firms in any month the clearing firm is certified in the membership system to clear transactions on the Exchange.

The Exchange proposes to assess EEMs a monthly fee of $1,000 for each Trading Permit. Below is the proposed table showing the Trading Permit fees for EEMs:

Type of trading permit	Monthly MIAX Emerald trading permit fee
Electronic Exchange Member	$1,000.00

The Exchange proposes to assess monthly Trading Permit fees for Market Makers in any month the Market Maker (including a Registered Market Maker, Lead Market Maker, and Primary Lead Market Maker) is certified in the membership system, is credentialed to use one or more MIAX Emerald Express Interface (''MEI'') [17] ports in the production environment and is assigned to quote in one or more classes. Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) $7,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national average daily volume (''ADV''); (ii) $12,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV; (iii) $17,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $22,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Emerald.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the following Trading Permit fee levels, which represent the 3rd and 4th levels of the Market Maker Trading Permit fee table: (i) Market Maker Assignments in up to 100 option classes or up to 50% of option classes by volume; and (ii) Market Maker Assignments in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Emerald. Specifically, the Exchange proposes to adopt footnote ''▪'' following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald—listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

Below is the proposed table showing the Trading Permit fees for Market Makers:

Type of trading permit	Monthly MIAX Emerald trading permit fee	Market maker assignments (the lesser of the applicable measurements below)	
		Per class	Percent of national average daily volume
Market Maker (includes RMM, LMM, PLMM)	$7,000.00	Up to 10 Classes	Up to 20% of Classes by volume.
	12,000.00	Up to 40 Classes	Up to 35% of Classes by volume.
	▪17,000.00	Up to 100 Classes	Up to 50% of Classes by volume.
	▪22,000.00	Over 100 Classes	Over 50% of Classes by volume up to all Classes listed on MIAX Emerald.

▪For these Monthly MIAX Emerald Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.025% of the total monthly executed volume reported by OCC in the customer account type for MIAX Emerald-listed option classes for that month, then the fee will be $15,500 instead of the fee otherwise applicable to such level.

For the calculation of the monthly Market Maker Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national ADV in classes listed on MIAX Emerald in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume. The Exchange proposes to assess MIAX Emerald Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Emerald that the Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national ADV measurement.

The purpose of the alternative lower fee designated in proposed footnote ''▪'' is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange's affiliate, MIAX, provides a similar alternative lower Trading Permit fee for Market Makers who quote the entire MIAX market (or substantial amount of the MIAX market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant

[17] The MEI is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. The Exchange offers Full Service MEI Ports, which provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. The Exchange also offers Limited Service MEI Ports, which provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions Section of the Fee Schedule.

amount of volume on MIAX.[18] The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange,[19] and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

MIAX Emerald believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. MIAX Emerald believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange's marketplace. MIAX Emerald deems Trading Permit fees to be access fees. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange believes the Proposed Access Fees will allow the Exchange to offset expense the Exchange has and will incur, and that the Exchange is providing sufficient transparency (as described below) into how the Exchange determined to charge such fees. Accordingly, the Exchange is providing an analysis of its revenues, costs, and profitability (before the proposed changes), and the Exchange's revenues, costs, and profitability (following the proposed changes) for the Proposed Access Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with the Proposed Access Fees.

In order to determine the Exchange's costs associated with providing the Proposed Access Fees, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the services included in the Proposed Access Fees. The sum of all such portions of expenses represents the total cost of the Exchange to provide the Proposed Access Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide the Proposed Access Fees.

In order to determine the Exchange's projected revenues associated with providing the Proposed Access Fees, the Exchange analyzed the number of Members currently utilizing the Exchange's services associated with the Proposed Access Fees during 2020, and, utilizing a recently completed monthly billing cycle, extrapolated annualized revenue on a going-forward basis.

The Exchange is presenting its revenue and expense associated with the Proposed Access Fees in this filing in a manner that is consistent with how the Exchange presents its revenue and expense in its Audited Unconsolidated Financial Statements. The Exchange's most recent Audited Unconsolidated Financial Statement is for 2019. However, since the revenue and expense associated with the Proposed Access Fees were not in place in 2019 or for the first three quarters of 2020, the Exchange believes its 2019 Audited Unconsolidated Financial Statement is not useful for analyzing the reasonableness of the total annual revenue and costs associated with the Proposed Access Fees. Accordingly, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 actual (for the first 9 months) and projected (for the final 3 months) revenue and costs, as described herein, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements. Based on this analysis, the Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing the Exchange's total annual expense associated with providing the services associated with the Proposed Access Fees versus the total projected annual revenue the Exchange will collect for providing those services.

* * * * *

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[20] On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[21] Accordingly, the Exchange believes that the Proposed Access Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including comprehensive revenue and cost data and analysis) that they are fair and reasonable because they not result in excessive pricing or supra-competitive profit; and (iv) utilize a cost-based justification framework that is substantially similar to a framework previously used by the Exchange to establish other non-transaction fees. Accordingly, the Exchange believes that the Commission should find that the Proposed Access Fees are consistent with the Act.

The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[22] in general, and furthers the objectives of Section 6(b)(4) of the Act[23] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and

[18] *See supra* note 15.

[19] *See e.g.,* NYSE Arca Options Fees and Charges, p.1 (assessing market makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, an additional $3,000 for all option issues on the exchange, and an additional $1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers $8,000 for up to 60 plus the bottom 45% of option issues, an additional $6,000 for up to 150 plus the bottom 45% of option issues, an additional $5,000 for up to 500 plus the bottom 45% of option issues, and additional $4,000 for up to 1,100 plus the bottom 45% of option issues, an additional $3,000 for all issues traded on the exchange, and an additional $2,000 for 6th to 9th ATPs; plus an addition fee for premium products). *See also* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts. *Id.*

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[21] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4) and (5).

issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange only has four primary sources of revenue: transaction fees, access fees (which includes the Proposed Access Fees), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Exchange believes that the Proposed Access Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX Emerald associated with providing these services versus the total projected annual revenue that the Exchange projects to collect. For 2020, the total annual expense for providing the services associated with the Proposed Access Fees for MIAX Emerald is projected to be approximately $2.5 million. The $2.5 million in projected total annual expense is comprised of the following, all of which are directly related to the services associated with the Proposed Access Fees: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees. As noted above, the Exchange believes it is more appropriate to analyze the Proposed Access Fees utilizing its 2020 actual (for the first 9 months) and projected (for the final 3 months) revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[24] The $2.5 million in projected total annual expense is directly related to the services associated with the Proposed Access Fees, and not any other product or service offered by the Exchange. It does not include general costs of operating matching systems and other trading technology, and no expense amount was allocated twice.

As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the services associated with the Proposed Access Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with the Proposed Access Fees.

For 2020, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide the services associated with the Proposed Access Fees, is projected to be $190,621. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI'')[25], which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members connect to the network to trade, receive market data, etc.).

For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with the Proposed Access Fees, only that portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 10% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, MIAX and MIAX PEARL, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services

[24] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-part expense described in this filing is attributed to the same line item for the Exchange's 2020 Form 1 Amendment, which will be filed in 2021.

[25] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

associated with the Proposed Access Fees. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the Proposed Access Fees, approximately 1% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 1% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 10% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees.

For 2020, total projected internal expense, relating to the internal costs of MIAX Emerald to provide the services associated with the Proposed Access Fees, is projected to be $2,046,137. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with the Proposed Access Fees, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with the Proposed Access Fees, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with the Proposed Access Fees. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those items to the services associated with the Proposed Access Fees.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with the Proposed Access Fees. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing the services associated with the Proposed Access Fees is projected to be $1,403,101, which is only a portion of the $9,354,009 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with the Proposed Access Fees. Without these employees, the Exchange would not be able to provide the services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with the Proposed Access Fees, only the portions which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 15% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing the services associated with the Proposed Access Fees is projected to be $571,888, which is only a portion of the $3,812,590 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with the Proposed Access Fees. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with the Proposed Access Fees to its Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the Proposed Access Fees, approximately 15% of the total

depreciation and amortization expense, as these services would not be possible without relying on such. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing the services associated with the Proposed Access Fees is projected to be $71,148, which is only a portion of the $474,323 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with the Proposed Access Fees. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 150 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with the proposed Trading Permit fees. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with the Proposed Access Fees to its Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with the Proposed Access Fees. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with the Proposed Access Fees, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 15% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with the Proposed Access Fees, and not any other service, as supported by its cost review [sic]

Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit. To illustrate, for 2020, the Exchange's total projected revenue associated with the Proposed Access Fees for the remaining three months of 2020 is approximately $625,000. Total projected expense for the Exchange for 2020 for the provision of the Proposed Access Fees is approximately $2,236,758. Accordingly, the provision of the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit (rather, it will result in a loss of $1,611,758 for 2020).

On a going-forward, fully-annualized basis, the Exchange projects that its annualized revenue for providing the services associated with the Proposed Access Fees would be approximately $2.5 million per annum, based on a most recently completed billing cycle. The Exchange projects that its annualized expense for providing the services associated with the Proposed Access Fees would be approximately $2,236,758 per annum. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue for the providing the services associated with the Proposed Access Fees will not result in excessive pricing or supra-competitive profit, as the Exchange will make only a 10% profit margin on the Proposed Access Fees ($2.5 million − $2,236,758 = $263,242 per annum).

For the avoidance of doubt, none of the expenses included herein relating to the services associated with the Proposed Access Fees relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with the Proposed Access Fees because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with the Proposed Access Fees to its Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. The Proposed Access Fees are intended to recover the Exchange's costs of operating and supporting the network. Accordingly, the Exchange believes that the Proposed Access Fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected annual revenue from the Proposed Access Fees.

Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX Emerald market since this market is now established and MIAX Emerald no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposal is equitable and not unfairly discriminatory because the elimination of the fee waiver for the Proposed Access Fees will uniformly apply to all EEMs and Market Makers seeking to become Members of the Exchange. The Exchange also notes that the Exchange's affiliate, MIAX, charges a similar, fixed trading permit fee to its EEMs, and a similar, varying trading permit fee to its Market Makers, based upon the number of assignments of option classes or the percentage of volume in option classes.[26]

The Exchange believes that the Proposed Access Fees are reasonable, equitable and not unfairly discriminatory because they are within the range of comparable fees at other competing options exchanges.[27] The Proposed Access Fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Market Makers regardless of type and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange notes that trading volume and quoting activity in

[26] *See supra* note 15.

[27] *See supra* note 19.

the options market tends to be concentrated in the top ranked options classes; with the vast majority of options classes being thinly quoted and traded. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst Market Maker assignments to account for quoting and trading activity.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the Proposed Access Fees do not place certain market participants at a relative disadvantage to other market participants because the Proposed Access Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange notes that trading volume and quoting activity in the options market tends to be concentrated in the top ranked options classes; with the vast majority of options classes being thinly quoted and traded. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be assigned and quote in option classes with lower total national average daily volume while also equitably allocating the fees in a reasonable manner amongst Market Maker assignments to account for quoting and trading activity.

Inter-Market Competition

The Exchange believes the Proposed Access Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to become members of all options exchanges. The Exchange notes that it has far less Members as compared to the much greater number of members at other options exchanges. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Access Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of October 2020, the Exchange had a market share of approximately 3.60% of executed multiply-listed equity options [28] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

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.

[28] *See* The Options Clearing Corporation (''OCC'') publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/market-data/volume/default.jsp.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[29] and Rule 19b–4(f)(2) [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EMERALD–2020–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2020–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the 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

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2020–18 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27393 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90604; File No. SR–CboeEDGX–2020–060]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule

December 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (''EDGX Equities'') by amending (1) Retail Volume Tiers, (2) modifying Fee Codes EA and ER and (3) eliminating unused fee codes.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity, assesses a standard fee of $0.00270 per share for orders that remove liquidity and assesses a standard fee of $0.0030 for orders that are routed. For orders priced below $1.00, the Exchange a standard rebate of $0.00009 per share for orders that add liquidity, assesses a fee of 0.30% of Dollar Value for orders that remove liquidity and for orders that are routed. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Retail Volume Tiers

Pursuant to footnote 3 of the fee schedule, the Exchange currently offers Retail Volume Tiers which provide Retail Member Organizations (''RMOs'')[5] an opportunity to receive an enhanced rebate from the standard rebate for Retail Orders[6] that add liquidity (*i.e.,* yielding fee code ''ZA''[7]). Currently, the Retail Volume Tiers offer three levels of criteria difficulty and incentive opportunities in which RMOs may qualify for enhanced rebates for Retail Orders. The tier structure is designed to encourage RMOs to increase their order flow in order to receive an enhanced rebate on their liquidity adding orders, and the Exchange now proposes to amend existing Retail Volume Tiers 1, 2 and 3. The current Retail Volume Tiers are as follows:

- Tier 1 provides an enhanced rebate of $0.0034 for a Member's qualifying orders (*i.e.,* yielding fee code ZA) where

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on December 1, 2020 (SR–CboeEDGX–2020–059). On December 3, 2020, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 27, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[5] A ''Retail Member Organization'' or ''RMO'' is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders. *See* EDGX Rule 11.21(a)(1).

[6] A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* EDGX Rule 11.21(a)(2).

[7] Appended to Retail Orders that add liquidity to EDGX and offered a rebate of $0.0032 per share.

a Member adds a Retail Order ADV [8] (*i.e.,* yielding fee code ZA) greater than or equal to 0.35% of the TCV.[9]

• Tier 2 provides an enhanced rebate of $0.0037 for a Member's qualifying orders (*i.e.,* yielding fee code ZA) where a Member (1) has a Retail Step-Up Add TCV [10] (*i.e.* yielding fee code ZA) from May 2020 greater than or equal to 0.10% and (2) removes a Retail Order ADV (*i.e.,* yielding fee code ZR) greater than or equal to 0.15% of the TCV.

• Tier 3 provides an enhanced rebate of $0.0036 for a Member's qualifying orders (*i.e.,* yielding fee code ZA) where a Member adds a Retail Order ADV (*i.e.,* yielding fee code ZA) greater than or equal to 0.60% of the TCV.

The Exchange proposes to update the criteria in Retail Volume Tier 2, adopt new Retail Volume Tier 4 and renumber Retail Volume Tiers 2 and 3. First, the Exchange proposes to ease the criteria under Retail Volume Tier 2. Particularly, to meet the proposed criteria in Tier 2 a Member must continue to satisfy the first prong of Retail Volume Tier 2 but also remove an ADV greater than or equal to 0.70% of the TCV (instead of removing Retail Order ADV greater than or equal to 0.15%). The Exchange also proposes to adopt a new Retail Volume Tier 4 which would provide a rebate of $0.0037 per share where a Member (1) has a Retail Step-Up Add TCV [11] (*i.e.* yielding fee code ZA) from July 2020 greater than or equal to 0.05% and (2) adds a Retail Order ADV (*i.e.,* yielding fee code ZA) greater than or equal to 0.40% of the TCV. The Exchange also proposes to switch the order of current Retail Volume Tiers 2 and 3 such that Retail Volume Tier 2 becomes Retail Volume Tier 3 and Retail Volume Tier 3 becomes Retail Volume Tier 2. The proposed change would provide that the Retail Volume Tiers would be in ascending order with respect to the available rebates, which the Exchange believes would alleviate potential confusion and make the table easier for market participants to follow.

The Exchange notes Retail Volume Tier 2, as modified, continues to be available to all RMOs and provide RMOs an opportunity to receive an enhanced rebate. Moreover, the proposed change to Retail Volume Tier 2 and the proposed new Retail Volume Tier 4 are both designed to encourage RMOs to increase retail order flow on the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants at improved prices.

Fee Codes EA and ER

The Exchange proposes to amend fee codes EA and ER which are appended to Internalized Trades. An Internalized Trade is a trade where the two orders inadvertently match against each other and share the same Market Participant Identifier (''MPID''). Fee code EA is appended to the side of an Internalized Trade that adds liquidity, while fee code ER is appended to the side of an Internalized Trade that removes liquidity. Orders that yield fee codes EA or ER are currently charged a fee of $0.00050 per share in securities priced at or above $1.00 and 0.15% of the dollar value of the trade in securities priced below $1.00. The Exchange proposes to provide that both fee codes apply to Displayed orders only. The proposed rule change would allow Non-Displayed orders that inadvertently match against each other and share the same MPID to be eligible to receive better prices, including rebates applicable to Non-Displayed orders that add liquidity.[12]

Elimination of Certain Routing Fee Codes

The Exchange assesses fees in connection with orders routed away to various exchanges. The Exchange proposes to eliminate several routing-related fee codes that have been unused for several years. Particularly, the Exchange proposes to eliminate the following fee codes:

• Fee Code 9, which is appended to orders routed to NYSE Arca and adds liquidity (Tapes A or C) and provides a rebate of $0.00210 per share for securities priced at or above $1.00 and are free for securities priced below $1.00;

• Fee Code NB, which is appended to orders routed to any exchange not covered by Fee Code NA and adds non-displayed liquidity and assesses a fee of $0.00300 per share for securities priced at or above $1.00 and a fee of 0.30% of dollar value for securities priced below $1.00;

• Fee Code R, which is appended to orders re-routed by NYSE and assesses a fee of 0.00300 per share for securities priced at or above $1.00 and a fee of 0.30% of dollar value for securities priced below $1.00;

• Fee Code RA, which is appended to orders re-routed to EDGA and adds liquidity and assess a fee of 0.00300 per share for securities priced at or above $1.00 and are free for securities priced below $1.00; and

• Fee Code RB, which is appended to orders routed to BX and adds liquidity and assess a fee of 0.00200 per share for securities priced at or above $1.00 and are free for securities priced below $1.00.

As noted, above the Exchange has observed no volume in recent years in orders yielding fee codes 9, NB, R, RA and RB. The Exchange believes that because no Members elect to route their orders that yield these fee codes, the current demand (or lack thereof) does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of transactions. Therefore, the Exchange now proposes to delete fee codes 9, NB, R, RA and RB in the Fee Schedule. The Exchange notes that Members will continue to be able to choose to route their orders to any exchange covered by these fee codes and such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (*e.g.,* the standard fees applied to routed orders, which yields fee code X).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure

[8] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[9] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[10] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

[11] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

[12] *See e.g.,* Cboe EDGX Equities Fees Schedule, Fee Code HA which provides Non-Displayed orders that add liquidity a rebate of $0.00100 and Footnote 1 which provides for 3 incentive tiers applicable to Non-Displayed Orders.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed changes to Retail Volume Tier 2 (to be renumbered to Retail Volume Tier 3) are reasonable because the tier, as modified, continues to be available to all RMOs and provides RMOs an opportunity to receive an enhanced rebate using less stringent criteria. Similarly, the Exchange believes Retail Volume Tier 4 provides an additional opportunity for RMOs to receive an enhanced rebate if they meet the proposed criteria. The Exchange next notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open to all Members (and RMOs as applicable) on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.

The Exchange also believes that the current enhanced rebates under Retail Volume Tier 2, along with the proposed new rebate under Retail Volume Tier 4 are commensurate with the proposed criteria. That is, these rebates reasonably reflect the difficulty in achieving the corresponding criteria as amended.

The Exchange believes that the proposal relating to the Retail Volume Tiers also represents an equitable allocation of rebates and is not unfairly discriminatory because all RMOs will continue to be eligible for each Retail Volume Tier. The proposed changes are designed as an incentive to any and all RMOs interested in meeting the tier criteria, as amended to submit additional adding and/or removing, or Retail, order flow to the Exchange. The Exchange notes that greater add volume order flow provides for deeper, more liquid markets and execution opportunities, and greater remove volume order flow increases transactions on the Exchange, which incentivizes liquidity providers to submit additional liquidity and execution opportunities, thus, providing an overall increase in price discovery and transparency on the Exchange. Also, an increase in Retail Order flow, which orders are generally submitted in smaller sizes, tends to attract Market-Makers, as smaller size orders are easier to hedge. Increased Market-Maker activity facilitates tighter spreads, signaling an additional corresponding increase in order flow from other market participants, which contributes towards a robust, well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also notes all RMOs will continue to have the opportunity to submit the requisite order flow and will receive the applicable enhanced rebate if the tier criteria is met. The Exchange additionally notes that while the Retail Volume Tiers are applicable only to RMOs, the Exchange does not believe this application is discriminatory as the Exchange offers similar rebates to non-RMO order flow.[15]

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any RMOs qualifying for the proposed amended tier. The Exchange notes that most recently, one Member satisfied Retail Volume Tier 2. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy Retail Volume Tier 2 (as amended). The Exchange also anticipates that approximately two Members will be able to satisfy new Retail Volume Tier 4. The Exchange also notes that the proposed amended tiers will not adversely impact any RMO's ability to qualify for other rebate tiers. Rather, should an RMO not meet the criteria for Retail Volume Tier 2, as amended, or Retail Volume Tier 4 as proposed, the RMO will merely not receive the corresponding proposed enhanced rebate. Furthermore, the rebates under each Retail Volume Tiers would uniformly apply to all RMOs that meet the required criteria.

The Exchange believes renumbering Retail Volume Tiers 2 and 3 will eliminate potential confusion and make the Fees Schedule easier to read by organizing the Retail Volume Tier program in ascending order with respect to available rebates.

The Exchange believes it's reasonable to exclude non-displayed orders from Fee Codes EA and ER as such orders would then be eligible to receive better prices, including rebates applicable to Non-Displayed orders that add liquidity.[16] The Exchange notes that other exchanges do not require Non-Displayed orders that match against each other and share the same MPID to be subject to specific internalization fees, but rather are treated the same as other non-displayed transactions.[17] The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies equally to all Members.

The Exchange also believes the proposed rule change to remove fee codes 9, NB, R, RA and RB is reasonable as the Exchange has observed no volume in orders yielding these fee codes and, therefore, the Exchange believes the proposed change will have a de minimis impact. Additionally, the Exchange believes that infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of routed orders is not warranted or necessary in light of the fact that it has not received any recent volume yielding these fee codes. As noted above, to the extent volume for transactions currently covered by these fee codes ever increases, such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (*e.g.,* the standard fees applied to routed orders, which yield fee code X). Finally, the Exchange believes that the proposed elimination of the fee codes is equitable and not unfairly discriminatory as it applies equally to all members that use the Exchange to route orders. If

[15] Such as the other Add/Remove Volume Tiers under Footnote 1 of the EDGX Fees Schedule which provide opportunities to all Members to submit the requisite order flow to receive an enhanced rebate.

[16] *See e.g.,* Cboe EDGX Equities Fees Schedule, Fee Code HA which provides Non-Displayed orders that add liquidity a rebate of $0.00100 and Footnote 1 which provides for 3 incentive tiers applicable to Non-Displayed Orders.

[17] *See e.g.,* Cboe BZX Equities Fees Schedule, Cboe BYX Equities Fees Schedule and Cboe EDGA Fees Schedule.

members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Retail Volume Tier program apply to all RMOs equally in that all RMOs are eligible for those tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the enhanced rebates if such criteria are met. Additionally, the proposed tiers are designed to attract additional order flow to the Exchange. The Exchange believes that the updated tier criteria would incentivize market participants to direct liquidity adding and/or removing order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Additionally, the proposed change to fee codes EA, ER and the proposal to remove unused routing-related fee codes apply equally to all Members.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2020–060 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-CboeEDGX–2020–060. 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

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX–2020–060 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27395 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 16, 2020 at 10:00 a.m.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via audio webcast only on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt rules that will require resource extraction issuers to disclose payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas, or minerals. The rules will implement Section 13(q) of the Securities Exchange Act of 1934, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

2. The Commission will consider whether to adopt amendments under the Investment Advisers Act of 1940 (the ''Advisers Act'') to update rules that govern investment adviser marketing to accommodate the continual evolution and interplay of technology and advice, while preserving investor protections. The Commission will also consider whether to adopt amendments to Form ADV to provide the Commission with additional information about advisers' marketing practices, and corresponding amendments to the books and records rule under the Advisers Act.

3. The Commission will consider whether to approve a proposed rule change by New York Stock Exchange LLC to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings.

CONTACT PERSONS FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: December 9, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–27510 Filed 12–10–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90609; File No. SR-CboeEDGA–2020–031]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

December 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 3, 2020, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fee schedule applicable to Members and non-Members[3] of the Exchange pursuant to EDGA Rules 15.1(a)

and (c). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to remove unused routing-related fee codes.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' See Exchange Rule 1.5(n).

[4] The Exchange initially filed the proposed fee changes December 1, 2020 (SR–CboeEDGA–2020–030). On December 3, 2020, the Exchange withdrew that filing and submitted this proposal.

available information,[5] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0018 per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity and for orders that are routed. For orders priced below $1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity and assesses a fee of 0.30% of total dollar value for orders that are routed. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. The Exchange proposes to eliminate several routing-related fee codes that have been unused for several years. Particularly, the Exchange proposes to eliminate the following fee codes:

- Fee Code 9, which is appended to orders routed to NYSE Arca and adds liquidity (Tapes A or C) and provides a rebate of $0.00210 per share for securities priced at or above $1.00 and are free for securities priced below $1.00;
- Fee Code LK, which is appended to orders routed to SDP using C–LNK and assesses a fee of $0.00020 per share;
- Fee Code NB, which is appended to orders routed to any exchange not covered by Fee Code NA and adds non-displayed liquidity and assesses a fee of $0.00300 per share for securities priced at or above $1.00 and a fee of 0.30% of dollar value for securities priced below $1.00;
- Fee Code R, which is appended to orders re-routed by NYSE and assesses a fee of 0.00300 per share and a fee of 0.30% of dollar value for securities priced below $1.00; and
- Fee Code RB, which is appended to orders routed to BX and adds liquidity and assess a fee of 0.00200 per share for securities priced at or above $1.00 and are free for securities priced below $1.00.

As noted above, the Exchange has observed no volume in recent years in orders yielding fee codes 9, LK, NB, R, and RB. The Exchange believes that, because no Members elect to route their orders that yield these fee codes, the current demand (or lack thereof) does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of transactions. Therefore, the Exchange now proposes to delete fee codes 9, LK, NB, R, and RB in the Fee Schedule. The Exchange notes that Members will continue to be able to choose to route their orders to any exchange covered by these fee codes and such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (*e.g.,* the standard fees applied to routed orders, which yields fee code X).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange also believes the proposed rule change to remove fee codes 9, LK, NB, R, and RB is reasonable as the Exchange has observed no volume in orders yielding these fee codes and, therefore, the Exchange believes the proposed change will have a de minimis impact. Additionally, the Exchange believes that infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of routed orders is not warranted or necessary in light of the fact that it has not received any recent volume yielding these fee codes. As noted above, to the extent volume for transactions currently covered by these fee codes ever increases, such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (*e.g.,* the standard fees applied to routed orders, which yield fee code X). Finally, the Exchange believes that the proposed elimination of the fee codes is equitable and not unfairly discriminatory as it applies equally to all members that use the Exchange to route orders. If members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby

[5] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 27, 2020), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [9]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . ..''.[11] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b-4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number

SR–CboeEDGA–2020–031 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-CboeEDGA–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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2020–031 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

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[9] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[10] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[11] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90597; File No. SR–EMERALD–2020–15]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a One-Time Membership Application Fee, Application Programming Interface (''API'') Testing and Certification Fees, and Network Connectivity Testing and Certification Fees

December 8, 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 November 25, 2020, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to establish: (1) One-time membership application fees for new MIAX Emerald Members;[3] and (2) per-instance Application Programming Interface (''API'') Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish: (1) One-time membership application fees for new MIAX Emerald Members based upon the applicant's status as either an Electronic Exchange Member (''EEM'')[4] or as a Market Maker;[5] and (2) per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members.

MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act[6] on March 1, 2019.[7] The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15.[8] In that filing, the Exchange expressly waived, among other fees, the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees, both for Members and non-Members, in order to provide an incentive to prospective market participants to become Exchange Members and for prospective Members and non-Members to connect to MIAX Emerald as soon as possible. At that time, the Exchange waived the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for the Waiver Period,[9] and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On September 15, 2020, the Exchange issued a Regulatory Circular which announced that the Exchange would terminate the Waiver Period for, among other fees, the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members, beginning October 1, 2020.[10]

The Exchange initially filed its proposals to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees on October 1, 2020.[11] The First Proposed Rule Changes were published for comment in the **Federal Register** between October 20–21, 2020.[12] On November 25, 2020, the Exchange withdrew the First Proposed Rule Changes and refiled its proposal to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees.[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

[4] ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

[5] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100 and the Definitions section of the Fee Schedule.

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[8] *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

[9] ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions Section of the Fee Schedule.

[10] *See* MIAX Emerald Regulatory Circular 2020–41 available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.*

[11] *See* Securities Exchange Act Release Nos. 90183 (October 14, 2020), 85 FR 66607 (October 20, 2020) (SR–EMERALD–2020–09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Application Programming Interface (''API'') Testing and Certification Fees and Network Connectivity Testing and Certification Fees); 90196 (October 15, 2020), 85 FR 67064 (October 21, 2020) (SR–EMERALD–2020–11) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt One-Time Membership Application Fees and Monthly Trading Permit Fees). The Exchange's prior proposals to establish the one-time membership application fee and per-instance API Testing and Certification fees and Network Connectivity Testing and Certification fees are collectively referred to herein as the ''First Proposed Rule Changes.'' The Exchange notes that it will refile its proposal to establish monthly Trading Permit fees in a separate filing.

[12] *See id.*

[13] *See* Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange will withdraw the First Proposed Rule Changes.

One-Time Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX Emerald membership as an EEM will be assessed a one-time application fee of $2,500. The Exchange proposes that applicants for MIAX Emerald membership as a Market Maker will be assessed a one-time application fee of $3,000. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[14] MIAX Emerald's proposed one-time membership application fees are the same as the one-time application fees in place at the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX'') ($2,500 for an EEM and $3,000 for a MIAX Market Maker),[15] and similar to or less than application fees for the Cboe Exchange, Inc. (''Cboe'') ($3,000 for an individual applicant and $5,000 for an applicant organization)[16] and Nasdaq ISE, LLC (''Nasdaq ISE'') ($7,500 per firm for a primary market maker, $5,500 per firm for a competitive market maker, and $3,500 per firm for an electronic access member).[17] Below is the table showing the proposed one-time membership application fees for EEMs and Market Makers:

Type of membership	Application fee
Electronic Exchange Member	$2,500.00
Market Maker	3,000.00

API Testing and Certification Fees for Members

The Exchange also proposes to adopt an API Testing and Certification fee for Members. An API makes it possible for Member software to communicate with MIAX Emerald software applications, and is subject to Member testing with, and certification by, MIAX Emerald. API testing and certification includes, for EEMs, testing all available order types, new order entry, order management, order throughput and mass order cancellation. For Market Makers, API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The API Testing and Certification fees for Members are based upon the type of interface that the Member has been credentialed to use. The Exchange proposes to adopt an API testing and certification fee for EEMs (other than Clearing Firms): (i) Initially per API for Financial Information Exchange (''FIX'')[18] ports, FIX Drop Copy (''FXD'')[19] ports and Clearing Trade Drop (''CTD'')[20] ports in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to adopt an API testing and certification fee for EEM Clearing Firms (i) initially per API in the month the EEM Clearing Firm has been credentialed to use one or more CTD Ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification.

The Exchange proposes to adopt an API testing and certification fee for Market Makers: (i) Initially per API for CTD and MIAX Emerald Express Interface (''MEI'')[21] ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's System[22] that requires testing and certification. The Exchange proposes to assess Member API Testing and Certification fees of $1,000 for EEMs and $2,500 for Market Makers. Below is the proposed table for API Testing and Certification fees for Members:

Type of member	API testing and certification fee
Electronic Exchange Member	$1,000.00
Market Maker	2,500.00

API Testing and Certification Fee for Non-Members

The Exchange proposes to adopt an API Testing and Certification fee for Third Party Vendors,[23] Service Bureaus[24] and other non-Members (such as clearing firms): (i) Initially per API for FIX, FXD, CTD and MEI ports in the month the Third Party Vendor, Service Bureau or non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. The Exchange also

[14] *See* Chapter VI of the Exchange's rules, generally.

[15] *See* MIAX Fee Schedule, Section (3)(a).

[16] *See* Cboe Fees Schedule, p. 9, Cboe Trading Permit Holder Application Fees.

[17] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

[18] ''FIX Port'' means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. *See* the Definitions section of the Fee Schedule.

[19] The FIX Drop Copy (''FXD'') Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. *See* the Definitions section of the Fee Schedule.

[20] ''CTD Port'' or ''Clearing Trade Drop Port'' provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. *See* the Definitions section of the Fee Schedule.

[21] The MEI is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. The Exchange offers Full Service MEI Ports, which provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. The Exchange also offers Limited Service MEI Ports, which provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. *See* the Definitions section of the Fee Schedule.

[22] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[23] Third Party Vendors are subscribers of MIAX Emerald's market and other data feeds, which they in turn use for redistribution purposes. *See* the Definitions section of the Fee Schedule.

[24] ''Service Bureau'' means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. *See* the Definitions section of the Fee Schedule.

proposes that API Testing and Certification fees will not be assessed to non-Members in situations where the Exchange initiates a mandatory change to the Exchange's System that requires testing and certification.

The Exchange proposes to assess non-Member API Testing and Certification fees of $1,200 for Third Party Vendors, Service Bureaus and other non-Members. Below is the proposed table for API Testing and Certification fees for non-Members:

Non-member	API testing and certification fee
Third Party Vendors and Service Bureaus and other non-Members	$1,200.00

The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The Exchange believes it is necessary to charge an API Testing and Certification fee to Members and non-Members because of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing takes less time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

Network Connectivity Testing and Certification Fee for Members

The Exchange established electronic communication connections with Members and now proposes to assess Members a Network Connectivity Testing and Certification fee for each 1 Gigabit (''Gb'') connection and 10 Gb ultra-low-latency (''ULL'') connection. The Exchange proposes to assess a Member Network Connectivity Testing and Certification fee: (i) Initially per connection in the month the Individual Firm has been credentialed to use any API or market data feeds in the production environment utilizing the tested network connection, and (ii) each time an individual firm initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The Exchange proposes to assess Members a Network Connectivity Testing and Certification Fee of $1,000 per 1Gb connection and $4,000 per 10Gb ULL connection. Below is the proposed table for Member Network Connectivity Testing and Certification fees:

Type of member	1 Gigabit fee per connection	10 Gigabit ULL fee per connection
Individual Firm ..	$1,000.00	$4,000.00

The proposed fee amounts are identical to the fees currently assessed for the same services at the Exchange's affiliates, MIAX and MIAX PEARL, LLC (''MIAX PEARL''). The Exchange notes that the Emerald Express Network Interconnect (''EENI'') [25] is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the Exchange. When utilizing a Shared [26] cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliates, MIAX and MIAX PEARL. Members utilizing a single, Shared cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX and MIAX PEARL will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

Network Connectivity Testing and Certification Fee for Non-Members

MIAX Emerald established electronic communication connections with Service Bureaus, Extranet Providers and other non-Members, and now proposes to assess a Network Connectivity Testing and Certification fee for each 1Gb connection and 10Gb ULL connection. The Exchange proposes to assess a non-Member Network Connectivity Testing and Certification fee: (i) Initially per connection in the month the Service Bureau, Extranet Provider or other non-Member has been credentialed to use any API or market data feeds in the production environment using the tested network connection, and (ii) each time the Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification. Non-Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange's Disaster Recovery Facility.

The Exchange proposes to assess non-Members a Network Connectivity Testing and Certification Fee of $1,200 per 1Gb connection and $4,200 per 10Gb ULL connection. Below is the proposed table for non-Member Network Connectivity Testing and Certification fees:

[25] ''EENI'' means the Emerald Express Network Interconnect, which is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX Emerald. When utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of MIAX Emerald. The EENI consists of the low latency and ultra-low latency connectivity options set forth in the Exchange's Fee Schedule. *See* the Definitions section of the Fee Schedule.

[26] ''Shared'' (cross-connect) means cross-connect that provides network connectivity to the trading platforms, market data systems, test systems, and/or disaster recovery facilities of MIAX Emerald, MIAX and MIAX PEARL via a single, shared connection. The following connections can be Shared across MIAX Emerald, MIAX and MIAX PEARL: 1 Gigabit, 1 Gigabit Disaster Recovery, and 10 Gigabit Disaster Recovery. *See* the Definitions section of the Fee Schedule.

Non-member	1 Gigabit fee per connection	10 Gigabit ULL fee per connection
Service Bureau/ Extranet Provider and other non-Members	$1,200.00	$4,200.00

The EENI is also available to non-Member subscribers. For non-Member subscribers, when utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange's affiliates, MIAX and MIAX PEARL. Accordingly, non-Members utilizing Shared cross-connects to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Member and non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic communication connections with MIAX Emerald. The Exchange's affiliates, MIAX and MIAX PEARL, charge the same fees for the same services for their Members and non-Members.[27] The Exchange proposes to assess a higher Network Connectivity Testing and Certification fee to non-Members than to Members, similar to how MIAX and MIAX PEARL assesses such fees to their Members and non-Members. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed one-time membership application fee is reasonable, equitable and not unfairly discriminatory because it is a one-time, *de minimis* fee that is reasonably related to (and designed to recover) the Exchange's cost associated with reviewing and approving membership applications, which consists primarily of the time and resources of Exchange personnel to process the membership application and conduct the new member on-boarding process. The Exchange's process for reviewing and approving potential new Members involves several steps and participation from personnel in multiple Exchange departments, as follows: (i) Reviewing prospective Member information included in various membership forms, including, where necessary, possibly consulting with FINRA, pursuant to the Exchange's Regulatory Services Agreement; (ii) the on-boarding process, where Exchange personnel contacts the firm for an introductory meeting with the Exchange's Business Team to discuss goals, answer questions and schedule the technical on-boarding meeting; (iii) the technical on-boarding meeting where the Exchange's on-boarding team and Trading Operations Team guides the firm through the on-boarding process with Exchange personnel available to discuss network connectivity, APIs, Exchange functionality and operational issues; and (iv) follow-ups with the Trading Operations Team to coordinate testing, as necessary, until the firm is active in the Exchange's live trading environment.[30] The Exchange tracks the number of hours spent by Exchange personnel providing the aforementioned services per membership application. Based on the Exchange's average cost per full-time employee (''FTE''), the Exchange represents that its cost to provide this service is reasonably related to (and often exceeds) the amount of the membership application fee the Exchange proposes to charge for such service. Accordingly, the proposed fee would enable the Exchange to recover a material portion of such cost.

The Exchange believes the difference in the proposed membership application fee to be charged to EEMs and Market Makers is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[31] because of the additional review and resources involved in processing a Market Maker's application as opposed to an EEM's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[32]

The Exchange believes its proposal to adopt API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act[33] because it is a per-instance, *de minimis* fee that is reasonably related to (and designed to recover) the Exchange's cost associated with providing such API Testing and Certification services and Network Connectivity Testing and Certification services, which consists primarily of the time and resources spent to ensure that Member and non-Member APIs and connectivity function correctly to prevent any System malfunction. The Exchange tracks the number of hours spent by Exchange personnel providing the aforementioned services per billable instance. Based on the Exchange's average cost per FTE, the Exchange represents that its costs to provide these services are reasonably related to (and often exceed) the amount of the respective testing and certification fees the Exchange proposes to charge for such service. Accordingly, the proposed fees would enable the Exchange to recover a material portion of such costs.

Further, the Exchange believes the price differential in API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing utilizes less Exchange resources and employee time than non-Member testing as Members have more

[27] *See* MIAX Fee Schedule, Sections 4(c) and 4(d); *see also* MIAX PEARL Fee Schedule, Sections 4(c) and 4(d).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4) and (5).

[30] *See* the Exchange's Membership and Technical Onboarding process, available at *https://www.miaxoptions.com/membership/emerald.*

[31] 15 U.S.C. 78f(b)(4).

[32] *See supra* note 14.

[33] 15 U.S.C. 78f(b)(4).

experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members. The Exchange believes its proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees are reasonable and well within the range of non-transaction fees assessed among other exchanges, including the Exchange's affiliates, MIAX and MIAX PEARL.[34]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply to all new Exchange Members and those firms looking to establish APIs and network connectivity in the same manner. Market participants may not only choose whether to become Exchange Members at all, but may choose to become members at competing options exchanges instead.

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that various market participants are charged different fees for the one-time membership application and per-instance API and network connectivity testing, those distinctions are not unfairly discriminatory and do not unfairly burden one set of market participants over another. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.[35] The proposed higher fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process. MIAX Emerald's proposed one-time membership application fee and per-instance API Testing and Certification fee levels and Network Connectivity Testing and Certification fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by the Exchange's affiliates, MIAX and MIAX PEARL.[36]

The Exchange believes that the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API Testing and Certification fees and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 15 other options exchanges where market participants can become members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[37] and Rule 19b–4(f)(2) [38] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[34] *See supra* notes 15, 16 and 17.

[35] *See supra* note 14.

[36] *See supra* notes 15, 16 and 17.

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2020–15 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–EMERALD–2020–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2020–15 and should be submitted on or before January 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–27391 Filed 12–11–20; 8:45 am]

BILLING CODE 8011–01–P

[39] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11261]

60-Day Notice of Proposed Information Collection: Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to February 12, 2021.

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

• *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2020–0051'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: Antarctica@state.gov.*

• *Regular Mail:* Send written comments to: William Muntean, Senior Advisor for Antarctica, Office of Ocean and Polar Affairs, Room 2665, Bureau of Oceans, Environment and Science, U.S. Department of State, 2201 C Street NW, Washington ,DC 20520.

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* ADVANCE NOTIFICATION FORM: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area.

• *OMB Control Number:* 1405–0181.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs (OES/OPA).

• *Form Number:* DS–4131.

• *Respondents:* Operators of Antarctic expeditions organized in or proceeding from the United States.

• *Estimated Number of Respondents:* 25.

• *Estimated Number of Responses:* 25.

• *Average Time per Response:* 9 hours.

• *Total Estimated Burden Time:* 225 hours

• *Frequency:* On occasion.

• *Obligation to Respond:* Required to comply with Article VII(5)(a) of the Antarctic Treaty and associated documents.

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

Information solicited on the Advance Notification Form (DS–4131) provides the U.S. Government with information on tourist and other non-governmental expeditions to the Antarctic Treaty area. The U.S. Government needs this information to comply with Article VII(5)(a) of the Antarctic Treaty and associated documents.

Methodology

The Form DS–4131 is available by download from the Department's website. The information will be submitted by U.S. organizers of tourist and other non-governmental expeditions to Antarctica by means of this form. The form should be submitted via email, although signed originals submitted by regular mail are also valid.

Evan T. Bloom,

Director.

[FR Doc. 2020–27358 Filed 12–11–20; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice:11260]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of ''Man on a Diving Board'' Painting by Aksel Waldemar Johannessen

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that one object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary exhibition within the Department of European Paintings of The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–27367 Filed 12–11–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Women in Aviation Advisory Board; Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Women in Aviation Advisory Board (WIAAB).

DATES: The meeting will be held on January 14, 2020, from 9 a.m.—3:30 p.m. EDT.

Requests to attend the meeting must be received by Thursday, December 31, 2020.

Requests for accommodations to a disability must be received by Thursday, December 31, 2020.

If you wish to speak during the meeting, you must submit a written copy of your remarks to FAA by Thursday, December 31, 2020.

Requests to submit written materials to be reviewed during the meeting must be received no later than Thursday, December 31, 2020.

ADDRESSES: Due to circumstances outside of the Federal Aviation Administration's control, the meeting will be offered as a webinar. You can visit the WIAAB internet website at:

https://www.faa.gov/about/office_org/headquarters_offices/ahr/advisory_committees/women_aviation/.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Anderson, Designated Federal Officer, Federal Aviation Administration, at *S612WomenAdvisoryBoard@faa.gov.* Any committee related request should be sent to the person listed in this section or by phone at 202 267–9629.

SUPPLEMENTARY INFORMATION:

I. Background

WIAAB was created under the Federal Advisory Committee Act (FACA), in accordance with Section 612 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254), to encourage women and girls to enter the field of aviation with the objective of promoting organizations and programs that provide education, training, mentorship, outreach, and recruitment of women in the aviation industry.

II. Agenda

At the meeting, the agenda will include the following topics:

- Official Statement of the Designated Federal Officer
- Welcome/Opening Remarks
- Update from Subcommittee Chairs
- Review of Action Items
- Closing Remarks

A detailed agenda will be posted on the WIAAB internet website address listed in the **ADDRESSES** section at least 15 days in advance of the meeting. Copies of the meeting minutes will also be available on the WIAAB internet website.

III. Public Participation

The meeting will be open to the public and members of the public who wish to attend must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Anyone who has registered to attend will be notified in a timely manner prior to the meeting.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Thursday, December 31, 2020.

There will be a total of 15 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the Federal Aviation Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to WIAAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time. The public may present written statements to WIAAB by emailing the Designated Federal Officer's address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on December 8, 2020.

Angela O. Anderson,

Senior Advisor, Office of the Assistant Administrator for Human Resource Management, Federal Aviation Administration.

[FR Doc. 2020–27383 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0031]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of

Management and Budget's (OMB) approval for an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 28, 2020. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0031 by any of the following methods:

website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground

Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Scurry, 202 897–7168, Office of Safety, Federal Highway Administration, Department of Transportation, 840 Bear Tavern Road, Suite 202, West Trenton, NJ, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Highway Safety Improvement Program.

Background:

The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) continues the Highway Safety Improvement Program (HSIP) as a core federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

The existing provisions of Title 23 U.S.C. Sections 130, Railway-Highway Crossings Program,, as well as implementing regulations in 23 CFR 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 reports related to the implementation and effectiveness of their HSIPs, that are to include information on: (a) progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic fatalities and serious injuries [Sections 148(h)]; and (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(h)], which will be used by FHWA to produce and submit biennial reports to Congress. To be able to produce these reports, State DOTs must have safety data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, based on both crash experience and crash potential, as well as determining the effectiveness of highway safety improvement projects. FHWA provides an online reporting tool to support the annual HSIP reporting process. Additional information is available on the Office of Safety website at *http://safety.fhwa.dot.gov/hsip/resources/onrpttool/.* Reporting into the online reporting tool meets all report requirements and USDOT website compatibility requirements. The information contained in the annual HSIP reports provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels.

Respondents: 51 State Transportation Departments, including the District of Columbia

Frequency: Annually

Estimated Average Burden per Response: 250 hours Estimated Total Annual Burden Hours: 12,750 hours (51 states at an average of 250 hours each).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 9, 2020.

Michael Howell,

Information Collection Officer.

[FR Doc. 2020–27407 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0032]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 28, 2020. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0032 by any of the following methods:

website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground

Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Bartz, (512) 536–5906, Office of Program Administration, Federal Highway Administration, Department of Transportation, 300 East 8th Street,

Suite 826, Austin, Texas, 78701. Office hours are from 7:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Preparation and Execution of the Project Agreement and Modifications

OMB Control Number: 2125–0529

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as ''project agreements'' are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: On an on-going basis as project agreements are written.

Estimated Average Annual Burden per Response: There is an average of 400 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 22,400 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 9, 2020.

Michael Howell,

Information Collection Officer.

[FR Doc. 2020–27408 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0032]

Agency Information Collection Activities: Request for Comments on the Renewal of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 18, 2020. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 13, 2021.

ADDRESSES: You may submit comments identified by DOT Docket ID 2020–0032 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Thorkildsen, 518–487–1186, Office of Civil Rights, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Federal-Aid Highway Construction Equal Employment Opportunity.

Background: Title 23, Part 140(a), requires the FHWA to ensure equal opportunity regarding contractors' employment practices on Federal-aid highway projects. To carry out this requirement, the contractors must submit employment workforce data to the State Transportation Agencies (STAs) on all work being performed on Federal-aid contracts during all or any part of the last payroll period preceding the end of July. This report provides the employment workforce data on these contracts and includes the number of minorities, women, and non-minorities in specific highway construction job categories. This information is reported on Form PR–1391, Federal-Aid Highway Construction Contractors Summary of Employment Data. The statute also requires the STAs to submit a report to the FHWA summarizing the data entered on the PR–1391 forms. This summary data is provided on Form PR–1392, Federal-Aid Highway Construction Contractors Summary of Employment Data. The STAs and FHWA use this data to identify patterns and trends of employment in the highway construction industry, and to determine the adequacy and impact of the STA's and FHWA's contract compliance and on-the-job (OJT) training programs. The STAs use this information to monitor the contractors-employment and training of minorities and women in the traditional highway construction crafts. Additionally, the data is used by FHWA to provide summarization, trend analyses to Congress, DOT, and FHWA officials as well as others who request information relating to the Federal-aid highway construction EEO program. The information is also used in making decisions regarding resource allocation; program emphasis; marketing and promotion activities; training; and compliance efforts.

Respondents: 11,077 annual respondents for form PR–1391, and 53 STAs and Territory annual respondents for Form PR–1392 that, total of 11,130.

Frequency: Annually.

Estimated Average Burden per Response: FHWA estimates it takes 30 minutes for Federal-aid contractors to complete and submit Form PR–1391 and 8 hours for STAs to complete and submit Form PR–1392.

Estimated Total Amount Burden Hours: Form PR–1391— 5,539 hours per year; *Form PR—1392-* 416 hours per year, total of 5,955 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this

information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 9, 2020.

Michael Howell,

Information Collections Officer.

[FR Doc. 2020–27409 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0117]

Agency Information Collection Activities; Approval of Reinstated Renewal for Information Request: Commercial Driver's License (CDL) Skills Testing Delays Annual Survey

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its renewal.

DATES: Please send your comments by January 13, 2021. OMB must receive your comments by this date in order to act quickly on the ICR.

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: Dan Britton, Office of Analysis, Research, and Technology/Research Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–9980; *Email Address: dan.britton@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: *Title:* Commercial Driver's License (CDL) Skills Testing Delays Annual Survey.

OMB Control Number: 2126–0065.

Type of Request: Reinstatement of a renewal that was discontinued at the Agency's request.

Respondents: State CDL Coordinators (one from each of the 50 States, and one from Washington, DC)

Estimated Number of Respondents: 51

Estimated Time per Response: 2.3 hours (137.5 minutes).

Expiration Date: To be determined.

Frequency of Response: Annually.

Estimated Total Annual Burden: The annual burden is estimated to be no more than 2.3 hours (137.5 minutes) per respondent, which equates to 116.9 hours over the universe of 51 respondents. This estimate contains a maximum of 2 hours to gather information from State information systems, and an estimated maximum of 17.5 minutes to respond to the survey. While States that already track and report similar information may need much less than 2 hours to gather information, discussions with subject matter experts led to an agreement that 2 hours was a reasonable maximum time limit to use to estimate the maximum annual burden expected.

The estimated time for survey completion was calculated using Versta Research's methodology for calculating an estimate of survey length, where each question is given a number of points based on the estimated burden required to respond to the question (for example, simple multiple choice questions are 1 point, whereas short answer questions are 3 points per expected short phrase). The total number of points for all questions is then divided by eight (the number of simple questions a user can respond to online in 1 minute) to determine the estimate required length for finishing the survey.

Background

Section 5506 of the Fixing America's Surface Transportation Act (''FAST Act''). requires FMCSA to produce a study on CDL skills test delays on an annual basis. The requirements of the study are to submit an annual report describing:

''(A) the average wait time from the date an applicant requests to take a skills test to the date the applicant has the opportunity to complete such test;

(B) the average wait time from the date an applicant, upon failure of a skills test, requests a retest to the date the applicant has the opportunity to complete such retest;

(C) the actual number of qualified commercial driver's license examiners available to test applicants; and

(D) the number of testing sites available through the State department of motor vehicles and whether this number has increased or decreased from the previous year.''

The annual report is also required to describe ''specific steps the Administrator is taking to address skills testing delays in States that have average skills test or retest wait times of more than 7 days.''

If this information collection does not occur, FMCSA will not be able to continue to conduct the study on CDL skills test delays. This data collection aims to continue to create longitudinal data where currently there is none. If the information collection occurs on a less-than-annual basis, FMCSA will not be able to make observations on yearly trends or analyze differences between States.

For the initial 2017 survey FMCSA met with several stakeholders, including the American Association of Motor Vehicle Administrators, the Commercial Vehicle Training Association, and State Driver Licensing Agencies to ensure the information being collected was not already collected elsewhere and was not available to FMCSA. FMCSA conducted extensive background research to ensure the study was not duplicative. A previous study, done by the Government Accountability Office (GAO) in 2015, asked for similar information but did not produce specific enough data to be used in this study.

The survey will continue to be sent out via email, with the option for online completion using SurveyMonkey® or Qualtrics. Each State can continue to respond via email or the online survey tool depending on which method is more convenient for the respondent. The welcome letter will continue to indicate that FMCSA prefers responses via the online survey tool.

The information collected will continue to be published annually in a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Prior Publication

FMCSA published a notice in the **Federal Register** (85 FR 35496) with a 60-day public comment period to

announce this proposed information collection on June 10, 2020. The agency received four total comments, three unique comments and one duplicated comment, in response to this notice.

The three comments received in response to the 60-day notice were from the following persons and organizations:

1. National School Transportation Association (NSTA)
2. Texas Trucking Association (TXTA)
3. Commercial Vehicle Training Association (CVTA)

The comment from NSTA was posted twice, but was the same comment. NSTA was supportive of the information collection request and felt that it was necessary and important information to collect, not only due to FAST Act requirements but also in light of the ongoing COVID–19 situation, which has impacted SDLAs and their operating statuses, as well as many other aspects of the transportation sector. NSTA made several recommendations regarding issuances of CDLs for school bus drivers and inspections for school bus drivers that are outside the scope of this information collection request. These comments have been passed on to the appropriate parties in FMCSA, but did not result in any changes to the proposed information collection contained in this request.

Similarly, TXTA made several comments regarding the actual licensing procedures and policies within Texas, which are outside the scope of this information collection. These comments have been passed on to the appropriate parties in FMCSA, but did not result in any changes to the proposed information collection contained in this request.

CVTA was supportive of the information collection request itself but made several suggestions for improvement. First, CVTA suggested that FMCSA require States to respond to the survey. Furthermore, CVTA felt that FMCSA's analysis of the collected data was lacking and expressed concern with the definition of delays and wait times used by FMCSA in the original analysis. CVTA noted in their comment that they felt this was a failure of FMCSA to meet the requirements of the FAST Act statute. FMCSA does not have the authority to compel States to respond to the survey and re-asserts that responses to the survey must be voluntary. The prior survey received at least partial responses from the majority of States. FMCSA successfully delivered the 2017 report to Congress, which the Agency understood to fulfill the intent behind Section 5506 of the FAST Act. FMCSA did not make any changes to the proposed information collection as a result of this comment, which largely focused on the reporting out of results from the information collection as opposed to the collection of information itself.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87.

Tom Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2020–27376 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Final Agency Actions on Proposed Railroad Project in California, on Behalf of the California High-Speed Rail Authority

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FRA, on behalf of the Authority, is issuing this notice to announce actions taken by the Authority that are final. By this notice, the FRA is advising the public of the time limit to file a claim seeking judicial review of the actions. The actions relate to a proposed railroad project, the California High-Speed Rail Project Merced to Fresno Project Section: Central Valley Wye in Merced, Madera, Fresno, and Stanislaus Counties, California. The Merced to Fresno Project Section: Central Valley Wye provides an approximately 51-mile portion of the larger 800-mile California High-Speed Rail (HSR) system planned throughout California. These actions grant approvals for project implementation pursuant to the National Environmental Policy Act (NEPA) and other laws, regulations, and executive orders.

DATES: A claim seeking judicial review of the agency actions on the railroad project will be barred unless the claim is filed on or before January 14, 2022. If Federal law authorizes judicial review of a claim that provides a time period of less than two years for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT:

For the Authority: Dan McKell, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, (telephone: 916–324–1541; email: *dan.mckell@hsr.ca.gov*).

For FRA: Stephanie Perez-Arrieta, Lead Environmental Protection Specialist, Federal Railroad Administration, (telephone: 202–493–0388; email: *s.perez-arrieta@dot.gov*).

SUPPLEMENTARY INFORMATION: bEffective July 23, 2019, FRA assigned, and the State of California acting through the Authority assumed, its responsibilities for environmental review, consultation, and other actions required by applicable Federal environmental laws for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Authority has taken final agency actions subject to 49 U.S.C. 24201(a)(4) and 23 U.S.C. 139(*l*)(1) by issuing approvals for the following railroad project in California: California High-Speed Rail Project Merced to Fresno Project Section: Central Valley Wye.

The purpose of the California HSR System is to provide a reliable high-speed electric-powered train system that links the major metropolitan areas of California, delivering predictable and consistent travel times. A further objective is to provide an interface with commercial airports, mass transit, and the highway network and to relieve capacity constraints of the existing transportation system as increases in intercity travel demand in California occur, in a manner sensitive to and protective of California's unique natural resources.

The FRA and the Authority published the Merced to Fresno Section Final Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS) in April 2012. The FRA issued a Record of Decision (ROD) for the Merced to Fresno Project Section on September 18, 2012. The FRA's 2012 ROD deferred identification of a selected alternative for the Central Valley Wye. The Authority published the Merced to Fresno Section: Central Valley Wye Final Supplemental EIR/EIS (Final Supplemental EIR/EIS) on August 7, 2020. The Final Supplemental EIR/EIS was prepared as a supplement to the 2012 EIR/EIS for the Merced to Fresno Project Section. The Authority approved a Supplemental ROD for the Central Valley Wye portion of the Merced to Fresno Project Section on September 16, 2020. The Supplemental ROD is a

supplement to FRA's 2012 ROD for the Merced to Fresno Project Section. The Supplemental ROD does not change any determinations made in FRA's 2012 ROD for the Merced to Fresno Project Section.

In the Supplemental ROD, the Authority selected the State Route (SR) 152 (North) to Road 11 Wye Alternative, identified in the Final Supplemental EIR/EIS, for the Central Valley Wye portion of the Merced to Fresno Project Section. The selected alternative is located west-southwest of the city of Chowchilla with the east-west axis along the north side of SR 152 and the north-south axis on the east side of Road 11. As part of the California HSR System, the selected alternative will provide the public with electric-powered HSR service that provides predictable and consistent travel times between major urban centers and connectivity to airports, mass transit, and the highway network in the north San Joaquin Valley, and that connects the system in the Central Valley to system facilities in the San Francisco Bay Area. The Authority selected this alternative because: (1) It best satisfies the Purpose, Need, and Objectives for the proposed action; and (2) it minimizes impacts on the natural and human environment by utilizing an existing transportation corridor where practicable and incorporating mitigation measures.

This conclusion does not alter, affect or change FRA's conclusions and decision in the 2012 Record of Decision (ROD) on the Merced to Fresno Final Environmental Impact Report/Environmental Impact Statement.

The actions by the Authority, and the laws under which such actions were taken, are described in the Supplemental ROD and Final Supplemental EIR/EIS. The Supplemental ROD, the Final Supplemental EIR/EIS, and other documents are available online in PDF format at the Authority website: *www.hsr.ca.gov,* and copies may be requested by contacting the Authority at the address above or by calling (916) 324–1541.

This notice applies to the Supplemental ROD, the Final Supplemental EIR/EIS, and all other Federal agency decisions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. NEPA;
3. Fixing America's Surface Transportation Act;
4. Department of Transportation Act of 1966, Section 4(f);
5. Land and Water Conservation Fund Act of 1965, Section 6(f);
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. National Historic Preservation Act of 1966, as amended, Section 106;
11. Executive Order 11990, Protection of Wetlands;
12. Executive Order 11988, Floodplain Management;
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; and
14. Executive Order 13112, Invasive Species.

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Infrastructure Investment.

[FR Doc. 2020–27441 Filed 12–11–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (the SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On December 9, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. SHERMAN, Harry Varney Gboto-Nambi, 17th Street and Chessman Avenue, Sinkor, P.O. Box 10–3218,10, Monrovia, Liberia; 11803 Backus Drive, Bowie, MD 20720–4464, United States; DOB 16 Feb 1953; POB Robertsport, Grand Cape Mount County, Liberia; nationality Liberia; Gender Male; Passport PP0099877 (Liberia) expires 28 May 2025 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

2. MATRAIMOV, Raimbek (a.k.a. MATRAIMOV, Raimbek Ismailovich; a.k.a. MATRAIMOV, Raiymbek; a.k.a. MATRAIMOV, Rayimbek; a.k.a. YSMAIYLOV, Raiym), Osh, Kyrgyzstan; DOB 03 May 1971; POB Agartuu, Kyrgyzstan; nationality Kyrgyzstan; Gender Male; National ID No. 1340572 issued 07 Aug 2010 expires 07 Aug 2029; alt. National ID No. 1877213 (Kyrgyzstan) expires 15 Oct 2030; alt. National ID No. 1825229 (Kyrgyzstan) expires 14 Sep 2030 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

3. KOI, Wan Kuok (a.k.a. KUOK–KUI, Wan; a.k.a. ''Broken Tooth''; a.k.a. ''Brokentooth''; a.k.a. ''GUOJU, Yin''; a.k.a. ''KUI, Bung Nga''), Macau; DOB 29

Jul 1955; Gender Male; Passport 31135083 (Portugal) expires 27 Mar 2023 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery, relating to the leader's or official's tenure.

Entities:

1. DONGMEI INVESTMENT GROUP CO., LIMITED (Chinese Traditional: 東美投資集團有限公司) (a.k.a. DONGMEI GROUP), Hong Kong, China; C.R. No. 2920383 (Hong Kong) [GLOMAG] (Linked To: KOI, Wan Kuok).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KOI, Wan Kuok, a person whose property and interests in property are blocked pursuant to EO. 13818.

2. PALAU CHINA HUNG-MUN CULTURAL ASSOCIATION, Palau; Organization Established Date 2019 [GLOMAG] (Linked To: KOI, Wan Kuok).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KOI, Wan Kuok, a person whose property and interests in property are blocked pursuant to EO. 13818.

3. WORLD HONGMEN HISTORY AND CULTURE ASSOCIATION (Chinese Traditional: 世界洪門歷史文化協會), Cambodia; Organization Established Date 2018 [GLOMAG] (Linked To: KOI, Wan Kuok).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, KOI, Wan Kuok, a person whose property and interests in property are blocked pursuant to EO. 13818.

Dated: December 9, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–27458 Filed 12–11–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and have been removed from the list of Specially Designated Nationals and Blocked Persons. Additionally, OFAC is publishing an update to the identifying information of a person currently included in the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 2, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List under the relevant sanctions authorities listed below.

Individuals

1. GONZALEZ MEJIA, Cristian David (a.k.a. GONZALES MEJIA, Cristian), Basel, Switzerland; DOB 01 Aug 1987; POB Bogota,

Colombia; citizen Colombia; Cedula No. 1126098461 (Colombia) (individual) [SDNTK].

2. VALENCIA JAIME, Rafael Angel, c/o AGRICOLA GAXIOLA S.A. DE C.V., Hermosillo, Sonora, Mexico; c/o TEMPLE DEL PITIC S.A. DE C.V., Hermosillo, Sonora, Mexico; Ave Articulo 123 109, Hermosillo, Sonora 83287, Mexico; DOB 22 Jan 1968; POB Hermosillo, Sonora, Mexico; nationality Mexico; citizen Mexico; Passport 02260105052 (Mexico); C.U.R.P. VAJR680122HSRLMF08 (Mexico) (individual) [SDNTK].

3. GRAJALES BERNAL, Sonia Patricia, c/o C.A.D. S.A., Bogota, Colombia; c/o G.L.G. S.A., Bogota, Colombia; c/o GRAJALES S.A., La Union, Valle, Colombia; c/o ILOVIN S.A., Bogota, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o MACEDONIA LTDA., La Union, Valle, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; c/o SALOME GRAJALES Y CIA. LTDA., Bogota, Colombia; c/o ASESORES CONSULTORES ASOCIADOS LTDA., Cali, Colombia; c/o *CALI@TELE.COM* LTDA., Cali, Colombia; c/o COMUNICACIONES ABIERTAS CAMARY LTDA., Cali, Colombia; c/o FUNDACION CENTRO FRUTICOLA ANDINO, La Union, Valle, Colombia; c/o JEHOVA LTDA., Tulua, Valle, Colombia; Cedula No. 29613767 (Colombia) (individual) [SDNT].

4. POSSO, Maria Esperanza, c/o HOTEL LOS VINEDOS, La Union, Valle, Colombia; c/o INDUSTRIAS DEL ESPIRITU SANTO S.A., Malambo, Atlantico, Colombia; c/o TRANSPORTES DEL ESPIRITU SANTO S.A., La Union, Valle, Colombia; c/o FRUTAS DE LA COSTA S.A., Malambo, Atlantico, Colombia; c/o CONSTRUCCIONES E INVERSIONES LTDA., La Union, Valle, Colombia; c/o DOXA S.A., La Union, Valle, Colombia; Cedula No. 29613348 (Colombia) (individual) [SDNT].

5. MUNOZ PAZ, Adriana del Socorro, c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia; DOB 01 Oct 1966; Cedula No. 31950689 (Colombia) (individual) [SDNT].

Additionally, on December 2, 2020, OFAC updated the SDN List for the following person, whose property and interests in property continue to be blocked.

Individual

From:

DAVILA LOPEZ, Jose Ramon (a.k.a. DAVILA LOPEZ, Juan Ramon; a.k.a. RUBIO CONDE, David; a.k.a. TORRES HERNANDEZ, Antonio), Mexico; Calle 22, Valle Hermoso, Tamaulipas, Mexico; DOB 31 Aug 1978; alt. DOB 11 Mar 1979; POB Tijuana, Baja, Mexico; citizen Mexico; nationality Mexico (individual) [SDNTK]

To:

DAVILA LOPEZ, Jose Ramon (a.k.a. RUBIO CONDE, David; a.k.a. TORRES HERNANDEZ, Antonio), Mexico; Calle 22, Valle Hermoso, Tamaulipas, Mexico; DOB 31 Aug 1978; POB Tijuana, Baja California, Mexico; nationality Mexico; citizen Mexico; Gender Male; C.U.R.P. DALR780831HBCVPM06 (Mexico) (individual) [SDNTK].

Dated: December 2, 2020.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2020–27431 Filed 12–11–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 8, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Entities

Entities

1. THINH CUONG COMPANY LIMITED (a.k.a. CONG TY TNHH THINH CUONG (Latin: CÔNG TY TNHH THỊNH CƯỜNG); a.k.a. THINH CUONG CO LTD), 41/8 B Cu Chinh Lan, Hai Phong, Vietnam (Latin: 41/8B Cù Chính Lan, Hải Phòng, Vietnam); Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 1867946; Enterprise Number 0200289195 (Vietnam) [DPRK4].

   Designated pursuant to section 1(a)(i) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect To North Korea" for operating in the transportation industry in North Korea.

2. ALWAYS SMOOTH LTD (a.k.a. ALWAYS SMOOTH LIMITED), London, United Kingdom; c/o Weihai Huijiang Trade Limited, Room 602, 28 Crown Garden District, Weihai Economic and Technological Development Zone, Poyuzhen, Huancui Qu, Weihai, Shandong 264200, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 6013334; Company Number 11032231 (United Kingdom) [DPRK4].

   Designated pursuant to section 1(a)(i) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect To North Korea" for operating in the transportation industry in North Korea.

3. GOOD SIBLINGS LTD, London, United Kingdom; c/o Weihai Huijiang Trade Limited, Room 602, 28 Crown Garden District, Weihai Economic and Technological Development Zone, Poyuzhen, Huancui Qu, Weihai, Shandong 264200, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 6040603; Company Number 11257095 (United Kingdom) [DPRK4].

   Designated pursuant to section 1(a)(i) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect To North Korea" for operating in the transportation industry in North Korea.

4. SILVER BRIDGE SHIPPING CO-HKG (a.k.a. SILVER BRIDGE SHIPPING CO., LIMITED; a.k.a. SILVER BRIDGE SHIPPING CO., LTD.), Unit B-01, 20th Floor, Full Win Commercial Centre, 573 Nathan Road, Yau Ma Tei, Kowloon, Hong Kong; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 5931563; Company Number 2400341 (Hong Kong) [DPRK4].

Vessels

Designated pursuant to section 1(a)(i) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect To North Korea" for operating in the transportation industry in North Korea.

5. WEIHAI HUIJIANG TRADE LIMITED (a.k.a. WEIHAI HUIJIANG TRADE LTD), Room 602, 28 Crown Garden District, Weihai Economic and Technological Development Zone, Poyuzhen, Huancui Qu, Weihai, Shandong 264200, China; Longzhu Garden, Weihai, Shandong 264200, China; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Identification Number IMO 6036742 [DPRK4].

   Designated pursuant to section 1(a)(i) of Executive Order 13810 of September 20, 2017 "Imposing Additional Sanctions With Respect To North Korea" for operating in the transportation industry in North Korea.

6. KOREA DAIZIN TRADING CORP. (a.k.a. 126 ECONOMIC EXCHANGE COMPANY; a.k.a. DAEJIN TRADING GENERAL CORPORATION (Korean: 대진무역총회사); a.k.a. KOREA DAIZIN TRADING CORPORATION; a.k.a. KOREA TAEJIN TRADING; a.k.a. KOREA TAEJIN TRADING CORPORATION; a.k.a. KOREA TAIJIN TRADE CORPORATION; a.k.a. TAECHIN TRADING CORPORATION; a.k.a. TAEJIN TRADING COMPANY; a.k.a. TAEJIN TRADING CORPORATION; a.k.a. TAEJIN TRADING GENERAL COMPANY), Hu'ngbu-dong, Moranbong District, Pyongyang, Korea, North; Hanoi, Vietnam; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Type: Mining of hard coal [DPRK2] [DPRK3].

   Designated pursuant to section 1(a)(i) of Executive Order 13687 of January 2, 2015 "Imposing Additional Sanctions With Respect To North Korea" for being an agency, instrumentality, or controlled entity of the Government of North Korea or the Worker's Party of Korea.

   Designated pursuant to section 2(a)(ii) of Executive Order 13722 of March 15, 2016 "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" for having sold, supplied, transferred, or purchased, directly or indirectly, to or from North Korea or any person acting for or on behalf of the Government of North Korea or the Workers' Party of Korea, metal, graphite, coal, or software, where any revenue or goods received may benefit the Government of North Korea or the Workers' Party of Korea, including North Korea's nuclear or ballistic missile programs.

Dated: December 8, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–27412 Filed 12–11–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Designation of Financial Market Utilities

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Written comments must be received on or before January 13, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Designation of Financial Market Utilities.

OMB Control Number: 1505–0239.

Type of Review: Extension without change of a currently approved collection.

Description: On July 27, 2011, the Council published in the **Federal Register** a final rule (12 CFR part 1320) that describes the criteria that will inform and the processes and procedures established under the Dodd-Frank Act for the Council's designation of FMUs as systemically important under the Dodd-Frank Act. On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII of the Dodd-Frank Act.

The collection of information under 12 CFR 1320.11 affords FMUs that are under consideration for designation, or rescission of designation, an opportunity to submit written materials to the Council in support of, or in opposition to, designation or rescission of designation. The collection of information under 12 CFR 1320.12 affords FMUs an opportunity to contest a proposed determination of the Council by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The collection of information in 12 CFR 1320.14 affords FMUs an opportunity to contest the Council's waiver or modification of the notice, hearing, or other requirements contained in 12 CFR 1320.11 and 1320.12 by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The information collected from FMUs under 12 CFR 1320.20 will be used by the Council to determine whether to designate an additional FMU or to rescind the designation of a designated FMU.

Form: None.

Affected Public: Businesses or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 9.[1]

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 11.[2]

Estimated Time per Response: 50, hours, 20 hours, 10 hours, 10 hours.[3]

Estimated Total Annual Burden Hours: 440 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 9, 2020.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2020–27463 Filed 12–11–20; 8:45 am]

BILLING CODE 4810–25–P

[1] This estimate refers to the eight FMUs currently designated as systemically important under Title VIII, as well as one additional respondent for purposes of illustrating the burden associated with 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

[2] This estimate refers to the eight FMUs currently designated as systemically important under Title VIII, as well as three additional responses for purposes of illustrating the burden associated with 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

[3] The hour estimates refer, respectively, to information collections for respondents associated with 12 CFR 1320.20, 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board Subcommittee Meeting

TIME AND DATE: December 17, 2020, from Noon to 2:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 990 9002 2806, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/j/99090022806.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

—Subcommittee action only to be taken in designated areas on agenda

IV. Review and Approval of Minutes from the November 19, 2020 Meeting—Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the November 19, 2020 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

V. Audit Module Development Discussion with the Education and Training Subcommittee—UCR Operations Director

The Subcommittee will discuss and provide updates on development of the Audit Module.

VI. Decision Tree Development Discussion with the Education and Training Subcommittee—UCR Operations Director

The Subcommittee will discuss and provide input and comments on the development of the Decision Tree Widget.

VII. Other Items—Subcommittee Chair

The Subcommittee Chair will call for any other items the committee members would like to discuss.

VIII. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, December 9, 2020 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2020–27572 Filed 12–10–20; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Decision Review Request: Supplemental Claim

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 12, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: *Nancy J. Kessinger, (202) 632–8924.*

SUPPLEMENTARY INFORMATION:

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 115–55; 38 CFR 3.2501.

Title: Decision Review Request: Supplemental Claim (VA Form 20–0995).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Form 20–0995, *Decision Review Request: Supplemental Claim* will be used by a claimant to formally request a Supplemental Claim of an initial VA decision based on new and relevant evidence, in accordance with the Appeals Modernization Act. The information collected will be used by VA to identify the issues in dispute which the claimant seeks review of in the Supplemental Claim Lane.

Affected Public: Individuals and households.

Estimated Annual Burden: 66,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 265,000 per year.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–27449 Filed 12–11–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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No. 240 December 14, 2020

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 470, 635, and 655

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 470, 635, and 655

[FHWA Docket No. FHWA–2020–0001]

RIN 2125–AF85

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Proposed rule; notice of proposed amendments (NPA).

SUMMARY: The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) is incorporated in FHWA regulations and recognized as the national standard for traffic control devices used on all public roads. The purpose of this NPA is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The proposed changes are intended to update the technical provisions to reflect advances in technologies and operational practices, incorporate recent trends and innovations, and set the stage for automated driving systems as those continue to take shape. The proposed changes would promote uniformity and incorporate technology advances in the traffic control device application, and ultimately improve and promote the safe and efficient utilization of roads that are open to public travel. These proposed changes are being designated as the 11th edition of the MUTCD.

DATES: Comments must be received on or before March 15, 2021. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590–0001;
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329;
- *Instructions:* You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Sylvester, Office of Transportation Operations, (202) 366–2161, *Kevin.Sylvester@dot.gov,* or Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, *William.Winne@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* The website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *https://www.federalregister.gov.*

Executive Summary

I. Purpose of the Regulatory Action

This regulatory action seeks to collect comments from the public on proposed revisions to the MUTCD. The proposed changes are intended to streamline processes and reduce burdens on State and local agencies by including many of the successful devices or applications that have resulted from over 180 official experiments that FHWA has approved, including congestion-reduction strategies such as variable speed limits, dynamic lane control and shoulder use, and pedestrian safety enhancements such as the rectangular rapid-flashing beacon.

The proposed changes would update the technical provisions to reflect advances in technologies and operational practices, incorporate recent trends and innovations, and set the stage for automated driving systems as those systems continue to take shape. These changes would promote uniformity and incorporate technological advances in traffic control device design and application, and ultimately improve and promote the safe and efficient utilization of roads that are open to public travel.

With this proposed rule, FHWA seeks to address any existing provisions that might have contributed to situations that inhibit or contravene the purpose of a nationwide standard for traffic control devices, which is to promote the safe and efficient utilization of the highways and streets through an uninterrupted uniform system of signs, signals, and markings as road users travel between jurisdictions. Uniformity and consistency in message, placement, and operation of traffic control devices have been shown to address the expectancy of the road user, resulting in a more predictable response. The system of uniform traffic control devices works in concert with the natural tendencies of the road user in the various high-judgment situations that the road user will encounter.

II. Summary of the Major Provisions of the Regulatory Action in Question

Key proposed changes in this NPA include the following:

Incorporation of provisional traffic control devices currently under Interim Approval, including pedestrian-actuated rectangular rapid-flashing beacons at uncontrolled marked crosswalks, green-colored pavement for bicycle lanes, red-colored pavement for transit lanes, and a new traffic signal warrant based on crash experience;

Improvements to safety and accessibility for pedestrians, including the location of pushbuttons at signalized crosswalks, crosswalk marking patterns, and accommodations in work zones;

Expanded traffic control devices to improve safety and operation for bicyclists, including intersection bicycle boxes, two-stage turn boxes, bicycle traffic signal faces, and a new design for the U.S. Bicycle Route sign;

Considerations for agencies to prepare roadways for automated vehicle technologies and to support the safe deployment of automated driving systems;

Clarifications on patented and proprietary traffic control devices to foster and promote innovation; and

Safety and operational improvements, including revised procedures for the posting of speed limits, new criteria for warning signs for horizontal alignment changes, new application of traffic control devices for part-time travel on shoulders to manage congestion, and new application of traffic control devices at busway crossings.

In addition, this regulatory action amends the following:

23 CFR part 470, subpart A, appendix C;

23 CFR 635.309(o); and

23 CFR 655.603(b)(1).

III. Costs and Benefits

FHWA has estimated the costs and evaluated potential benefits of this rulemaking and believes the rulemaking

is being proposed in a manner that fulfills the requirements under 23 U.S.C. 109(d) and 23 CFR part 655, while also providing flexibility for agencies. The estimated national costs are documented in the economic analysis report titled, ''Manual on Uniform Traffic Control Devices Assessment of Economic Impacts of Notice of Proposed Amendment,'' which is available on the docket.

The proposed rulemaking introduces a variety of revisions resulting in clarification of language and organization of the MUTCD, deregulation through increased flexibility and alternatives for agencies, deregulation through relaxation of standards to guidance, and the introduction of new traffic devices. For the purposes of this analysis, where revisions improve the clarity of existing content, those revisions have been considered non-substantive. All other revisions are considered substantive as they materially change the requirements of the MUTCD.

This NPA provides quantitative estimates of the expected compliance costs associated with the proposed substantive revisions. There are 132 substantive revisions in total. There are 124 substantive revisions with minimal or no impact, including the introduction of 37 new traffic control device applications. These revisions materially change the MUTCD requirements but have no cost impacts or minimal cost impacts.

The remaining eight substantive revisions have quantifiable economic impacts. For the three substantive revisions for which costs can be quantified, the total estimated cost measured in 2018 dollars is $541,978 when discounted to 2018 at 7 percent; and $589,667 when discounted at 3 percent. These costs are estimated as the sum of the price of the traffic control device and the removal and installation costs of the device, applied to the current and future deployment rate of the traffic control device, considering the compliance date for the provision relating to the device. The proposed revisions differ in their compliance dates, the date after which the traffic control devices must comply with the MUTCD revisions. The cost estimates reflect whether the proposed revision includes a compliance date. For those proposed changes without a compliance date, the analysis assumes that agencies would make traffic control devices comply with the proposed revisions at the end of the service life of a device. For those proposed changes with a compliance date, the analysis assumes that agencies would upgrade non-conforming traffic control devices through systematic upgrading, proportionally each year until the compliance date. The analysis period is 10 years starting with an implementation date of 2021 and extending through 2030. The costs of five substantive revisions could not be estimated due to lack of information, but all are expected to have net benefits based on per-unit or per-mile costs and benefits of the proposed revision. Costs for each substantive revision with appreciable impacts are estimated based on the cost of the traffic control device, the removal and installation costs of the device, the current and future deployment of the traffic control device, and the compliance date if applicable.

The benefits of the revisions include operational and safety benefits. Operational benefits include the capacity of the traffic control device to convey necessary information to road users and any mobility impacts from efficient operation. Currently, no specific data or studies exist to measure operational benefits or efficiency gains, and these benefits are evaluated qualitatively. Ideally, safety benefits would be measured by the revision's impact on crashes, but there are no data that correlate the direct impact of traffic control devices with crash rates, and the safety benefits of these revisions could not be quantified. Potential safety benefits are evaluated qualitatively as well.

For each substantive revision with measurable costs, FHWA expects that the benefits will exceed costs. Based on the qualitative and quantitative information presented, FHWA expects that, in general, the potential benefits of the rulemaking will exceed its costs.

Background

This rule is proposed under 23 U.S.C. 109(d), 315, and 402(a), which give the Secretary of Transportation the authority to promulgate uniform provisions to promote the safe and efficient utilization of the highways. This authority is delegated to FHWA under 49 CFR 1.85.

The text, figures, and tables of a proposed new edition of the MUTCD incorporating the proposed changes from the current edition are available for inspection and copying, as prescribed in 49 CFR part 7, at FHWA Office of Transportation Operations, 1200 New Jersey Avenue, SE, Washington, DC 20590. Further, the text, figures, and tables of a proposed new edition of the MUTCD incorporating changes from the current edition are available on the MUTCD website *http://mutcd.fhwa.dot.gov.* The proposed text is available in two formats. The first format shows the current MUTCD text with proposed additions in blue underlined text and proposed deletions as red strikeout text, and also includes notes in green boxes to provide helpful explanations where text is proposed to be relocated or where minor edits are proposed. The second format shows a ''clean'' version of the complete text proposed for the next edition of the MUTCD, with all the proposed changes incorporated. Though the proposed text, figures, and tables are available only as separate documents for inspection, all three elements will be integrated when the new edition of the MUTCD is published in a consistent format, similar to the current edition. The complete current 2009 edition of the MUTCD with Revision No. 1 and Revision No. 2 incorporated is also available on the same website.

This NPA is being issued to provide an opportunity for public comment on the desirability of these proposed amendments to the MUTCD. This NPA does not address the proposals contained in FHWA's ongoing rulemaking titled, ''Maintaining Pavement Marking Retroreflectivity,'' (RIN 2125–AF34; Docket No. FHWA–2009–0139) at 82 FR 770 (January 4, 2017). Based on the comments received and its own experience, FHWA may issue a final rule concerning the proposed changes included in this document.

The NPA is being published to address the many advances in technology, research results, and improved traffic and safety management strategies that have occurred since the 2009 edition of the MUTCD. FHWA invites comments on these proposed changes to the MUTCD. FHWA requests that commenters cite the page number and line numbers of the proposed MUTCD text for which each specific comment to the docket about the proposed text is concerned, to help make FHWA's docket comment review process more efficient. A form is provided on the docket to simplify the comment submission process. FHWA requests that commenters download and utilize this form to submit comments the docket, but it is not required.

A summary of the proposed general changes and proposed changes for each of the parts of the MUTCD is included in the following discussion. In general, the proposed changes are based on the goal of achieving uniformity in the appearance, meaning, application, and other critical attributes of traffic control devices to promote the safe and efficient utilization of the streets and highways. Uniformity and consistency in message,

placement, and operation of traffic control devices have been shown to accommodate the expectancy of the road user, resulting in a more predictable response which, in turn, results in a safer, more efficient operation of the roads nationwide. It is under this premise that the provisions of the MUTCD are developed and promulgated. These proposals are based on the best available research, professional judgment, and data demonstrating that road user confusion would be avoided had a non-uniform traffic control device been uniform. Where this NPA proposes regulatory requirements prescribing specific conduct that regulated entities must adopt, FHWA has determined that these regulations are necessary to address the compelling need for nationwide uniformity to ensure the safety and efficiency of the traveling public.

Discussion of Proposed Amendments to Part 1 General

1. As part of the reorganization, FHWA proposes to delete the existing Introduction and relocate most of that material into a proposed expanded/restructured Part 1. The purpose of this consolidation is to present more logically the general information about the MUTCD and traffic control devices and to eliminate duplicative material that appears in both the Introduction and sections of Part 1. As a part of this change, FHWA also proposes to remove the existing text and table regarding the historical development of the MUTCD and paragraphs pertaining to the use of metric units, as this material is not needed in the MUTCD or can be instead posted on the MUTCD website for those who are interested in it.

In addition to the changes described herein and shown in the proposed text of the MUTCD, FHWA proposes a new format for each specific traffic control device that is consistent with the format currently used in Part 4 of the Manual, which uses all upper-case letters for each type of traffic signal indication (*e.g.,* ''CIRCULAR RED signal indication''). For example, the title of a sign would be shown in the MUTCD as ''SPEED LIMIT sign'' instead of ''Speed Limit sign,'' ''CHEVRON ALIGNMENT sign'' instead of ''Chevron Alignment sign,'' and ''EXIT DIRECTION sign'' instead of ''Exit Direction sign.'' (The sign title would not depend on whether any word legend on a sign is displayed in upper-case or upper- and lower-case letters.) A similar format would be used for pavement markings: ''NORMAL WIDTH DOTTED WHITE lane line'' instead of ''normal width dotted white lane line,'' ''WIDE SOLID WHITE line'' instead of ''wide solid white line,'' ''DOUBLE SOLID YELLOW line'' instead of ''double solid yellow line,'' and ''CHEVRON HATCH markings'' instead of ''chevron hatch markings.'' This proposed change is not shown in the proposed text of the MUTCD, but would be incorporated in the new edition of the MUTCD if adopted in the Final Rule. FHWA requests comment on this reformatting proposal for implementation throughout the entire Manual.

2. In the proposed consolidated Part 1, FHWA proposes to reorganize the retained material from the existing Introduction and existing Part 1 into four new chapters, to create a more logical flow of information and make it easier for users to find the content they need. The four chapters of the new Part 1 are Chapter 1A (General), Chapter 1B (Legal Requirements for Traffic Control Devices), Chapter 1C (Definitions, Acronyms, and Abbreviations Used In This Manual), and Chapter 1D (Provisions Applicable to Traffic Control Devices in General).

3. In Chapter 1A General, FHWA proposes to create Section 1A.01, titled, ''Purpose of the MUTCD,'' with new text recommended by Item 525 of the 20-Year Vision and Strategic Plan for the MUTCD.[1] FHWA proposes this revision because a clear statement of the MUTCD's purpose is critical in defining what content should be in the MUTCD and how that content should be used.

4. In Section 1A.02 (existing Section 1A.01), FHWA proposes to retitle the section to ''Traffic Control Devices—Definition.'' FHWA also proposes to change the Standard (relocated from the Introduction, Paragraph 1) to Support, restating and referring to the definition of ''traffic control devices'' (as proposed to be revised in Section 1C.02). FHWA also proposes to add a new Support paragraph about infrastructure elements and certain operational devices, to explain that these are not considered traffic control devices. FHWA proposes these revisions to align proposed content and material being relocated from the Introduction and from other sections within existing Part 1.

FHWA also proposes to include a new list item (labeled ''F''), stating that messages displayed on changeable message signs for America's Missing: Broadcast Emergency Response (AMBER) alerts and homeland security information during declared states of emergency are not being considered as traffic control devices and, therefore, provisions regarding their design and use are not included in the MUTCD. FHWA proposes this revision because these two types of messages are specific exceptions to the use of a traffic control device expressly allowed by statute. They are referenced in the MUTCD because the device on which they are displayed is a traffic control device, even though the specific messages are not traffic control device messages.

Lastly, FHWA proposes to relocate the Standard and Support pertaining to advertising to Section 1D.09. FHWA proposes this revision to align proposed content and material in each Section.

5. FHWA proposes to add a new Section 1A.03, titled, ''Target Road Users,'' with new text recommended by Item 526 of the 20-Year Vision and Strategic Plan for the MUTCD.[2] The proposed text describes the characteristics of the two groups of target road users for traffic control devices—operators of vehicles (including bicyclists) and pedestrians. FHWA proposes this revision because proper use of traffic control devices can be optimized by stating the expectations for road users responding to the traffic control devices.

6. FHWA proposes to add a new Section 1A.04, titled, ''Use of the MUTCD,'' with two new Standard paragraphs and one new Guidance paragraph consisting of text recommended by items 528 and 529 of the 20-Year Vision and Strategic Plan for the MUTCD, plus additional text relocated from the Introduction.[3] The proposed text establishes minimum qualifications for those responsible for performing traffic control device activities in order to reduce the potential for unqualified individuals performing traffic control device activities, specifically recommending that traffic control device decisions should be made with consideration of multiple factors.

Lastly, FHWA proposes to change Support paragraphs to provide clarity and to reflect the new use of unnumbered sub-chapter headings.

7. In Section 1A.05 (existing Section 1A.11) Relation to Other Publications, FHWA proposes to add three additional publications to the list of useful sources of information (''Manual for Assessing Safety Hardware'' 2009 Edition

[1] ''20-Year Vision and Strategic Plan for the Manual on Uniform Traffic Control Devices,'' National Committee on Uniform Traffic Control Devices, January 9, 2014, can be viewed at the following internet website: *http://ncutcd.org/wp-content/uploads/MUTCD/MUTCD-20-Year-Vision-NCUTCD-Appvd-1-9-14-FINAL.pdf.*

[2] ''20-Year Vision and Strategic Plan'' can be viewed at the following internet website: *http://ncutcd.org/wp-content/uploads/MUTCD/MUTCD-20-Year-Vision-NCUTCD-Appvd-1-9-14-FINAL.pdf.*

[3] *Ibid.*

AASHTO, ''Equipment and Materials Standards of the Institute of Transportation Engineers'' 1988 Edition ITE, and ''Vehicle Traffic Control Signal Heads: Light Emitting Diode (LED) Vehicle Arrow Traffic Signal Supplement'' 2007 Edition ITE). FHWA also proposes to delete four publications from the existing list of useful sources of information (''Roundabouts—An Informational Guide (FHWA–RD–00–067)'' 2000 Edition FHWA, ''Purchase Specification for Flashing and Steady Burn Warning Lights'' 1981 Edition ITE, ''Traffic Detector Handbook'' 1991 Edition ITE, and ''Traffic Signal Lamps'' 1980 Edition ITE). Lastly, FHWA proposes to update several of the listed publication editions. FHWA proposes these revisions to reflect the most current and applicable supporting publications and to delete any references to publications that are obsolete or have been superseded. In concert with this change, FHWA also proposes Standard and Support paragraphs to explain how specific editions of the resources listed apply to the new edition of the MUTCD.

8. FHWA proposes to add a new Section 1A.06, titled, ''Uniform Vehicle Code—Rules of the Road,'' with text relocated from the existing Introduction and from existing Section 1A.02, plus additional new Support text to explain the current status of the Uniform Vehicle Code. FHWA proposes these revisions to provide clear guidance on the application of the Uniform Vehicle Code.

9. FHWA proposes to add a new Section 1B.01, titled, ''National Standard,'' with text relocated from the existing Introduction. As a part of this change, FHWA proposes to revise existing Paragraph 2, Sentence 2, of the Introduction, from a Standard to a Support, as it is a statement of fact rather than a mandate of the MUTCD.

Lastly, FHWA proposes to add a new Standard indicating the types of facilities to which the MUTCD shall apply and not apply, per 23 CFR 655.603(a). FHWA proposes this revision to make the MUTCD easier for users to understand its applicability, particularly for smaller agencies and individual owners of roads open to public travel.

10. FHWA proposes to add a new Section 1B.02, titled, ''State Adoption and Conformance,'' with text relocated from the existing Introduction and existing Section 1A.07. FHWA proposes this revision to consolidate information about the adoption of the MUTCD by States and other Federal agencies and substantial conformance of State MUTCDs and Supplements.

FHWA also proposes a new Standard paragraph to clarify the fact that, in addition to State MUTCDs or Supplements, any policies, directives, or other supplemental documents that a State or other agency might issue to address traffic control devices are considered supplements to the MUTCD and must be in substantial conformance with the national MUTCD. This proposed change is for clarification purposes and does not represent a change to existing requirements.

Lastly, FHWA proposes to add Guidance indicating that traffic control devices that have been granted Interim Approval, but which have not yet been adopted into the national MUTCD, should not be included in State MUTCDs or Supplements. FHWA proposes this revision to clarify the process for such cases because the technical conditions or status of an Interim Approval are provisional in nature and can change before adoption into the MUTCD. Adoption into State Manuals or Supplements can create a burden for those States for which a legislative change would be required to comply with any new or revised provisions that FHWA might issue. FHWA proposes this change to ensure that an Interim Approval can accommodate flexibility by responding readily to any changes that might become necessary.

11. FHWA proposes to add a new Section 1B.03, titled, ''Compliance of Devices,'' with text relocated from the existing Introduction and existing Sections 1A.07 and 1A.10. FHWA proposes this revision to consolidate information regarding the compliance of traffic control devices to streamline and improve the usability of the MUTCD.

FHWA also proposes to revise an existing Standard relocated from Section 1A.07 to Support. FHWA proposes this revision since the statement is of fact rather than a mandate of the MUTCD.

FHWA also proposes to add a new Support paragraph clarifying the status of devices or applications not specifically addressed in the Manual. FHWA proposes this revision to address a common misperception that an application of a device is allowed if it is not explicitly prohibited in the Manual, even if that application is not addressed in the Manual. In those cases in which there might be some question as to whether an application that is not specifically mentioned in the MUTCD might be allowed, an individual is encouraged to seek an official interpretation, in which FHWA can evaluate whether such application is consistent with the provisions for that device and whether it would adversely impact uniformity.

FHWA also proposes to combine a Standard paragraph and an Option paragraph regarding the replacement of non-compliant traffic control devices, relocated from the Introduction, into a single Standard. FHWA proposes this revision to streamline existing language.

FHWA also proposes to remove 12 rows in Table 1B–1 (existing Table I–2), titled, ''Target Compliance Dates Established by the FHWA.'' FHWA proposes this revision since these rows contain requirements with previously established compliance dates that have passed or will have passed by the date of the publication of the Final Rule resulting from this NPA. Related to this proposed change, FHWA proposes to delete additional compliance dates from the table that are in effect at the time this NPA is published, but expire prior to the effective date of the Final Rule.

FHWA also proposes to add three new compliance dates to Table 1B–1 (existing Table I–2). For Section 2C.25 Low Clearance Signs, the compliance date of five years from the effective date of the final rule for this edition applies to the proposed new Standard requiring that if used, Low Clearance Overhead signs shall indicate the portion of the structure with low clearance if the posted clearance does not apply to the entire structure to indicate the point of applicability. The proposed changes were based on recommendations from the National Transportation Safety Board (NTSB) H–14–11 [4] to provide signing indicating the proper lane of travel for over height vehicles traveling under an arched structure.

For Section 8B.16 High-Profile Grading Crossings, the compliance date of five years from the effective date of the final rule for this edition applies to the proposed new Guidance recommending the installation of Low Ground Clearance and/or Vehicle Exclusion and detour signs for vehicles with low ground clearances that might hang up on high-profile grade crossings. The proposed compliance date applies only to those locations with known histories of vehicle hang-ups occurring because sufficient geometric criteria do not currently exist by which agencies could evaluate crossings to determine the specific types of vehicles that could be problematic. The proposed changes were based on recommendation from

[4] The NTSB report can be viewed at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR1401.pdf.*

NTSB H–18–24 [5] to provide signing for high-profile grade crossings.

For Section 8D.10 through 8D.13 Highway Traffic Signals at or Near Grading Crossings, the compliance date of ten years from the effective date of the final rule for this edition applies to the determination and installation of the appropriate treatment (preemption, movement prohibition, pre-signals, or queue cutter signals) at highway-rail grade crossings in close proximity to signalized intersections. FHWA proposes this compliance date due to the high potential for train-vehicle crashes at locations where a vehicle traveling in a platoon can come to a stop on a crossing unintentionally due to a queue from a downstream signalized intersection.

12. FHWA proposes to replace existing Section 1A.10 with seven new Sections numbered from 1B.03 through 1B.09. The seven new Sections are Section 1B.03 (Compliance of Devices), Section 1B.04 (Issuance of Official Rulings Related to this Manual), Section 1B.05 (Official Interpretations), Section 1B.06 (Experimentation), Section 1B.07 (Changes to the MUTCD), Section 1B.08 (Interim Approvals), and Section 1B.09 (Requesting Official Interpretations, Experiments, Changes to the MUTCD, or Interim Approvals). FHWA proposes this revision to improve the organization of material regarding official interpretations, experimentations, changes to the MUTCD, interim approvals, and procedures for requesting any of these actions.

13. In proposed Section 1B.06 Experimentation, FHWA proposes to revise existing Section 1A.10, Paragraph 11, and change from Guidance to Standard. In addition, FHWA proposes to add Standards, Support, and Guidance paragraphs further addressing the experimentation process. FHWA proposes these revisions to clarify and streamline the experimentation process for agencies wishing to experiment with novel traffic control devices or applications.

14. In proposed Section 1B.08 Interim Approvals, FHWA proposes to revise existing Section 1A.10, Paragraph 18, and change from Guidance to Standard. FHWA proposes this revision to clarify and streamline the interim approval process.

15. In proposed Section 1B.09 Requesting Official Interpretations, Experiments, Changes to the MUTCD, or Interim Approvals, FHWA proposes to add Support paragraphs to provide further clarity on official rulings.

16. In proposed new Chapter 1C Definitions, Acronyms, and Abbreviations Used in this Manual, FHWA proposes to replace existing Section 1A.13 with two new Sections. Section 1C.01, titled, ''Definitions of Headings Used in this Manual'' would cover definitions of the headings used in the MUTCD (such as Standard, Guidance, etc.). Section 1C.02, titled, ''Definitions of Words and Phrases Used in this Manual'' would cover definitions of the words and phrases used in the MUTCD. FHWA proposes this revision to provide clarity between definitions of the headings and definitions of words and phrases used throughout the Manual.

FHWA also proposes to revise the definition of a Standard in Section 1C.01 to indicate that in limited cases, the results of a documented engineering study might indicate that a deviation from one or more requirements of a Standard provision to be appropriate. FHWA proposes this revision based on Official Ruling No. 1(09)–1(I).[6]

17. In proposed Section 1C.02 Definitions of Words and Phrases Used in this Manual, FHWA proposes to *revise* the existing definitions for the following: ''active grade crossing warning system,'' ''actuated operation,'' ''actuation,'' ''channelizing line markings,'' ''constant warning time train detection,'' ''conventional road,'' ''crashworthy,'' ''delineator,'' ''emergency-vehicle traffic control signal,'' ''engineering judgement,'' ''engineering study,'' ''flashing,'' ''full-actuated operation,'' ''highway traffic signal,'' ''in-roadway lights,'' ''intersection,'' ''logo,'' ''median,'' ''minimum track clearance distance,'' ''overhead sign,'' ''parking area,'' ''paved,'' ''pedestrian clearance time,'' ''pedestrian facility,'' ''pictograph,'' ''preemption,'' ''pre-signal,'' ''private road open to public travel,'' ''queue clearance time,'' ''quiet zone,'' ''raised pavement marker,'' ''road user,'' ''semi-actuated operation,'' ''sign,'' ''sign panel,'' ''sequence of indications,'' ''statutory speed limit,'' ''traffic,'' ''traffic control device,'' ''traffic control signal (traffic signal),'' and ''worker.'' FHWA proposes these revisions to reflect accepted practice and terminologies, and for consistency in the usage of these terms in the MUTCD. The proposed revision to the definition of ''engineering study'' is a specific recommendation of Item 531 of the 20-Year Vision and Strategic Plan for the MUTCD.[7]

FHWA also proposes to *add* definitions for the following: ''active grade crossing,'' ''agency,'' ''application,'' ''bicycle signal face,'' ''bicycle symbol signal indication,'' ''blank-out sign,'' ''busway,'' ''diagnostic team,'' ''driveway,'' ''driving aisle,'' ''dynamic message sign,'' ''engineer,'' ''exclusive alignment,'' ''fail-safe,'' ''four-quadrant gate system,'' ''general-purpose lane,'' ''gore area,'' ''identification marker,'' ''jughandle turn,'' ''loading zone,'' ''low-volume rural road,'' ''mixed-use alignment,'' ''on-street parking,'' ''option lane,'' ''parking space,'' ''professional engineer (P.E.),'' ''queue cutter signal,'' ''reconstructed,'' ''rectangular rapid-flashing beacon,'' ''right-of-way, public highway,'' ''semi-exclusive alignment,'' ''serviceable,'' ''shoulder,'' ''sidewalk grade crossing,'' ''signal dimming,'' ''site roadways open to public travel,'' ''swing gate,'' ''through train,'' ''toll road (facility),'' ''uncontrolled approach,'' and ''variable message sign.'' FHWA proposes these revisions because these terms either are used or are proposed for use in the MUTCD.

In addition, FHWA proposes to *delete* the existing definitions for the following: ''advance preemption,'' ''advance preemption time,'' ''average day,'' ''cantilevered signal structure,'' ''concurrent flow preferential lane,'' ''end of roadway marker,'' ''interval sequence,'' ''maximum highway traffic signal preemption time,'' ''minimum warning time,'' ''right-of-way transfer time,'' ''simultaneous preemption,'' and ''wayside equipment.'' FHWA proposes these revisions because these terms are either proposed for deletion from the Manual as part of this document or used only once in a specific section of the Manual.

FHWA also proposes to delete the definition for ''safe-positioned'' and relocate this information to Part 6. FHWA proposes this revision because this term is only used in that Part of the MUTCD.

FHWA also proposes to delete the definitions for ''average day,'' ''cantilevered signal structure,'' ''concurrent flow preferential lane,'' and ''end-of-roadway marker.'' FHWA proposes these revisions because these

[5] The NTSB report can be viewed at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR1801.pdf.*

[6] Official Ruling No. 1(09)–1(I), dated October 1, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/reqdetails.asp?id=30.*

[7] ''20-Year Vision and Strategic Plan for the Manual on Uniform Traffic Control Devices,'' National Committee on Uniform Traffic Control Devices, January 9, 2014, can be viewed at the following internet website: *http://ncutcd.org/wp-content/uploads/MUTCD/MUTCD-20-Year-Vision-NCUTCD-Appvd-1-9-14-FINAL.pdf.*

terms are not used anywhere in the MUTCD.

18. In Section 1C.03 (existing Section 1A.14), retitled, ''Meanings of Acronyms and Abbreviations Used in this Manual,'' FHWA proposes to delete the acronyms/abbreviations ''EPA'' and ''TDD'' and relocate the information to Part 2. FHWA proposes these revisions because these terms are only used in that Part of the MUTCD.

FHWA also proposes to delete the acronyms/abbreviations ''HOT,'' ''HOTM,'' ''HOTO,'' ''PCMS,'' and ''RRPM.'' FHWA proposes these revisions because the terms are not used in the MUTCD text.

Lastly, FHWA proposes to add the abbreviations ''cd/lx/m^2,'' ''ft,'' ''in,'' and ''mi.'' FHWA proposes these revisions because these abbreviations for light intensity and distances are used throughout the MUTCD.

19. In Section 1D.01 (existing Section 1A.02), retitled, ''Purpose and Principles of Traffic Control Devices,'' FHWA proposes to revise the title to reflect the content with the proposed relocation of a paragraph from existing Section 1A.01 to this section. Also, FHWA proposes to revise the Guidance about what makes a traffic control device effective by changing ''meet five basic requirements'' to ''be consistent with these principles.'' FHWA proposes these revisions to clarify that the principles are recommendations rather than requirements, as they are contained within a Guidance provision.

In addition, FHWA proposes to add a new Standard indicating that traffic control devices used on site roadways open to the public shall have the same shape, color, and meaning as those required by the MUTCD, unless exceptions are noted in the Manual.

20. FHWA proposes to add a new Section 1D.02, titled, ''Traffic Control Device Characteristics and Activities,'' with new text recommended by Item 527 of the 20-Year Vision and Strategic Plan for the MUTCD.[8] The proposed text describes seven characteristics and activities associated with traffic control devices. FHWA proposes this revision since clarifying distinctions between types of traffic control device activities would assist agencies in establishing the qualifications needed to perform the selected activities.

21. FHWA proposes to combine existing Sections 1A.07 and 1A.08 into a single Section 1D.04, titled, ''Responsibility and Authority for Traffic Control Devices.'' With this revision, FHWA proposes to delete the last two sentences of Paragraph 1 as this text is redundant with Section 1B.

FHWA also proposes to relocate several existing paragraphs since they better align with content presented in other Sections.

FHWA also proposes to delete an existing Support paragraph since all States have a law on the adoption of, and have adopted, the MUTCD.

FHWA also proposes to delete an existing Guidance paragraph since this text is redundant to paragraphs contained in other Sections.

FHWA also proposes to revise an existing Standard paragraph to change the word ''advertisements'' to ''public announcements or notices'' because the existing term can be misinterpreted to refer only to announcements of a commercial nature.

In addition, FHWA proposes to delete an existing Guidance paragraph because the Standard paragraphs in this and other sections define (1) the authorization for placement and, by inference, removal of traffic control devices; and (2) the criteria or warrants for the installation of traffic control devices.

Lastly, FHWA proposes to add two additional Support paragraphs to emphasize further that the highway right-of-way is reserved for highway related purposes in accordance with 23 CFR 1.23(b), and that States may adopt restrictions on outdoor advertising that resembles official traffic control devices, which is required by 23 CFR 750.180 in certain cases.

22. In Section 1D.05 (existing Section 1A.09) Engineering Study and Engineering Judgment, FHWA proposes to revise existing Support paragraphs. FHWA proposes this revision based on Official Ruling No. 1(09)–1(I),[9] and to emphasize a clear understanding of the application of engineering studies and engineering judgement in this Manual.

23. In Section 1D.06 (existing Section 1A.03) Design of Traffic Control Devices, FHWA proposes to revise existing Guidance to clarify that a traffic control device's design should be modified only in unusual circumstances based on an engineering study or engineering judgment.

FHWA also proposes to add a new Standard requiring that shapes that are exclusive to a particular sign, such as the octagon for the STOP sign, shall not be obscured by another sign mounted on the back of the assembly. This proposed change is consistent with existing provisions in proposed Section 2B.18 (existing Section 2B.10). FHWA proposes this revision to ensure that sign shapes that are of critical importance are easily recognized, because their unique shapes instantly convey a unique message to road users.

Lastly, FHWA also proposes to add a new Standard indicating that colors shall be consistent across the face of a sign or panel, and that color gradients shall not be allowed. FHWA proposes this revision to provide clarification due to the technological capabilities of sign printers, which have entered the market in just the last few years.

24. In Section 1D.07 (existing Section 1A.12) Color Code, FHWA proposes to add a Standard indicating that colors shall be used only as prescribed in this Manual for specific devices or applications. FHWA proposes this revision to clarify that the listed color definitions are general designations and do not mean that any color can be applied in any combination or orientation for non-standard signs. This proposed change is for clarification purposes and does not represent a change to existing requirements.

25. FHWA proposes to create a new Section 1D.08, titled, ''Public Domain, Copyrights, and Patents,'' with new Standard and Support paragraphs. FHWA proposes this revision to clarify the existing provisions on this topic with respect to traffic control devices, and that the meaning, appearance, operation, and application of traffic control devices as a road user experiences them shall not be protected by a patent, trademark, or copyright due to its adverse impact on the very uniformity the MUTCD is intended to promote. However, their method of assembly, their method of manufacture, and their component parts can be, and often are, protected.

Uniformity in the display of traffic control devices is central to the underlying foundation of the MUTCD. As such, FHWA establishes the criteria therein with uniformity in mind, including a limitation on patents, trademarks, and copyrights associated with traffic control devices. This limited prohibition on intellectual property associated with a traffic control device is stated in the MUTCD to be associated with the device's ''design and

[8] ''20-Year Vision and Strategic Plan for the Manual on Uniform Traffic Control Devices,'' National Committee on Uniform Traffic Control Devices, January 9, 2014, can be viewed at the following internet website: *http://ncutcd.org/wp-content/uploads/MUTCD/MUTCD-20-Year-Vision-NCUTCD-Appvd-1-9-14-FINAL.pdf.*

[9] Official Ruling No. 1(09)–1(I), dated October 1, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/reqdetails.asp?id=30.*

application provision contained in [the] Manual.'' [10]

FHWA occasionally receives requests to approve patented traffic control device concepts for potential open-road experimentation under the MUTCD provisions, with the ultimate intent of having the devices adopted in the provisions of the MUTCD through rulemaking. FHWA believes that those involved in the development of new traffic control devices, as well as highway agencies being requested to experiment with these devices, could benefit from further clarification of the term ''design and application provision'' of a traffic control device as provided for in the MUTCD, to understand better which aspects of devices can be patented, trademarked, or copyrighted.

In addition, FHWA continues to receive inquiries related to its recent rulemaking [11] that rescinded regulations related to the procurement of patented or proprietary products on highway projects, which did not change the patent provisions of the MUTCD. Some stakeholders believed that the removal of restrictions on the procurement of patented or proprietary products either did extend or should have extended to the patent provisions of the MUTCD as well. However, the limitation in the MUTCD is based on uniformity and its purpose is separate and distinct from 23 CFR 635.411, which addresses the procedures for the procurement of proprietary products in highway construction using Federal-aid funds. The MUTCD limitation on proprietary products necessarily excludes proprietary traffic control devices which claim protection on the message conveyed. The purpose of this limitation is to ensure uniformity in the message. However, any other aspects of a device may be patented so long as the appearance, audible message, or other aspects of the message conveyed remain freely reproducible by all without infringing on any proprietary rights or interests.

The proposed MUTCD language, along with this document, provides further clarification and background on this subject matter. The information clarifies what aspects of a traffic control device can and cannot be patented or otherwise protected. In general, the component parts of a traffic control device may be patented or otherwise protected, but how the device is to appear and operate to the observer (*i.e.,* how it would be specified in the MUTCD) must remain in the public domain and must not be covered by any patent that would preclude others from freely producing the traffic control device. As a result, the road user will always experience the same traffic control device for similar conditions in the same way.

The purpose of addressing this aspect of traffic control devices is due to the adverse effect that protections on what the road user experiences would have on uniformity in the message to the road user. By virtue of patent or other protections on the message itself, alternate messages would have to be allowed to address the same conditions so as not to include infringement by competitors.

Based on the varying views that the public has expressed in the past on this topic, FHWA requests that commenters provide sufficient detail and explanation of how the proposal or alternatives would support both uniformity and cost-effectiveness of traffic control devices, and enable their manufacture without infringement on protections enjoyed by patent holders. Specific references should be made to the proposed MUTCD text and to the explanation provided in this document.

26. FHWA proposes to create a new Section 1D.09 Advertising, with text relocated from existing Section 1A.01. In this Section, FHWA proposes to add Acknowledgment signs to the existing items that are not considered advertising, consistent with existing text in Part 2 for that type of sign.

27. In Section 1D.10 (existing Section 1A.15) Abbreviations Used on Traffic Control Devices, FHWA proposes to revise an existing Guidance paragraph to be consistent with the notes in Table 1D–2 (existing Table 1A–2).

28. In Section 1D.11 (existing Section 1A.04) Placement and Operation of Traffic Control Devices, FHWA proposes to add a Standard statement that, before any new highway, site roadway open to public travel, detour, or temporary route is opened to public travel, all necessary traffic control devices shall be in place. FHWA proposes this revision to consolidate similar Guidance text in existing Section 3A.01 regarding markings and similar Standard text in existing Section 6B.01 regarding signs, and because it is important that all necessary traffic control devices be in place before new roads, detours, or temporary routes are opened to public travel.

Discussion of Proposed Amendments to Chapter 2A Signs—General

29. In Section 2A.01 Function and Purpose of Signs, FHWA proposes to delete existing P3 referencing definitions for various roadway types, because the information is repetitive and not necessary.

FHWA also proposes to revise this Section to expand on the language from existing P1 regarding the use of signs on a frequent basis to confirm rules of the road or statutes. FHWA proposes a new Guidance provision recommending that agencies use temporary signs when determined necessary to advise of new regulations or as part of an educational campaign. FHWA also adds a recommendation on the placement of permanent signs for rules of the road in adjacent jurisdictions. FHWA proposes this new paragraph to limit the amount of signing along a given route to reduce sign clutter and the informational load imposed on the road user and to reduce sign maintenance burdens on the responsible maintaining agency.

30. In Section 2A.02 (existing Section 2A.03) Standardization of Application, FHWA proposes to add a Support paragraph relocating certain information from existing Part 5 regarding the use of traffic control devices on low-volume rural roads. FHWA proposes to redistribute the provisions of existing Part 5 among the remaining parts.

FHWA also proposes to delete the second sentence of the Standard paragraph because the statement is redundant and is implied throughout the Manual.

31. In Section 2A.04 (existing Section 2A.06) Design of Signs, FHWA proposes to eliminate the provision in the existing Standard P8 that allows for minor changes to the proportion of symbols. FHWA proposes this change because symbol designs are standardized for recognition based on the specific proportions of the symbol, and this statement contradicts the subsequent standard.

FHWA also proposes to delete the existing Option P10 because the subject of orientation is addressed in Section 2A.09 (existing Section 2A.12).

FHWA also proposes to add a new Standard to clarify that, except where explicitly allowed, the substitution of a word legend for a symbol legend is prohibited where the standard sign legend uses the specific symbol, as it contravenes uniformity in recognition and messaging to road users. This proposed change is for clarification purposes and does not represent a change to existing requirements, and is consistent with changes included in the 2009 MUTCD, which discontinued a number of alternate standard signs with word legends for which the primary standard sign included a symbol legend.

[10] From the Introduction, Paragraph 4, 2009 MUTCD, which is available at the following internet website: *https://mutcd.fhwa.dot.gov/.*

[11] 84 FR 51023 (September 27, 2019).

FHWA proposes to add a new Standard that prohibits an alternative sign design or dimensions when there is a standard sign provided in the Manual or detailed in the ''Standard Highway Signs'' publication, except where specifically allowed. FHWA also proposes a related Standard for standardized sign layouts that might have a variable length legend, but otherwise have a standard dimension. FHWA proposes this change because the standardized designs are often of recognizable form as well as message.

FHWA also proposes to add a Support paragraph regarding the use of special word legend signs that may be unclear to road users. FHWA proposes this addition to encourage evaluation of such signs to determine comprehension or possible misinterpretation.

FHWA proposes to delete Guidance P15 and revise Standard P14 that describes provisions related to the range of allowable information and graphical symbols affixed to the face and back of a sign. FHWA updates this paragraph to reflect similar forms of information to those listed in the existing P14 and proposes to prohibit the following additional items unless otherwise specified for a specific sign: Telephone numbers, metadata tags (''hash-tags''), quick-response (QR) codes, bar codes, or other graphics for optical scanning. In conjunction with this change, FHWA proposes to revise Option P16 to allow for the use of these items for signs that are intended and oriented for viewing by pedestrians only. FHWA proposes these changes to consolidate like information.

FHWA proposes to revise the Standard regarding pictographs to require that they be devoid of QR codes, bar codes, or other graphics designed for optical scanning for the purpose of obtaining information to be consistent with the Standard language described above.

FHWA proposes to add a Standard to clarify the existing prohibition of Business Identification (formerly Logo) sign panels from being displayed on signs except as specifically provided in the Manual. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement.

FHWA proposes to reiterate and expand the existing Standard from Section 2B.10 prohibiting items other than traffic control signs from being mounted on the back of a sign.

FHWA proposes to add an Option permitting the display of date of fabrication, sign designation, sign size, and manufacturer name on the front of a sign face, as well as a Standard specifying the location, maximum letter heights, and letter color.

32. In Section 2A.05 (existing Section 2A.09) Shapes, FHWA proposes to add a new Guidance provision with recommendations for mounting a diamond-shaped warning sign where lateral space is constrained. FHWA also proposes a new Option to allow a vertically oriented rectangle for the legend of the warning sign when the methods contained in the Guidance are impractical. Further, FHWA proposes to add a new Standard prohibiting other modifications to sign shapes, such as cutting off the left and right points of a diamond, resulting in a vertical hexagon. FHWA proposes these changes to ensure consistency and recognition of sign shapes and to clarify that ''modifying'' a sign to fit into constrained locations cannot result in a new, non-standard shape.

33. In Section 2A.07 (existing 2A.11) ''Dimensions,'' FHWA proposes to add a Standard to prohibit the use of larger sign sizes where a maximum allowable sign size is prescribed. FHWA proposes this to provide consistency in sign dimensions.

FHWA also proposes to revise existing Guidance P8 to allow for specific exceptions to the increase in size of supplemental plaques for larger signs. FHWA proposes this change because some plaques are not allowed to be enlarged beyond the size specified.

34. In Section 2A.08 (existing Section 2A.13) Word Messages, FHWA proposes to add a new Standard requiring all word messages to be aligned horizontally across a sign, reading left to right, except as provided otherwise in the Manual. FHWA proposes this change to allow for signs that require a vertically oriented message, such as Reference Location signs and the Depth Gauge sign, and to make explicit that words are prohibited on retroreflective sign post strips for enhanced conspicuity. Though this requirement has always been inherent in the designs of the standardized signs in the MUTCD, the proposed statement clarifies the intent.

FHWA also proposes to add a Standard statement that requires distances displayed on signs to be in a fraction format, not decimal, except as provided otherwise in the Manual. FHWA proposes this change to be consistent with language found in other Chapters and standardized signs throughout the Manual.

35. In Section 2A.09 (existing Section 2A.12) Symbols, FHWA proposes to clarify the Guidance statement to indicate that new standardized warning or regulatory symbol signs should be accompanied by an educational plaque where engineering judgment determines that the plaque would improve road user comprehension during the transition from word message to symbol signs.

FHWA also proposes to change the existing Option regarding the use of mirror images of symbols from a Guidance to an Option to allow the use of mirror images, rather than recommend their use, thereby allowing more flexibility.

Finally, FHWA proposes to eliminate the Option to use recreational and cultural interest area guide sign symbols on streets or highways outside of a recreational and cultural interest area. FHWA proposes this change for consistency with other proposed changes in Chapter 2M.

36. In section 2A.10 (existing Section 2A.14) Sign Borders, FHWA proposes to revise the Standard by incorporating language from existing Section 2E.16 requiring the border of a sign be the same color as the legend to outline the shape and ease recognition.

FHWA proposes this change to account for the proposed elimination of the Standard in Section 2E.16 and provide more specific justification for the Standard, and because this provision applies to all signs in general.

FHWA proposes to revise the Guidance to recommend that, on unusually large signs with oversized letter heights and other legend elements, the border width be 2½ inches wide and not exceed 3 inches in width.

FHWA also proposes to add a Support statement that provides reference to Section 2A.20 (existing Section 2A.07) regarding the use of LED units within the border of a sign.

37. In Section 2A.11 (existing Section 2A.15) Enhanced Conspicuity for Standard Signs, FHWA proposes to revise Option P1 to add a maximum period of 6 months for the NEW plaque to be displayed, adding DO NOT ENTER and WRONG WAY signs to the signs that are not allowed to be supplemented by a warning beacon, and allow a rectangular rapid-flashing beacon (RRFB) to supplement a Pedestrian or School warning sign at an uncontrolled, midblock crosswalk. FHWA proposes these changes based on common practice and the proposed addition of the RRFB to the Manual (proposed Chapter 4L).

FHWA proposes to delete the existing Standard prohibiting the use of the NEW plaque alone, because plaques by definition may not be used alone. As a result, this text is unnecessary.

FHWA also proposes to revise the Standard to clarify that the display of

any legend or other information on the retroreflective strip on a sign support is prohibited. FHWA adds this Standard because some agencies have added vertically arranged supplemental legends in substandard letter sizes on retroreflective strips. The existing Option allowing retroreflective strips does not allow for supplemental legends. FHWA adds this language to clarify the existing provisions.

FHWA also proposes to add a Standard statement that prohibits the installation of duplicate signs on the same post facing the same direction of traffic. The allowable methods of enhancing conspicuity do not currently allow this practice, and FHWA proposes this addition to clarify that current practices of this type are not appropriate means for enhancing conspicuity.

38. In Section 2A.12 (existing Section 2A.16) Standardization of Location, FHWA proposes to add a new Figure 2A–5 to illustrate the relative locations of Regulatory, Warning, and Guide Signs on an urban signalized intersection approach to help clarify typical signing at these complex situations for practitioners.

FHWA proposes to change the second sentence of the existing Standard to a Guidance, because the use of the posted or 85th-percentile speed for determining the appropriate sign spacing is just one factor, and there may be other factors that are more appropriate. Changing this to a Guidance statement provides agencies with more flexibility to use the factors they determine, through engineering judgment or study, to be most appropriate.

FHWA also proposes to add a Guidance provision to recommend that where certain signs indicate an action by a road user in the left lane or at the left-hand side of a one-way road, such as Merge signs, the sign should be located on the left-hand side of the roadway. In the case of a divided road, the sign should be located in the median if adequate width is available.

FHWA also proposes revising the existing Guidance to recommend that at locations where there are conflicts between the installation of regulatory and warning signs and a guide sign, that the guide sign should be relocated to another appropriate location where it would still be effective. FHWA also proposes the recommendation that in other cases, such as at a decision point, the guide sign should take precedence over other signs whose locations are not as critical to an immediate decision or action necessary by the road user. In all cases, careful attention should be given to minimizing sign clutter. FHWA proposes this additional information to reinforce the importance of separating critical regulatory and warning information from guidance information so that road users are not overloaded with important information all at one location.

39. In Section 2A.14 (existing Section 2A.18) Mounting Height, FHWA proposes to add a new Standard stating that minimum mounting heights prescribed in this Section shall not supersede those necessary for crash performance of sign installations that are required to be crashworthy. FHWA proposes this change to remind users of the importance of crash performance of sign installations that are required to be crashworthy, as stated in existing provisions of the Manual.

40. In Section 2A.15 (existing Section 2A.19) Lateral Offset, FHWA proposes to relocate existing P7 to Section 2A.17 (existing Section 2A.21) because the Option statement permitting the use of existing supports is more appropriate in the Posts and Mountings section. In concert with this change, FHWA proposes to delete P8 because the Standard is unrelated to the lateral offset of the sign installation and serves no purpose since the location is prescribed under other provisions in the Manual.

41. In Section 2A.17 (existing Section 2A.21) Posts and Mountings, FHWA proposes to add the Option statement relocated from Section 2A.15 (existing Section 2A.19) permitting the use of existing supports. As part of this change, FHWA proposes to add a Support statement referring readers to lateral and height placement criteria for Guidance and Standards contained in this Manual for such signs.

FHWA also proposes to delete the Option paragraph regarding adding retroreflective strips to sign posts because it is redundant to Section 2A.11 (existing Section 2A.15). In concert with this change, FHWA proposes to retain a reference and relocate the Standard paragraph to Section 2A.11 (existing Section 2A.15).

FHWA also proposes to add a Standard with requirements regarding the placement of equipment for powering electronic components of a sign, including solar panels, when such equipment is mounted to a sign support. FHWA proposes these requirements to retain crashworthiness performance of the sign installation as well as to avoid obscuring the face or shape of the sign.

42. FHWA proposes to relocate and renumber existing Section 2A.04 Excessive Use of Signs, to Section 2A.19. FHWA proposes clarifications in P1 recommending signs should be used and located judiciously, minimizing their proliferation in order to maintain their effectiveness; that signs should be used conservatively; and that sign clutter be avoided. FHWA also proposes to modify the second sentence to specify that route signs and directional guide signs for primary routes and destinations should be used frequently at strategic locations because their use promotes efficient operations by keeping road users informed of their location.

In concert with this change, FHWA proposes a new Support statement describing sign clutter consistent with Official Ruling No. 2–669(I) [12] as well as information regarding vanity signs, which are signs that are requested by an interested party, but are not essential for, or have no relation to, traffic control. As part of these changes, FHWA also proposes new Guidance statements recommending that signs and other traffic control devices be installed and maintained from a systematic standpoint rather than individually. FHWA proposes these changes because of the increased proliferation of signs, often installed separately over time, which reduces the effectiveness of signs and distracts road users at decision points and other locations requiring heightened attention.

43. In Section 2A.20 (existing Section 2A.07), retitled, ''Retroreflection and Illumination,'' FHWA proposes to add a new Standard that requires the use of an opaque or non-retroreflective material for a black legend or background. Under headlamp illumination, retroreflective black appears as white, which creates a conflict with the existing requirement for signs to appear similar under daytime and nighttime conditions. FHWA proposes this addition to resolve this conflict.

FHWA also proposes to add two Support statements regarding the use of LED units. In concert with these additions, FHWA also proposes to revise existing Standards P7 through P10 and add two new Standards regarding the pitch and placement along the edge of a sign to incorporate additional provisions for LED units to ensure that adequate legibility would be maintained.

44. In Section 2A.21 (existing Section 2A.08) Maintaining Minimum Retroreflectivity, FHWA proposes to add to Guidance recommendations for the visual inspection and revised assessment or management methods that should be used to maintain sign

[12] FHWA's Official Ruling No. 2–669(I), dated November 20, 2009, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/2_669.htm.*

retroreflectivity at or above the minimum levels in Table 2A–5 (existing Table 2A–3) and that signs that are below the minimum levels should be replaced. In addition, FHWA proposes to add paragraph headings to define which methods are management methods and which are assessment methods, and to include the three procedures that make up the visual assessment method. FHWA proposes these additions to clarify the types of methods and to place information that is currently available in other resources in one location.

45. In Section 2A.22 (existing Section 2A.23), retitled, ''Median Opening Treatments for Divided Highways,'' FHWA proposes to delete the existing Guidance and add new recommendations for signing a divided highway crossing as separate intersections when specific conditions are present. FHWA also proposes to add a new Figure 2A–6 to illustrate the new recommendations. FHWA proposes these changes to provide additional details for road user safety, based on the results of recently completed research on this topic.[13]

Discussion of Proposed Amendments to Chapter 2B Regulatory Signs, Barricades, and Gates

46. As part of the reorganization to improve usability of the MUTCD, FHWA proposes to include subchapter headings in Chapter 2B to organize sections into related groupings. FHWA proposes the following subchapters in Chapter 2B: General; Signing for Right-of-Way at Intersections; Speed Limit Signs and Plaques; Movement and Lane Control Signs; Passing Keep Right and Slow Traffic Signs; Selective Exclusion Signs; Do Not Enter, Wrong Way; One-Way and Related Signs and Plaques; Parking, Standing, Stopping, and Emergency Signs; Pedestrian Signs; Traffic Signal Signs; Road Closed and Weight Limit Signs; Other Regulatory Signs, and Barricades and Gates.

47. In Section 2B.01 Application of Regulatory Signs, FHWA proposes to delete portions of existing Standard P3 and all of P4 requiring signs to be the same shape and similar color by day and by night and restricting street lighting use for sign illumination, because the information is repetitive and covered elsewhere in the Manual.

48. In Section 2B.02 Design of Regulatory Signs, FHWA proposes to delete existing Option P2 and P3 because they are already covered in existing Section 2A.06.

FHWA also proposes to revise P5 from Guidance to Standard. FHWA also proposes to apply the Standard to LED signs for a part-time message and indicate the color scheme of regulatory messages displayed with LEDs. In concert with this change, FHWA also proposes adding an Option and two Standard paragraphs pertaining to the use of LEDs in the border of a sign and the display of regulatory signs in a full matrix changeable message sign, respectively. FHWA proposes these changes to provide uniformity in the application LEDs in traffic control signs and changeable message signs. These changes are necessary to ensure a consistent appearance in the sign legend regardless of the type of display, whether static, illuminated, or changeable.

49. In Section 2B.03 Size of Regulatory Signs, FHWA proposes to add a Standard statement regarding the size of regulatory signs on low-volume roads with operating speeds of 30 mph or less, to capture the language provided in the existing Part 5 text that has been redistributed among the remaining parts. FHWA also proposes to delete P6, requiring the use of 36″ x 36″ STOP signs on multi-lane approaches, because that requirement already exists in existing P3 and Table 2B–1. FHWA also proposes to delete P7 and P8 requiring the use of 36″ x 36″ STOP signs on side roads that intersect with multi-lane streets of 45 mph or higher speed limits, even if the side road is not multi-lane, because this may place an undue burden on agencies to change existing 30″x 30″ signs at such locations.

FHWA proposes to revise existing Guidance P9 and add a new Guidance paragraph to allow the use of single lane or multi-lane conventional road sign sizes on ramps that connect expressways or freeways to intersections with a conventional roadway. FHWA proposes this change, because the operating characteristics of exit ramps connecting expressways or freeways to other expressways or freeways are different from those connecting expressways or freeways to conventional roads. As a result, signs on exit ramps connecting to conventional roads do not require the larger size signs associated with a freeway or an expressway.

Finally, FHWA proposes to add a Standard requiring the use of a near side NO TURN ON RED or RIGHT (LEFT) ON RED ARROW AFTER STOP sign, as applicable, to supplement a far side, single-lane sized R10–11, R10–11a, R10–11b, or R10–17a sign when the distance between the stop line and the far side sign is more than 120 feet. FHWA proposes this to provide additional signing for turning vehicles at the near side of the intersection to supplement the far side sign at an increased distance.

50. FHWA proposes to delete existing Sections 2B.04 (Right-of-Way at Intersections), 2B.06 (STOP Sign Applications), 2B.07 (Multi-Way Stop Applications), and 2B.09 (YIELD Sign Applications) and replace them with new Sections 2B.06 through 2B.18, as described below, to address comprehensively the need for warrants for no control, yield control, stop control, or all-way stop control. FHWA proposes these changes to incorporate the results of a NCHRP Project 03–109,[14] which proposed general considerations, alternatives to changing right-of-way control, and forms of unsignalized control from least restrictive to most restrictive, beginning with no control and concluding with all-way stop control.

51. In Section 2B.04 (existing Section 2B.05) STOP Sign (R1–1) and ALL–WAY Plaque (R1–3P), FHWA proposes to delete P5 regarding the use of the ALL–WAY Plaque because it is redundant with the preceding paragraph.

52. FHWA proposes to add a new section numbered and titled, ''Section 2B.06 General Considerations,'' incorporating some paragraphs from existing Section 2B.04 and proposed new general Support and Guidance paragraphs regarding signing for right-of-way at intersections. FHWA proposes adding the Support regarding the types of right-of-way control that can exist at an unsignalized intersection based on the research results of NCHRP Project 03–109.[15] FHWA proposes adding Item G, suggesting the presence of a grade crossing near an intersection as a factor to consider when selecting a form of traffic control. FHWA proposes this additional item to address the potential for resultant queues at an intersection that may extend toward a nearby grade crossing.

53. FHWA proposes to add a new section numbered and titled, ''Section 2B.07 Determining the Minor Road for Unsignalized Intersections,'' that includes one Guidance paragraph from existing Section 2B.04 and one additional Guidance regarding criteria for selecting the minor road to be

[13] ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements'' NCHRP 881, 2018, can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

[14] Potential MUTCD Criteria for Selecting the Type of Control for Unsignalized Intersections, *http://www.trb.org/Main/Blurbs/172596.aspx.*

[15] Potential MUTCD Criteria for Selecting the Type of Control for Unsignalized Intersections, *http://www.trb.org/Main/Blurbs/172596.aspx.*

controlled by YIELD or STOP signs. FHWA proposes these criteria based on the result of NCHRP Project 03–109.[16]

54. FHWA proposes to add a new section numbered and titled, ''Section 2B.08 Right-of-Way Intersection Control Considerations,'' with proposed new Guidance paragraphs regarding the alternative treatments to consider prior to converting to a more restrictive right-of-way control.

55. FHWA proposes to add a new section numbered and titled, ''Section 2B.09 No Intersection Control,'' consisting of new Guidance and Option statements regarding factors to consider when making a decision not to use intersection control. FHWA proposes this new section specifically to include information in the MUTCD regarding conditions for consideration when determining the need for intersection control.

56. FHWA proposes to add a new section numbered and titled, ''Section 2B.10 Yield Control,'' consisting of some text relocated from existing Sections 2B.06 and 2B.09, plus new Guidance paragraphs regarding the use of YIELD signs to control an intersection. FHWA proposes this change to combine information regarding yield control in one location.

57. FHWA proposes to add a new section numbered and titled, ''Section 2B.11 Minor Road Stop Control,'' consisting of one paragraph relocated from existing Section 2B.06, plus proposed new Guidance paragraphs regarding stop control on the minor road approach only. FHWA proposes this new section to provide information specific to the use of stop control on a minor approach.

58. FHWA proposes to add new section numbered and titled, ''Section 2B.12 All-Way Stop Control,'' consisting of one paragraph relocated from existing Section 2B.07 and proposed new Guidance and Standard paragraphs regarding warrants for all-way stop control. FHWA proposes this new section to clarify the application of all-way stop control and provide an introduction to the proposed new sections (Sections 2B.13 through 2B.17) related to all-way stop control warrants.

59. FHWA proposes to add a new section numbered and titled, ''Section 2B.13 All-Way Stop Control Warrant A: Crash Experience,'' consisting of one proposed new Option paragraph regarding the selection considerations for all-way stop control based on crash experience.

60. FHWA proposes to add a new section numbered and titled, ''Section 2B. 14 All-Way Stop Control Warrant B: Sight Distance,'' consisting of a portion of one Support paragraph relocated from existing Section 2B.07, plus a proposed new Option paragraph regarding the selection considerations for all-way stop control based on sight distance.

61. FHWA proposes to add a new section numbered and titled, ''Section 2B.15 All-Way Stop Control Warrant C: Transition to Signal Control or YIELD Control at a Roundabout,'' consisting of one proposed Option paragraph regarding the selection considerations for all-way stop control based on a transition plan to convert an intersection to signal control.

62. FHWA proposes to add a new section numbered and titled, ''Section 2B.16 All-Way Stop Control Warrant D: 8-Hour Volume (Vehicle, Pedestrians, Bicycles),'' consisting of one proposed new Option paragraph regarding the selection considerations for all-way stop control based on the criteria included in Table 2B–2.

63. FHWA proposes to add a new section numbered and titled, ''Section 2B.17 All-Way Stop Control Warrant E: Other Factors,'' consisting of portions of an existing Option paragraph relocated from existing Section 2B.07, plus one proposed new Option paragraph regarding the selection considerations for all-way stop control based on other factors.

64. In Section 2B.18 (existing Section 2B.10) STOP Sign or YIELD Sign Placement, FHWA proposes to remove existing Standard P4 through P6 restricting the use of inventory stickers and other items on STOP and YIELD signs, because those restrictions apply to all signs, not just STOP and YIELD signs, and therefor and proposes to relocate this text to Chapter 2A.

FHWA proposes to add a Guidance limiting supplemental plaques used in conjunction with a STOP or YIELD sign to those specified in the MUTCD. FHWA proposes this change to ensure consistency in the use of supplemental plaques mounted beneath STOP and YIELD signs.

FHWA also proposes to add an Option allowing the use of a TO TRAFFIC IN CIRCLE (R1–2bP) or TO ALL LANES (R1–2cP) plaque, mounted below the YIELD sign, for locations where drivers must yield to traffic in a multi-lane roundabout. FHWA proposes this option to address situations that occur when drivers at a multi-lane roundabout are not anticipating the vehicle in the inside lane to maneuver to exit the roundabout.

65. In section 2B.19 (existing Section 2B.11) Yield Here to Pedestrians Signs and Stop Here for Pedestrians Signs (R1–5 Series),'' FHWA proposes to add a Support statement describing the intent of the R1–5 series signs, which is to mitigate scenarios associated with pedestrian and vehicle visibility.

FHWA proposes to revise the first sentence of Standard P1 to address confusion on the existing limitation of the R1–5 series signs that are only appropriate for use on multi-lane approaches where there is a multiple-threat scenario that can block other drivers' and pedestrians' views of one another. FHWA also proposes to change the last sentence of Standard P1 to correct an oversight in the 2009 Edition, prohibiting, rather than allowing, the use of the STATE LAW legend to be displayed at the top of these signs because the sign applies to the specific location for yielding or stopping in advance of a specific crosswalk that is occupied, rather than to the general requirement to yield or stop at occupied crosswalks.

In addition, FHWA proposes to change the advance placement distance portion of Guidance P2 to a Standard, requiring that the R1–5 series signs be placed 20 to 50 feet in advance of the nearest crosswalk line to ensure that they adequately mitigate the multiple-threat scenario on a multi-lane approach, which places pedestrians at risk when a second vehicle blocks other drivers' view of pedestrians and the pedestrians' view of the vehicles approaching in the adjacent lanes. FHWA proposes this change to ensure that the placement of the signs does not interfere with signs at the intersection and/or potentially cause misinterpretation as a Stop-controlled intersection either by approaching traffic or traffic on the cross street, as FHWA has observed in practice.

FHWA also proposes to add an Option for the R1–5a and R1–5c signs with the schoolchildren symbol in place of the pedestrian symbol, provided that the signs are only used in advance of a marked crosswalk that crosses an uncontrolled multi-lane approach within school zones. FHWA proposes this change to reflect Official Interpretation 2(09)–40(I),[17] allowing the use of the schoolchildren symbol in the R1–5 series signs, similar to the R1–6 series In-Street Pedestrian Crossing signs when used at an unsignalized school crossing.

66. FHWA proposes to renumber and retitle existing Section 2B.12, ''Section 2B.20 In-Street and Overhead Pedestrian

[16] *Ibid.*

[17] FHWA's Official Ruling No. 2(09)–40(I), June 4, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_09_40.htm.*

and Trail Crossing Signs (R1–6 and R1–9 Series)'' to reflect the additional proposed Trail Crossing sign. FHWA also proposes to revise existing Standard P3 through P5 to include the proposed new Trail Crossing sign.

FHWA proposes to clarify in Standard P3 that no more than one in-street sign shall be placed in the roadway, on a lane line for a one-way roadway application, or on a median island. FHWA proposes this change to minimize sign proliferation in the roadway and to prevent potential distraction due to an overuse of signs at a single location. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement, in response to an apparent misinterpretation of the existing provisions as evidenced by a number of technical inquiries and observations of noncompliant field deployments.

FHWA proposes to change existing Option P7 to a Standard and add a new Standard to require that if used, the In-Street or Overhead Pedestrian or Trail Crossing sign shall be used as a supplement to a Pedestrian Crossing (W11–2) or Trail Crossing (W11–15) warning sign with a diagonal downward-pointing arrow (W16–7P) plaque at the crosswalk location. FHWA proposes this change to ensure that if an in-street or overhead sign is used, that the appropriate non-vehicular warning sign is in place to ensure uniformity in application at crosswalks. FHWA proposes this change as a conforming edit, which does not change the existing underlying requirement, in response to an apparent misinterpretation of the existing provisions as evidenced by a number of technical inquiries and observations of noncompliant field deployments.

FHWA proposes to add an Option allowing In-Street Pedestrian or Trail Crossing signs to be mounted back to back in the median or on the centerline of an undivided roadway. FHWA proposes this option to minimize the number of in-street obstructions at the crossing.

FHWA also proposes to clarify in Standard P8 that the In-Street Pedestrian or Trail Crossing sign and the Overhead Pedestrian Crossing or Trail sign shall not be used at crosswalks on approaches controlled by a traffic control signal, pedestrian hybrid beacon, or an emergency vehicle hybrid beacon. FHWA proposes this clarification to eliminate conflict between the sign that says STOP or YIELD and a green signal indication on a traffic control signal or hybrid beacon. In concert with this change, FHWA proposes to add an Option statement permitting the use of the In-Street Pedestrian and Overhead Pedestrian and Trail Crossing sign at intersections or midblock pedestrian crossings with flashing beacons, because flashing beacons do not display a green indication, and therefore the use of this sign would not conflict with the signal indication.

Finally, FHWA proposes to reword existing Option P15 to clarify that both the in-street and overhead mountings of signs may be used together at the same crosswalk.

67. In Section 2B.21 (existing 2B.13) Speed Limit Sign (R2–1), FHWA proposes to reorganize and revise material based on the NTSB's recommendation [18] to review how speed limits are determined. FHWA proposes to move and revise Guidance P10, 12, and 13 and Option P16 to earlier in the section to clarify the factors that should be considered when establishing or reevaluating speed limits within speed zones. FHWA proposes changes to reinforce the stated understanding that other factors, in addition to the 85th-percentile speed, have a role in setting speed limits. FHWA retains reference to 85th-percentile speed as a factor that should be considered, particularly for freeways and expressways, as well as for rural highways, except those in urbanized locations within rural regions. FHWA also retains reference to the setting of speed zones in broad terms, thereby allowing agencies to establish detailed criteria based upon national guidance or based upon research, outside the MUTCD. In addition to providing comment on this proposed change, FHWA also requests comment on the following additional recommendations of the NTSB report: (1) Removal of the 85th-percentile speed as a consideration in setting speed limits regardless of the type of roadway (this recommendation was based in part on the assumption that that the 85th-percentile speed can increase over time as a result of the posted speed limit); and (2) the requirement to use an expert system to validate a speed limit that has been determined through engineering study. Commenters are also requested to address likely outcomes if one or more of the other recommendations in the report, such as increased automated enforcement, were not implemented in conjunction with the speed-setting recommendations outlined in the report.

FHWA also proposes to add Support to this section directing users to FHWA's Engineering Speed Limits web page, which provides information on where to find additional resources on the methods and practices for setting Speed Limits for specific segments of roads as well as tools to assist practitioners, such as USLIMITS2.

FHWA also proposes to change the second sentence of P4 from Standard to Guidance to recommend, rather than require, that additional Speed Limit signs be installed beyond major intersections and at other locations where it is necessary to remind road users of the applicable speed limit. FHWA proposes this change because engineering judgment is involved to determine what constitutes a major intersection.

FHWA also proposes to modify existing paragraph 9 to reference the Reduced Variable Speed Zone (W3–5b) and Truck Speed Zone (W3–5c) signs in conjunction with their addition to Chapter 2C. As part of this change, FHWA also proposes to add an Option for the use of an END VARIABLE SPEED LIMIT (R2–13) sign at the downstream end of a variable speed zone to provide notice to road users of the termination of the zone.

FHWA also proposes, in conjunction with the above, a Standard statement requiring an END TRUCK SPEED LIMIT (R2–14) sign be installed at the downstream end of the zone. This Standard is necessary to ensure that road users receive notice of the termination of a truck speed zone where trucks are allowed to resume the general regulatory speed limit.

In addition, FHWA proposes to revise existing P18 to replace the term ''changeable message sign'' with ''variable speed limit sign'' to reflect the sign type more accurately. FHWA also proposes to add a Standard statement requiring the variable speed limit sign legend ''SPEED LIMIT'' to be a black legend on a white retroreflective background, consistent with the standard legend and background on a Speed Limit sign. FHWA also proposes in this Standard statement to require the variable speed limit legend on a variable speed limit sign to be indicated by white LEDs on an opaque black background. FHWA proposes to add this Standard to clarify the text, as indicated in Official Ruling No. 2(09)–3(I).

Finally, FHWA proposes to delete existing Option P19 and Guidance P20 and add a Support statement referencing Section 2C.14 for provisions for the use of a Vehicle Speed Feedback sign, to group that information in Chapter 2C Warning signs.

[18] NTSB report ''Reducing Speeding-Related Crashes Involving Passenger Vehicles,'' can be viewed at the following internet website: *https://www.ntsb.gov/safety/safety-studies/Documents/SS1701.pdf.*

68. FHWA proposes to renumber and retitle existing Section 2B.14 to ''Section 2B.22 Vehicle Speed Limit Plaques (R2–2P Series)'' to reflect proposed changes in the section to clarify that a legend similar to TRUCKS XX may be used for other vehicles on a speed limit plaque. FHWA proposes this change to provide agencies with more flexibility in speed limit signing for various vehicle types, and to streamline processes by making it easier for agencies to specify and fabricate such plaques by standardizing the more common legends.

69. FHWA proposes to retitle existing Section 2B.16 to ''Section 2B.24 Minimum Speed Limit Plaque (R2–4P) and Combined Maximum and Minimum Speed Limits (R2–4a) Sign'' to reflect both the plaque and sign that are currently discussed in the existing Section. In concert with this change, FHWA also proposes to add a sentence to the existing Standard to clarify that the R2–4P plaque, if used, must be installed below the R2–1 sign, which is a stated condition of the existing Option paragraph that immediately follows. FHWA proposes this change as a conforming edit, which would not change the existing underlying condition of the Option.

70. In Section 2B.25 (existing Section 2B.17) Higher Fines Signs and Plaque (R2–6P, R2–10, and R2–11), FHWA proposes to change the first sentence of existing Standard P1 to Guidance to reflect the recommendation, rather than the requirement, to use a BEGIN HIGHER FINES ZONE (R2–10) sign or a FINES HIGHER (R2–6P) plaque to provide notice to road users. This proposed change would give agencies more flexibility in determining whether to install such signs and plaques, particularly those States that have higher fines by statute in school zones, work zones, and other locations.

71. In Section 2B.26 (existing Section 2B.18) Movement Prohibition Signs (R3–1 through R3–4, R3–18, and R3–27), FHWA proposes to add a Guidance recommending the use of Movement Prohibition signs only to prohibit a turn or through movement from an entire approach and not to designate movements that are required or permitted from a specific lane or lanes on a multi-lane approach. FHWA proposes this additional language to prevent the use of multiple conflicting movement prohibition signs along an approach where lane use signs and pavement markings would be more appropriate.

FHWA proposes to revise the first item under Option P12 to replace the term ''changeable message sign'' with less specific language describing the operation of the sign. In concert with this change, FHWA proposes to add a Standard statement regarding the use of blank-out LED signs and the allowable LED colors, to reflect current practice.

FHWA also proposes to add a new Option statement to allow the use of permanently mounted signs incorporating a supplementary legend showing the vehicle class restriction where the movement restriction applies to certain vehicle classes. FHWA proposes to add this language to provide agencies with flexibility in signing movement prohibitions for various vehicle classes without having to mount a plaque.

FHWA also proposes to add a Standard statement describing the design of the blank-out part-time electronic display for the Movement Prohibition sign. This Standard is necessary to ensure design consistency and uniformity in appearance with static signs used for the same purpose.

72. In Section 2B.27 (existing Section 2B.19) Intersection Lane Control Signs (R3–5 through R3–8), FHWA proposes to change Standard P6 to Guidance to reinforce that the use of an overhead intersection lane control sign on one lane of an approach does not require the use of overhead intersection lane control signs on the other lanes of that same approach, yet such signs can be used. In concert with this change, FHWA proposes a slight modification to Guidance P3 to clarify the independent use of signs. FHWA proposes this change to clarify the application of these signs and eliminate potential confusion with the use of the signs.

FHWA also proposes to remove Option P7 as the mounting requirements are specifically outlined in the specific Intersection Lane Control sections that follow.

73. In Section 2B.28 (existing Section 2B.20) Mandatory Movement Lane Control Signs (R3–5, R3–5a, R3–7, R3–19 Series, and R3–20), FHWA proposes to change the second sentence of Standard P1 to Guidance to provide flexibility as to where to place certain Mandatory Movement Lane Control signs.

In concert with this change, FHWA also proposes to revise existing Standard P3 to prohibit explicitly the R3–7 sign from being mounted at the far side of the intersection, incorporating the existing Standard P1 that requires these signs to be located in advance of the intersection. FHWA proposes this change to reinforce the existing requirement, which is intended to avoid confusion with the sign applying to a downstream intersection as has been demonstrated in practice. If a sign at the far side of the intersection is determined to be needed, then the proposed revision to Standard P1 would allow for other signs to be mounted overhead and aligned with each lane adjacent to the signals. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement.

FHWA also proposes to delete the first phrase of Standard P4, which specifies the use of the Mandatory Movement Lane Control symbol signs when the number of lanes available to through traffic is three or more. FHWA proposes to remove this requirement to promote uniformity, since there is already an existing post-mounted version of the sign (R3–7). In concert with this change, FHWA proposes to delete existing Guidance P5 in this section.

FHWA proposes to add a Guidance statement recommending the use of the EXCEPT BUSES or EXCEPT BICYCLES plaque where the lane restriction does not apply to buses or bicycles.

FHWA also proposes to delete existing Option P9 regarding the back-to-back mounting of a Mandatory Movement Lane Control (R3–5) sign for a left-turn lane and Keep Right (R4–7) signs, because the Mandatory Movement Lane Control (R3–5) sign is for overhead mounting and therefore installing a Keep Right (R4–7) sign on the back is not appropriate.

FHWA proposes to add an Option allowing the use of proposed new post-mounted LANE FOR LEFT TURN ONLY and LANE FOR U AND LEFT TURNS ONLY (R3–19 series) signs on the median at the start of the taper to be used in situations where a left-turn lane is added at a median location. FHWA proposes these new signs to standardize the message for which a number of States use a variation.

FHWA proposes to revise Option P11 to indicate that the BEGIN RIGHT TURN LANE (R3–20R) and the BEGIN LEFT TURN LANE (R3–20L) signs may be used in situations where the turn lane may not be apparent. FHWA proposes this revision to clarify when it is appropriate to use the sign because other standard signs exist to indicate a mandatory turn lane.

FHWA proposes to add a new Guidance statement describing the recommended use of the DO NOT DRIVE ON SHOULDER (R4–17) sign at locations where the transition from a paved shoulder to a mandatory turn lane might not be apparent and traffic regularly enters the shoulder to access the turn lane. FHWA proposes this language to clarify the method to address this condition. Use of the

BEGIN RIGHT TURN LANE sign is not intended for these situations.

74. In Section 2B.29 (existing Section 2B.21) Optional Movement Lane Control Sign (R3–6 Series), FHWA proposes to change the 2nd sentence of Standard P1 to Guidance to provide flexibility as to where to place the Optional Movement Lane Control signs.

FHWA proposes to add a standard U- and Left-Turn symbol Optional Movement Lane Control sign R3–6a and a standard oblique multiple left symbol Optional Movement Lane Control sign R3–6b with specific reference in the Standard P1. FHWA proposes this change to provide for left-turn lanes from which a U-turn is allowed, such as at median left-turn lanes as well as where there are multiple left turn angled movements that can be made from the lane.

FHWA proposes to relocate and revise existing Standard P5 to incorporate the requirement that the Optional Movement Lane Control sign be mounted overhead in Standard P1. In concert with this change, FHWA proposes to delete existing Guidance P6, because Optional Movement Lane Control signs are mounted overhead, not post-mounted. The R3–8 Advance Intersection Lane Controls signs are post-mounted.

FHWA proposes to delete existing Option P7 because the arrows on the sign indicate permitted movements and the text ''OK'' is repetitive and not needed.

75. In Section 2B.31 (existing Section 2B.22) Advance Intersection Lane Control Signs (R3–8 Series), FHWA proposes to add TAXI, BUS, BIKE or bicycle symbol to the allowable word messages that may be used within the border in combination with arrow symbols on Advance Intersection Lane Control signs. FHWA proposes to remove OK and ALL from the optional word messages as the lane control arrows are indicating this movement as allowable.

In addition, FHWA proposes to add an Option statement allowing the R3–8 sign to be modified to show the bicycle lane with a white legend on a black background where bicycle lane is between two general purpose lanes. FHWA proposes these changes to provide additional options for alerting motor vehicles and bicyclists of appropriate lane usage in advance of an intersection.

FHWA also proposes to change existing Guidance P3 to clarify that the Advance Intersection Lane Control sign should be placed either along the lane tapers or at the beginning of the turn lane. FHWA proposes this change because, if used in advance of the lane tapers, the sign and the available lanes would not match; therefore, the sign would not help a driver discern which lanes are added and could result in uncertainty due to its ambiguous message.

FHWA proposes a new Standard statement to prohibit mounting an Advance Intersection Lane Control sign at the far side of an intersection to which it applies. FHWA proposes this statement to reinforce placement in advance of the intersection either along the lane tapers or at the beginning of the turn lane. This Standard is necessary in order to avoid potential confusion with the sign applying to a downstream intersection.

FHWA proposes a new Standard statement requiring the R3–5bP and R3–5fP to be mounted above the R3–8 sign, when the R3–8 sign only shows the two outermost lanes of the roadway. FHWA adds this sign to display a complete message to the road user to comprehend the application when not all of the lanes are being shown on the R3–8 series sign.

76. FHWA proposes to renumber and retitle existing Section 2B.23 ''Section 2B.31 Right (Left) Lane Must Exit Signs (R3–33, R3–33a)'' to provide specific reference to and information regarding the use of the proposed new R3–33a sign, a vertical rectangle version of the R3–33 sign for use in limited right-of-way situations.

77. In Section 2B.33 (existing Section 2B.25) BEGIN and END Plaques (R3–9cP, R3–9dP), FHWA proposes to delete the Standard statement, and instead proposes to incorporate the proper placement of the plaque into the Option statement, because placement of the plaque does not warrant a Standard statement.

78. In Section 2B.34 (existing Section 2B.26) Reversible Lane Control Signs (R3–9e through R3–9i), FHWA proposes to add an Option statement indicating that where longitudinal barriers separate opposing directions of traffic, the R3–9g or R3–9h signs may be omitted.

FHWA also proposes to add a Guidance statement to provide for consistency between parking signs and reversible lane signs where curb parking is allowed. FHWA proposes this to avoid confusion.

79. In section 2B.38 KEEP RIGHT EXCEPT TO PASS Sign (R4–16) and SLOWER TRAFFIC KEEP RIGHT Sign (R4–3), FHWA proposes to make revisions to Option P1 and Guidance P2 to clarify that the KEEP RIGHT EXCEPT TO PASS sign is to be used where there are two lanes in one direction of travel. As currently written, ''multi-lane'' implies that no matter how many lanes are present, all traffic should be in the right lane. The meaning of this sign is to indicate that the left lane is for passing only; therefore, the message on the sign is only appropriate for roadways with two-lanes in the same direction of travel.

80. In Section 2B.40 (existing Section 2B.32), retitled, ''Keep Right and Keep Left Signs (R4–7 Series, R4–8 Series),'' FHWA proposes to add a new Guidance statement recommending the word legend (R4–7a, R4–7b, R4–8a, or R4–8b) signs should be used instead of the symbol (R4–7 or R4–8) signs to emphasize the degree of curvature away from the approach direction where the approach end of the island channelizes traffic away from the approach direction, such as on a loop ramp, to define the intended uses of signs that have similar legends better.

FHWA also proposes additional Option, Support, and Standard statements regarding the use of the Keep Right sign on medians on divided highways, as the result of recent research,[19] to provide more clarity regarding the proper use and placement of these signs.

81. FHWA proposes to add a new section numbered and titled, ''2B.45 ALL TRAFFIC Sign (R4–20) and RIGHT (LEFT) TURN ONLY Sign (R4–21)'' to include new Options, Guidance, and Standards regarding the use of the subject signs. FHWA proposes to add this section to allow for additional signs at intersections where movement prohibition and One-Way signs do not adequately convey the allowable direction of travel.

82. In Section 2B.46 (existing Section 2B.39) Selective Exclusion Signs, FHWA proposes to add provisions for a new No Snowmobiles Symbol sign (R9–15) that may be used where snowmobiles are prohibited on roadways or shared-use paths. FHWA proposes this new symbol sign based on research indicating that this symbol has high recognition value.[20] FHWA also proposes to include provisions for the NO THRU TRAFFIC, NO THRU TRUCKS, AND EXCEPT LOCAL DELIVERIES plaque as typical exclusion messages to reflect common practice.

FHWA also proposes to add a reference to R5–10, which would replace the current R5–10a sign. FHWA

[19] NCHRP Report 881 ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements,'' can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

[20] ''Synthesis of Non-MUTCD Traffic Signs'', FHWA, December 2005, p. 19, can be viewed at the following internet website: *https://rosap.ntl.bts.gov/view/dot/34772/dot_34772_DS1.pdf.*

proposes to revise the R5–10a to include the legend ''ON FREEWAY'' below the primary legend.

Finally, FHWA proposes to eliminate the word legend version of the NO TRUCKS (R5–2a) as an alternate to the No Trucks (R5–2) symbol sign. FHWA proposes this change for consistency with word message signs where a symbol sign exists.

83. In the proposed Sub-Chapter DO NOT ENTER, WRONG WAY, AND ONE-WAY Signs and Related Signs and Plaques, FHWA proposes to reorganize the sections so signs associated with wrong-way movements are consecutive sections rather intermixed with Selective Exclusion signs. In concert with these changes, FHWA proposes to provide clarifications and correct inconsistencies between the text and figures related to wrong-way movement signing, as the result of recent research.[21]

84. In Section 2B.47 (existing 2B.37), ''DO NOT ENTER Sign (R5–1),'' FHWA proposes, as the result of recent research,[22] to clarify Standard P1 to require DO NOT ENTER signing where a two-way roadway becomes a one-way roadway and near the downstream end of an interchange exit ramp. FHWA proposes to add a Standard paragraph requiring a DO NOT ENTER (R5–1) sign be installed at an intersection with a divided highway where the crossing functions as two separate intersections, except on low speed urban streets. In concert with this change, FHWA proposes to add Option statements allowing the use of DO NOT ENTER signs at an intersection with a divided highway where crossing functions as a single intersection, as well as allowing the omission of DO NOT ENTER signs at an intersection with a low speed urban street that is a divided highway at a crossing that functions as two separate intersections. As part of these changes, FHWA proposes to recommend that if used at an intersection with a divided highway that functions as a single intersection, DO NOT ENTER signs should be placed on the outside edge of the roadway facing traffic that might enter the roadway in the wrong direction. Finally, FHWA proposes to delete existing Option P4, since it is incorporated in the proposed new language in this section.

FHWA also proposes to add an Option statement regarding the use of white or red LEDs within the border of the DO NOT ENTER sign to enhance the conspicuity of the sign.

85. In Section 2B.48 (existing Section 2B.38) WRONG WAY Sign (R5–1a), FHWA proposes to add a Guidance statement recommending the WRONG WAY sign be placed on the same side of the road as the DO NOT ENTER sign. FHWA proposes this language, as the result of recent research,[23] to provide additional notification to road users that they are not to enter the roadway and clarify the placement of the WRONG WAY sign as it supplements the DO NOT ENTER sign.

FHWA proposes to add an Option statement allowing the use of white or red LEDs within the border to enhance the conspicuity of the sign.

86. In section 2B.49 (existing 2B.41) Wrong-Way Traffic Control at Interchange Ramps, FHWA proposes to add items F (Lane control or movement prohibition signs) and G (Keep Right signs) as traffic control devices that may be used to supplement the signs and pavement markings at interchange exit ramp terminals where the ramp intersects a crossroad in such a manner that wrong-way entry could inadvertently be made. FHWA proposes this new language, as the result of recent research, to provide additional tools for agencies to use to prevent vehicles from entering interchange exit ramps in the wrong direction.

FHWA proposes to add a new Option statement for the use of a NO LEFT TURN (R3–2) sign on the left side of interchange entrance ramps where the ramp merges with the through roadway and the design of the interchange does not clearly make evident the direction of traffic. This text supports the sign shown in existing Figure 2B–19. FHWA also proposes that a supplemental R3–2 sign may be located on the right side of the entrance ramp at the gore if one is installed on the left to provide agencies with greater flexibilities in signing for wrong-way traffic control.

FHWA also proposes a new Option statement and accompanying figure for the use of a ONE WAY sign and/or a NO TURNS (R3–3) sign on interchange entrance ramps where the ramp merges with the through roadway and the design clearly indicates the direction of flow, to provide agencies with greater flexibilities in signing for wrong-way traffic control.

FHWA proposes to delete Option P5 referencing special needs or prohibitive information. FHWA proposes this change because the statement is nonspecific and Chapter 2A already contains language specifying that a decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment.

In addition, FHWA revises Option P6 to clarify that the low mounting height for an independent installation of a DO NOT ENTER or WRONG WAY sign is for locations along the exit ramp rather than at the intersection with the crossroad. FHWA also proposes an Option to allow the installation of a low-mounted WRONG WAY sign on the DO NOT ENTER assembly at the intersection with the crossroad, provided that the DO NOT ENTER sign is mounted at a height consistent with the requirements for signs in general. FHWA proposes this change to ensure that the basic signing is at the typical mounting height a road user would expect to see, while still allowing signs at a lower mounting height as a supplement that are intended for a potentially disoriented driver whose vision might be focused at a lower height.

87. In Section 2B.50 (existing Section 2B.40) ONE WAY Signs (R6–1, R6–2), FHWA proposes, as the result of recent research,[24] to replace all language describing an intersection with a divided highway that has a median width at the intersection itself of 30 feet with proposed new language that describes the crossing of a roadway with a divided highway as an intersection operating as single or separate intersections. FHWA proposes these changes because it is important to base the application of ONE WAY signing on how the intersection functions, rather than the width of the median.

FHWA also proposes to revise Option P11 to indicate that a One-Direction Large Arrow sign may be used instead of or in addition to a ONE WAY sign in the central island of a circular intersection. FHWA proposes this change to reflect the proposed removal of the Roundabout Directional Arrow from the MUTCD.

In addition, FHWA proposes to add a Standard statement specifying that when a One-Direction Large Arrow sign is used without a ONE WAY sign, the R6–5P plaque shall be mounted below the Yield sign on the approach to a roundabout. FHWA proposes this to ensure that when only the One-

[21] NCHRP Report 881 ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements,'' can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

[22] *Ibid.*

[23] NCHRP Report 881 ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements,'' can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

[24] NCHRP Report 881 ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements,'' can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

Direction Large Arrow is used that a regulatory message indicating the direction of movements is provided.

FHWA also proposes to delete P10 and 13 because they are duplicative and contradictory, respectively, and therefore not necessary to include in the MUTCD.

88. In Section 2B.51 (existing 2B.42) Divided Highway Crossing Signs (R6–3, R6–3a), FHWA proposes similar changes as the result of recent research,[25] as described in proposed Section 2A.22, to the text regarding the description of a divided highway at a crossing that functions as separate intersection(s), rather than referring to the median width at the intersection.

89. FHWA proposes to relocate and renumber existing Section 2B.44 as ''Section 2B.52 Roundabout Circulation Plaque (R6–5P).''

90. FHWA proposes to delete existing Section 2B.43 Roundabout Directional Arrow Signs, because the design of the R6–4 series signs, for which there are 3 versions, confounds a warning sign with a regulation and, as a result, have become prone to misuse. To address the condition for which these signs were intended, this proposed change also includes associated changes to the use of ONE WAY signs and the Large Arrow sign, as described above.

91. As discussed above, FHWA proposes to relocate and renumber existing Section 2B.44 as ''Section 2B. 51 Roundabout Circulation Plaque (R6–5P).''

92. FHWA proposes to delete existing Section 2B.45 Examples of Roundabout Signing. Roundabouts have become very common. The figures have been retained in Chapter 2B; however, a separate section dedicated to examples is not needed.

93. In Section 2B.53 (existing Section 2B.46) Parking, Standing, and Stopping Signs (R7 and R8 Series), FHWA proposes to expand the Support statement to categorize parking signs into two categories: Prohibited parking and permitted parking with restrictions and provide examples of each category.

94. In Section 2B.54 (existing Section 2B.47) Design of Parking, Standing, and Stopping Signs, FHWA proposes to revise Standard paragraphs 2–4 to incorporate the proposed prohibitive and permissive parking sign classifications and provide additional information on the design of such signs in order to maintain consistency in general sign design, while also allowing flexibility for agencies to modify legends for specific regulations.

To improve consistency in the information provided in parking signs, FHWA proposes to expand the list of parking information that should be displayed on signs existing in Guidance P5 to include qualifying or supplementary information, exemptions to the restriction of prohibition, and tow-away message or symbol.

FHWA proposes to add a Standard requiring the times and days for which parking regulations are in effect to be displayed on the signs if they are not in effect all times of day or all days of the week. FHWA proposes this to ensure consistent signing methods in order to improve clarity for drivers wanting to park.

FHWA proposes to modify Option P18 regarding the use of word message plaques with the R8–3 series signs. FHWA proposes to remove the EXCEPT SUNDAYS AND HOLIDAYS (R8–3bP), LOADING ZONE (R8–3gP), and X:XX A.M to X:XX P.M.(R8–3hP) plaques as these are generally in urban conditions and are already covered by the R7 series parking signs. FHWA proposes to modify the ON PAVEMENT (R8–3cP), ON BRIDGE (R8–3dP), ON TRACKS (R8–3eP), and EXCEPT ON SHOULDERS (R8–3fP) by removing the plaque designations and combining the word legends with the standard NO PARKING symbol (R8–3) sign.

FHWA proposes to change the legend of the Emergency Snow Route (R7–203) sign to ''Snow Emergency Route'' to be consistent with the prevailing current practice and the fact that the restrictions apply during a declared snow emergency.

FHWA proposes several changes in this section to incorporate electronic payment, change the term ''pay parking'' to ''metered parking'' and other editorial changes to reflect current practice and commonly used nomenclature. This includes a proposed Option statement to accompany a proposed new Mobile Parking Payment plaque that may be installed below a Metered Parking sign.

FHWA also proposes to add an Option statement to allow the display of maximum time limits that vary by time of day or day of the week on the R7–20 sign to be omitted and instead displayed on the multi-space parking meter so that they are visible to pedestrians as they make payments.

FHWA also proposes to add a Standard statement immediately preceding existing Standard P8, to reiterate the existing requirement that the Accessible Parking (R7–8) sign display only the official International Symbol of Accessibility and not a modification thereof. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement in Chapter 2A.

FHWA proposes a new Guidance statement to incorporate provisions for Electronic Vehicle parking. The proposed language is based on FHWA's Memorandum on Regulatory Signs for Electric Vehicle Charging and Parking Facilities.[26]

FHWA proposes to delete the second and third sentences of existing Option P14 regarding the color of the bus symbol and the use of transit logos on the R7–107 sign, or alternates, because the text is not necessary and the use of transit logos on a sign may not be practical. In concert with this change, FHWA also proposes to delete the existing R7–7 sign, because the R7–107, as well as the R7–107a sign, are more distinguishable, and there is no need for an additional sign.

FHWA proposes to delete P19 and 20 regarding color coding of parking time limits. FHWA proposes this change to streamline the design of parking signs and because the standard colors of the parking signs have specific meanings as prescribed by the manual. In addition, the time limits are adequately displayed by the numbers on the signs.

Finally, FHWA proposes new Guidance paragraphs at the end of the section regarding the use of legends other than those on standard parking signs and the letter height of the principal legend. FHWA proposes these new paragraphs to provide agencies flexibility in creating specific signs while maintaining uniformity in design provisions.

95. In Section 2B.55 (existing Section 2B.48) Placement of Parking, Stopping, and Standing Signs, FHWA proposes to add a Guidance statement recommending signs placed at the head of perpendicular parking stalls to be parallel to the roadway facing the parking stall. FHWA proposes this addition to promote uniformity and clarity in signing parking stalls.

FHWA proposes to change P4 from a Standard to a Guidance to recommend, rather than require mounting parking signs back to back at the transition point between two parking zones, to provide jurisdictions with flexibility when it might be impractical to mount signs back-to-back.

FHWA also proposes to relocate and revise the Option statement regarding

[25] NCHRP Report 881 ''Traffic Control Devices and Measures for Deterring Wrong-Way Movements,'' can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/178000.aspx.*

[26] FHWA's Memorandum on Regulatory Signs for Electric Vehicle Charging and Parking Facilities can be accessed at the following web address: *https://mutcd.fhwa.dot.gov/resources/policy/rsevcpfmemo/.*

the use of signs to display blanket regulations from existing Section 2B.47 to this section, because this section deals specifically with sign placement.

96. In Section 2B.56 (existing Section 2B.49) Emergency Restriction Signs (R8–4, R8–7, R8–8), FHWA proposes to move existing Standard P3 to the beginning of the section and delete the color red as a legend color, for consistency with non-standard legends, as only black legends are allowed on Emergency Restriction signs.

97. In Section 2B.57 (existing Section 2B.50), ''WALK ON LEFT FACING TRAFFIC and No Hitchhiking Signs (R9–1, R9–4, R9–4a),'' FHWA proposes to change Standard P2 to Guidance to allow agencies greater flexibility in the installation of the signs.

98. In Section 2B.59 (existing Section 2B.52) Traffic Signal Pedestrian and Bicycle Actuation Signs (R10–1 through R10–4, and R10–24 through R10–26), FHWA proposes to revise Standard P1 to clarify that where manual actuation of a traffic signal is required for pedestrians or bicyclists to call a signal phase to cross a roadway, traffic signs related to pushbuttons at those traffic signals are required. FHWA proposes this change to reduce the burden of sign installation on agencies.

In addition, FHWA proposes to add a new sign to the Option statement, allowing for the use of a PUSH BUTTON IS FOR AUDIBLE MESSAGE ONLY (R10–3j) sign to provide agencies with the option where a pedestrian pushbutton is only used to activate accessible pedestrian features. Similarly, FHWA proposes to add a new sign to the Option statement allowing for the use of a sign that indicates the pedestrian button can be activated by either pushing or waving.

Lastly, FHWA proposes to modify the legend of the R10–25 sign to ''PUSH BUTTON FOR WARNING LIGHTS—WAIT FOR GAP IN TRAFFIC.'' FHWA proposes this change because these signs are used only at uncontrolled crosswalk locations where pedestrian-activated warning beacons only alert approaching traffic to the presence of a pedestrian, but do not assign right-of-way to conflicting traffic streams, such as with a traffic signal or hybrid-beacon. In such cases, pedestrians are required to wait for an acceptable gap in vehicular traffic and not enter the roadway in the path of a vehicle which is so close as to constitute an immediate hazard.

99. In Section 2B.60 (existing Section 2B.53) Traffic Signal Signs (R10–5 through R10–30), FHWA proposes to add Option and Guidance for the use of a text version of a LEFT TURN YIELD ON FLASHING YELLOW ARROW (R10–12a) sign with Flashing Yellow Arrow signals. FHWA proposes this change to promote uniformity in the use of signing for these signal applications.

FHWA proposes to add new Standard, Support, Guidance, and Option statements regarding the use of a proposed new LEFT TURN YIELD TO Bicycles (R10–12b) sign to provide agencies with information regarding the use of this sign to notify turning motorists of the possibility for unexpected conflicting bicycle movement at certain locations.

FHWA also proposes to add provisions for a new WAIT ON STEADY RED—YIELD ON FLASHING RED AFTER STOP (R10–23a) sign as an alternative to the R10–23 sign at pedestrian hybrid beacons. The 2017 Traffic Control Devices Pooled Fund Study [27] evaluated the comprehension and legibility of various alternatives for signing at midblock hybrid beacon pedestrian crossings. The results indicated that no significant differences were found between the alternatives; however, they did highlight the need for a sign, at least initially, while drivers are learning what actions to take based on the flashing beacon. As a result, FHWA proposes to add a word message sign for jurisdictions that determine the operational need at pedestrian hybrid beacons.

FHWA also proposes to add an Option for a STOP HERE ON FLASHING RED (R10–14b) sign to provide extra emphasis at an emergency-vehicle hybrid beacon.

FHWA also proposes to add a Standard to accompany a proposed new optional Turning Vehicles Stop for Pedestrians (R10–15a) sign to remind drivers who are making turns to stop for pedestrians, which shall be used only in jurisdictions where laws, ordinances, or resolutions specifically require that a driver must stop for a pedestrian.

Lastly, FHWA proposes to add an Option statement allowing the use of a U TURN SIGNAL (R10–10a) sign adjacent to a signal face that exclusively controls a U turn movement.

100. In Section 2B.61 (existing Section 2B.54) No Turn on Red Signs (R10–11 Series, R10–17a, and R10–30), FHWA proposes to change the designations of the No Turn on Red signs such that the word only message signs are designated R10–11 and 10–11a and the NO TURN ON RED with the symbolic circular red sign is designated as R10–11b. FHWA proposes this change to designate consecutively the word only message sign designations.

FHWA proposes to relocate existing Option P4 and revise Option P5 to indicate that a blank-out sign is the primary Option for displaying a part-time NO TURN ON RED restriction. In concert with this change, FHWA proposes an Option statement that allows the use of white LEDs in the border, and activated during periods of turn prohibition, to enhance sign conspicuity.

101. In Section 2B.62 (existing Section 2B.55), retitled, ''Photo Enforced Signs and Plaques (R10–18, R10–19P, R10–19aP, R10–18a),'' FHWA proposes to add a new optional Traffic Signal Photo Enforced (R10–18a) sign that may be installed on an approach to a signalized location where red-light cameras are present on any approach to the signalized location. FHWA proposes this new sign, and associated Option and Standard provisions, in accordance with Interim Approval (IA–12) issued November 12, 2010.[28]

102. In Section 2B.66 (existing Section 2B.59) Weight Limit Signs (R12–1 through R12–7), FHWA proposes to add Guidance statements regarding the use of weight limit signs to indicate a structure has a vehicle weight restriction. FHWA proposes to add a Guidance statement recommending that the term used for units shown on weight limit signs be consistent within a State or region with respect to pounds or tons. FHWA also proposes that the vehicle weight restrictions be depicted based on gross vehicle weight, and that weight per axle or empty vehicle weight should only be used when required by local laws to depict weight restrictions in that manner. In conjunction with this change, FHWA proposes to delete existing Guidance P2 and P4 regarding axle weight limits. FHWA proposes this change, in concert with the new Option provisions related to Specialized Hauling Vehicles and the proposed R12–6 sign which allows for a more comprehensive posting gross weight based on axle configurations and vehicle types. The proposed sign allows for distinguishing a single-unit vehicle and a combination vehicle while restricting to other vehicle types or reducing the mobility of vehicles that should not be restricted.

FHWA proposes to delete existing Guidance P3 regarding restrictions on

[27] ''Comprehension and Legibility of Selected Symbol Signs Phase IV'' Pooled Fund Study can be viewed at the following internet website: *http://www.pooledfund.org/Document/Download/7559.*

[28] FHWA's Interim Approval IA–12, November 12, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia12/index.htm.*

trucks in residential areas, because the sign is not conveying a weight restriction, but rather a selective prohibition of trucks in a neighborhood. A new NO THRU TRUCKS sign is being proposed in conjunction with this change in 2B.52 to convey more effectively the intent of the restriction.

FHWA also proposes to add Support and Option provisions related to Specialized Hauling Vehicles, which are single-unit trucks with closely spaced axles, for which weight limit signs displaying restrictions based on the number of axles may be used.

FHWA proposes to add several Standard statements regarding the symbols shown on the R12–5 and R12–6 Weight Limit signs. The symbols used are required to apply to all trucks of the type shown (single-unit, single-trailer or multi-trailer) regardless of the shape of the vehicle. Symbolic representations of other vehicle shapes or modifications of standard symbols shall not be used in accordance with existing requirements in Chapter 2A.

FHWA also proposes to add a Guidance statement recommending that Weight Limit signs show no more than 3 symbols in order to promote driver comprehension.

FHWA proposes to incorporate Guidance P7 into Standard P6 to require, rather than recommend that, if used, the Weight Limit sign, with an advisory distance ahead legend, shall be located in advance of the applicable section of highway or structure so that prohibited vehicles can detour or turn around prior to the limit zone. FHWA proposes this change to give vehicles affected by weight limit restrictions adequate information about the distance to the restricted area so that they can properly change their route and to minimize potential damage to highway infrastructure as a result of an overweight vehicle.

FHWA proposes provisions for the use of proposed new Emergency Vehicle Weight limit signs to address conditions where emergency vehicles can create higher load effects compared to legal loads. The R12–7 sign is for independent use and the R12–7aP plaque is for use only in a sign assembly below a primary regulatory Weight Limit sign.

103. FHWA proposes to renumber and retitle existing Section 2B.60 to ''Section 2B.68 Vehicle Inspection Area Signs (R13–1 Series)'' to provide more flexibility in the use of R13–1 signs for various types of inspections. In concert with this change, FHWA proposes to add an Option statement allowing modification to the legend to match the specific type of inspection conducted at that station. FHWA also proposes to delete the existing Option statement allowing the reverse color combinations of the signs in order to support uniformity.

104. In Section 2B.68 (existing Section 2B.61) TRUCK ROUTE Sign (R14–1), FHWA proposes to change Option P2 to Support and revise the statement to provide specific reference to existing Section 2D.20 regarding the use of the TRUCK auxiliary sign on numbered alternative routes. FHWA proposes this change so as not to duplicate or conflict with the information contained in Chapter 2D.

105. FHWA proposes to add a new section numbered and titled, ''Section 2B.71 Move Over or Reduce Speed Sign (R16–3)'' with an Option statement regarding the use of the subject sign to require motorists to change lanes and/or reduce speed when passing stopped emergency vehicles on the shoulder.

106. FHWA proposes to renumber and retitle existing Section 2B.65 to ''Section 2B.71 Minor Crashes Move Vehicles from Travel Lanes Sign (R16–4)'' and rephrase the subject sign from ''FENDER BENDER'' to ''MINOR CRASHES.'' FHWA proposes this change to align better with the various State laws and describe the type of crashes for which the sign is intended.

107. FHWA proposes to add a new section numbered and titled, ''Section 2B.73 No Hand-Held Phones by Driver Signs (R16–15, R16–15a)'' with an Option statement regarding the use of the subject sign, as State law applies, to notify drivers that they are prohibited from using hand-held telephones while driving.

108. In Section 2B.77 (existing Section 2B.68) Gates, FHWA proposes to delete Support P2 through P4 as they are not needed.

FHWA also proposes to revise existing Standard P5 to include a minimum width of the reflective sheeting. FHWA proposes this change to be consistent with the information provided in Part 8.

FHWA also proposes to delete existing Standard P9 and 10 and Guidance P12 regarding lateral offset of the gate arm and support, because this is addressed in AASHTO design criteria and reflects a design aspect better suited for other design manuals.

Discussion of Proposed Amendments to Chapter 2C Warning Signs and Object Markers

109. As part of the reorganization to improve usability of the MUTCD, FHWA proposes to include subchapter headings in Chapter 2C to organize sections into related groupings. FHWA proposes the following subchapters in Chapter 2C: General, Horizontal Alignment Warning Signs, Vertical Grade Warning Signs and Plaques, Roadway Geometry Warning Signs, Roadway and Weather Condition Signs and Plaques, Traffic Control and Intersection Signs and Plaques, Merging and Passing Signs and Plaques, Miscellaneous Warning Signs, Supplemental Plaques, and Object Markers.

110. FHWA proposes to delete existing Section 2C.01 Function of Warning Signs because this information is captured in Chapters 1A and 2A.

111. FHWA proposes to renumber and retitle existing Section 2C.02 to ''Section 2C.01 Function and Application of Warning Signs.'' FHWA also proposes to add a new Standard, referencing the existing requirements in Chapter 2A, requiring that all warning signs shall be retroreflective or illuminated. FHWA proposes this change for consistency with Section 2B.01.

FHWA also proposes to delete all the Option and Support statements because they restate information already covered in Chapter 1A.

112. In Section 2C.02 (existing Section 2C.03) Design of Warning Signs, FHWA proposes to add a Support regarding the use of shapes other than diamond-shaped for freeway overhead installations and a reference to Chapter 2A for information on modifications where lateral space is constrained.

FHWA proposes to revise Option P4 to clarify that word message warning signs other than those provided in this Manual may be developed and installed by State and local highway agencies for conditions not addressed by standard signs. FHWA proposes this additional language to clarify the allowable use of word message warning signs that are not in the MUTCD. FHWA proposes this clarification in response to an apparent misinterpretation of the existing provisions, in which noncompliant field deployments have unnecessarily modified the word legends of standard signs where used for the condition stated in the MUTCD.

Finally, FHWA proposes to add an Option statement allowing the use of static or flashing LEDs within the sign border to enhance the conspicuity of the sign.

113. In Section 2C.03 (existing Section 2C.04) Size of Warning Signs, FHWA proposes to revise the Guidance paragraph regarding the minimum size of diamond-shaped warning signs to restrict the provision to exit and entrance ramps at major interchanges connecting an expressway or freeway with an expressway or freeway. FHWA

also proposes to add a new Guidance statement recommending 36″ x 36″ as the minimum size for all diamond-shaped warning signs facing traffic on exit and entrance ramps at all other interchanges. FHWA proposes these changes because the operating characteristics of a single lane ramp can be closer to that of a single lane conventional roadway than that of a freeway, with the exception of freeway/expressway to freeway/expressway connections. The proposed language reaffirms the minimum recommended sizes and larger sizes can be used based on engineering judgement, when appropriate.

FHWA also proposes to add a Guidance statement regarding the size of warning signs used on low-volume rural roads with operating speeds of 30 mph or less to capture language in existing Part 5 FHWA proposes to redistribute among the remaining parts.

114. In Section 2C.04 (existing Section 2C.05) Placement of Warning Signs, FHWA proposes to delete the second sentence of P3 because it is not needed as the preceding guidance discusses placement with respect to perception-reaction time and the use of engineering judgment as well as referencing Section 2A for the placement of warning signs.

FHWA also proposes to delete P6 regarding the placement of warning signs that advise road users about conditions that are not related to a specific location, and instead include that information in Table 2C–4.

FHWA also proposes updates to Table 2C–4 by referencing the 2018 AASHTO Policy on Geometric Design of Highways and Streets, 7th Edition and providing for advance placement distances at higher speeds. FHWA also proposes to modify Condition B to place the AASHTO Stopping Sight Distance minimum design guidelines in the ''0'' column for STOP conditions placing Advance Traffic Control signs further in advance of the intersection providing greater advance notice of the critical intersection stop condition, a factor of safety for legibility distance, and more space on the intersection approach for lane control and guide signing.

115. In Section 2C.05 (existing Section 2C.06), retitled, ''Horizontal Alignment Warning Signs—General,'' FHWA proposes to delete the Standard statement regarding use of horizontal alignment warning signs. Instead, FHWA proposes new Option and Guidance statements regarding various treatments, including items other than traffic control devices, and factors to consider for other traffic control devices to warn road users of a change in horizontal alignment or to provide guidance in navigation. FHWA also proposes to delete existing Table 2C–5 and replace it with two tables in proposed Section 2C.06. As part of this change, FHWA proposes to move the portion of the Standard related to speed differential to proposed Section 2C.06 so that it appears in the same section with the referenced tables. FHWA proposes these changes based on a research study [29] that evaluated advance warning treatments at horizontal curves.

116. FHWA proposes to add a new section numbered and titled ''Section 2C.06 Device Selection for Changes in Horizontal Alignment.'' This proposed new section contains Standard, Support, and Option statements, as well as new tables, to assist practitioners in determining the type of device to be used in advance of horizontal curves on freeways, expressways, and roadways. FHWA proposes this new section to assist practitioners with the selection of the appropriate device for warning of a change in horizontal alignment.

117. In Section 2C.07 Horizontal Alignment Signs (W1–1 through W1–5, W1–11, W1–15), FHWA proposes to edit and move P2 from a Standard to Guidance. FHWA proposes to recommend the use of a Turn (W1–1) sign instead of a Curve sign in advance of curves where the advisory speed is half or less of the posted speed or a speed differential of 25 mph or more. FHWA proposes these changes to allow engineering judgment if a Turn sign does not fit the field conditions. Also, the proposed change in criteria to a speed differential limits the use of the Turn sign where the sign would otherwise be required on lower speed roadways with small differentials between the posted speed and the advisory speed.

118. In Section 2C.08 (existing Section 2C.09) Chevron Alignment Sign (W1–8), FHWA proposes to add Option and Standard statements regarding the use of LEDs when used within Chevron Alignment signs to enhance the conspicuity.

119. FHWA proposes to delete existing Section 2C.10 Combination Supplemental Horizontal Alignment/Advisory Speed Signs (W1–1a, W1–2a), because there is considerable evidence that the signs are not being used as a supplement in accordance with the Standard, since many take on the form of an Advance Warning sign and are placed in advance, rather than at the location of the hazard. To address the need to remind road users of the advisory speed at a location downstream of the advance warning location, FHWA proposes the Confirmation Advisory Speed Plaque (W13–1aP) described in proposed Section 2C.59.

120. In Section 2C.10 (existing Section 2C.12) One-Direction Large Arrow Sign (W1–6), FHWA proposes to revise Option P1 to allow use of the One-Direction Large Arrow sign either as a supplement or alternative to Chevron Alignment signs or delineators to delineate a change in horizontal alignment. FHWA proposes this change to reflect the results of a recent study on driver response to traffic control devices [30] and resulting desire to revise MUTCD language to clarify the use of devices in areas with change in horizontal alignment.

FHWA also proposes to delete Standard paragraph 7 prohibiting the use of the One-Direction Large Arrow sign in the central island of a roundabout and instead proposes to allow its use in a new Option. FHWA proposes to allow the use of the sign in conjunction with the proposed changes to remove existing Section 2B.43 for Roundabout Directional Arrow Signs. FHWA proposes these changes to provide agencies with an Option to use a warning sign within the roundabout instead of, or in addition to, a One-Way sign to direct traffic counter-clockwise around the central island. As part of these changes, FHWA proposes to add a Support statement referencing figures in Chapter 2B that show examples of regulatory and warning signs for roundabouts.

121. In Section 2C.11 (existing Section 2C.13), retitled, ''Truck Rollover Sign (W1–13),'' FHWA proposes to revise the existing Option statement to be more specific regarding locations where it may be appropriate to use the sign in lieu of a horizontal alignment warning sign. In addition, FHWA proposes to add a Guidance statement regarding the placement of the Truck Rollover sign. FHWA also proposes to add an Option allowing the use of a Vehicle Speed Feedback (W13–20) sign in conjunction with a Truck Rollover Warning sign.

122. FHWA proposes to combine existing Sections 2C.14 and 2C.15 and renumber and retitle the resulting section as, ''Section 2C.12 Advisory Exit and Ramp Speed Signs (W13–2 and

[29] ''Traffic Control Device Guidelines for Curves,'' Preliminary Draft Final Report, NCHRP Report 03–106, can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP03-106_FR.pdf.*

[30] ''Traffic Control Device Guidelines for Curves,'' Preliminary Draft Final Report, NCHRP Report 03–106, can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP03-106_FR.pdf.*

W13–3) and Combination Horizontal Alignment/Advisory Exit and Ramp Speed Signs (W13–6 through W13–13).'' FHWA proposes to add Standard, Guidance, and Option statements clarifying the use of these signs, including how they are to be used together, where applicable. FHWA also proposes to reference the proposed new tables in Section 2C.06.

In the proposed new Standard, FHWA proposes to require that the ramp geometries depicted on the Advisory Exit or Ramp Speed signs be limited to the standard designs of the proposed Combination Horizontal Alignment/Advisory Exit Speed and Combination Horizontal Alignment/Advisory Ramp Speed signs. While this limitation is implicit in the existing provisions of Section 2A.04 (existing Section 2A.06) that prohibit alternatives to standard signs or other uses of symbols, FHWA believes that a specific statement in this proposed Section would help to ensure that the proposed Combination signs are used only for those conditions at exit ramps that are atypical or unexpected. This limitation would minimize overuse of the Combination signs, which could result in a reduction of their effectiveness. Where typical or expected geometry exists at or near the ramp terminal, the Advisory Exit or Ramp Speed (W13–2 or W13–3) signs would continue to be used. FHWA proposes these new signs to provide agencies and practitioners greater flexibility to sign for various unexpected conditions at or near ramp terminals. In addition to the existing signs in the Manual that display the 270-degree loop arrow (W13–6 and W13–7), FHWA proposes Exit and Ramp Combination signs depicting the following geometric conditions: The 180-degree horseshoe curve arrow, the 90-degree turn arrow, and the truck rollover symbol and arrow. In this new Standard, FHWA also proposes to incorporate an existing requirement previously contained in Table 2C–5 for the use of Advisory Exit Speed and Advisory Ramp Speed signs on turning roadway exits and ramps when the difference between the speed limit and the advisory speed is 20 mph or greater.

FHWA also proposes to recommend in a new Guidance that the Advisory Exit Speed and Advisory Ramp Speed signs on turning roadway ramps be used when the difference between the speed limit and the advisory speed is 15 mph or greater. FHWA also proposes to add that Regulatory Speed Limit signs should not be located in the vicinity of exit ramps or deceleration lanes, particularly where they would conflict with the advisory speed displayed on the Advisory Exit or Ramp Speed signs.

In a revised Option, where there is a need to remind road users of the recommended advisory speed, FHWA proposes to allow a horizontal alignment warning sign with an advisory speed plaque to be installed at a downstream location along the ramp.

FHWA proposes new Guidance for the installation of a horizontal alignment warning sign if there are changes to the ramp curvature and the subsequent curves have advisory speeds that are lower than the initial ramp curve speed.

FHWA also proposes a new Option for the use of the One-Direction Large Arrow (W1–6) sign beyond the exit gore on the outside of the curve to provide additional warning of an immediate change in curvature.

FHWA proposes the changes in this new combined section to clarify the use of these signs and provide additional flexibility for their use on ramps where the speed differential is small, or where road users need reminding of the advisory speed.

123. FHWA proposes to add a new section numbered and titled, ''Section 2C.13 Vehicle Speed Feedback Sign (W13–20, W13–20aP),'' that contains Option, Standard, and Guidance paragraphs regarding the use of an LED sign to displays the speed of an approaching vehicle back to the vehicle operator to provide warning to drivers of their speed in relation to either a speed limit or horizontal alignment warning advisory speed sign. FHWA proposes this new section to provide additional information regarding the use of these signs and plaques, as well as references to other portions of the Manual to assist with uniformity in the use of the signs and plaques.

124. In Section 2C.14 (existing Section 2C.16) Hill Signs (W7–1, W7–1a), FHWA proposes to remove the Standard in P5 requiring that the percent grade supplemental plaque be placed below the Hill (W7–1) sign as the Standard for the placement of a plaque below a sign is contained in Section 2C.57 ''Use of Supplemental Warning Plaques.'' FHWA proposes this change to remove unnecessary or repetitive content and streamline the Manual.

125. In Section 2C.16 (existing Section 2C.18) HILL BLOCKS VIEW Sign (W7–6), FHWA proposes to revise the Option and to add Guidance to indicate that the HILL BLOCKS VIEW sign may be used on the approach to a crest vertical curve where the vertical curvature provides inadequate stopping sight distance at the posted speed limit, and that where such curve results in a sight distance obstruction to a specific condition beyond the crest of the vertical curve, the sign for the specific condition beyond the vertical crest should be used rather than the HILL BLOCKS VIEW sign. FHWA proposes these changes to provide agencies with options to provide more specific guidance to conditions to road users about conditions ahead.

126. In Section 2C.18 (existing Section 2C.20), retitled, ''NARROW BRIDGE and NARROW UNDERPASS Signs (W5–2, W5–2a)'' and in Section 2C.19 (existing Section 2C.21), retitled, ''ONE LANE BRIDGE and ONE LANE UNDERPASS Signs (W5–3, W5–3a),'' FHWA proposes to add Option statements that allow for the respective sign to be omitted on low-volume rural roads to capture language from existing Part 5 that FHWA proposes to redistribute among the remaining parts.

In addition, FHWA proposes to add NARROW UNDERPASS and ONE LANE UNDERPASS signs where the same conditions exist for an underpass.

127. In Section 2C.24 (existing Section 2C.26), retitled, ''DEAD END, NO OUTLET, and ROAD ENDS Signs (W14–1, W14–1a, W14–2, W14–2a, W8–26, W8–26a),'' FHWA proposes to change the term ''cul-de-sac'' to ''turn-around'' in Option P1 to reflect the roadway geometry more accurately.

FHWA proposes to delete Standard P4 prescribing the design of the sign, because sign design details are required to comply with existing requirements in Chapter 2A.

Lastly, FHWA proposes to add a new Option for signs for ROAD ENDS and STREET ENDS for use on the approach to the end of a conventional road or street. In concert with these new signs, FHWA also proposes a Guidance paragraph recommending the use of object markers to mark the end of the road or street if the new signs are used, presuming that the need for the sign would be based on low visibility of the end of the road or street. FHWA also proposes a Standard statement prohibiting the use of the proposed new ROAD ENDS and STREET ENDS signs at the entrance to a dead end road or street as the DEAD END and NO OUTLET signs are designated specifically for that purpose.

128. In existing Section 2C.27, renumbered and retitled, ''Section 2C.25 Low Clearance Signs (W12–2, W12–2a, W12–2b),'' FHWA proposes several revisions to clarify the signing practice for locations where the clearance is less than 12 inches above the statutory maximum vehicle height. FHWA proposes these changes to provide agencies with additional information for placing signs in advance of and on structures with low clearance. The

proposed changes were based on recommendations from NTSB H–14–11 to provide signing indicating the proper lane of travel for over height vehicles traveling under an arched structure.[31] As part of these changes, FHWA proposes to designate the existing W12–2 sign as a Low Clearance Ahead sign, and the existing W12–2a and a proposed new W12–2b sign as a Low Clearance Overhead sign, to indicate the portion of the structure with low clearance if the posted clearance does not apply to the entire structure. FHWA proposes a compliance date of 5 years based on the critical nature of the infrastructure.

129. In Section 2C.26 (existing Section 2C.28) BUMP and DIP Signs (W8–1, W8–2), FHWA proposes to change P3 from a Standard to a Guidance statement to discourage, rather than prohibit, the use of the DIP sign at a short stretch of depressed alignment that might hide a vehicle momentarily. FHWA proposes this change to give agencies more flexibility in the placement of the DIP sign.

130. In Section 2C.28 (existing Section 2C.39) DRAW BRIDGE Sign (W3–6), FHWA proposes to delete the exception for use of a DRAW BRIDGE sign in urban conditions because it is not necessary.

131. In Section 2C.30 (existing Section 2C.31) Shoulder Signs (W8–4, W8–9, W8–17, W8–23, and W8–25), FHWA proposes to delete Standard P7 requiring that Shoulder signs be placed in advance of the condition, because that requirement is applicable to almost all warning signs, and therefore is not needed as a separate Standard in this section.

132. FHWA proposes to add a new section numbered and titled, ''Section 2C.34 NO TRAFFIC SIGNS Sign (W18–1),'' that contains an Option statement that captures language from existing Part 5 that FHWA proposes to redistribute among the remaining parts.

133. In Section 2C.35 Weather Condition Signs (W8–18, W8–19, W8–21, and W8–22), FHWA proposes to change Standard P2 to a Guidance to provide agencies with flexibility in the placement of the Depth Gauge sign.

134. In Section 2C.36 Advance Traffic Control Signs (W3–1, W3–2, W3–3, W3–4), FHWA proposes to change the last sentence of Standard P1 related to visibility criteria for traffic control signals based on distances specified in Table 4D–2 to a Guidance to allow agencies more flexibility.

FHWA also proposes to combine and revise existing Option statements to allow for the use of LEDs within the border of the sign to enhance conspicuity.

135. FHWA proposes to add a new section numbered and titled, ''Section 2C.37 Actuated Advance Intersection Signs (W2–10 through W2–12),'' that contains Support, Option, and Standard paragraphs regarding the use of Actuated Advance Intersection Signs to allow agencies flexibility in implementing warning systems in the vicinity of traffic signals or other intersection conflict areas. FHWA proposes these signs, and the associated legends, based on information from a Pooled Fund Study.[32]

136. FHWA proposes to renumber and retitle existing Section 2C.52 as, ''Section 2C.39 NEW TRAFFIC PATTERN and SIGNAL OPERATION AHEAD Signs (W23–2, W23–2a)'' to add a proposed new optional sign that agencies may use to warn road users of changes in signal phasing.

137. In Section 2C.40 (existing Section 2C.38) Reduced Speed Limit Ahead Signs, FHWA proposes to add the Variable Speed Zone (W3–5b) and Truck Speed Zone (W3–5c) Ahead signs in the Guidance and Standard paragraphs to provide agencies with standard signs to be used to inform road users in advance of these reduced speed zone types.

138. FHWA proposes to add a new section numbered and titled, ''Section 2C.41 WATCH FOR STOPPED TRAFFIC Sign (W23–3).'' The new section contains an Option to use a new WATCH FOR STOPPED TRAFFIC Sign (W23–3) to warn road users of the possibility of vehicles stopped unexpectedly in the travel lane. FHWA proposes this change based on Synthesis of Non-MUTCD Signing,[33] which found that at least 20 State agencies currently use a sign that warns of the possibility of stopped or almost stopped traffic due to turns or other unexpected conditions, and therefore recommends adding the sign to the MUTCD. In accordance with this recommendation, FHWA proposes to add the W23–3 to Figure 2C–4 and Table 2C–1.

139. In Section 2C.42 (existing Section 2C.46) Intersection Warning Signs (W2–1 through W2–8), FHWA proposes to remove Option P5 regarding the design of intersection warning signs to remove language that implies certain classifications of roadways at an intersection may be of lesser importance.

FHWA proposes to revise Guidance P8 to exclude Grade Crossing and Intersection Advance Warning (W10–2 and W10–3) signs from Intersection Warning signs that are prohibited on approaches controlled by STOP signs, YIELD signs, or signals. FHWA proposes this change because of the safety importance associated with these signs.

140. In Section 2C.43 (existing Section 2C.47) Two–Direction Large Arrow Sign (W1–7), FHWA proposes to delete Standard P4 prohibiting the use of a Two–Direction Large Arrow Sign in the central island of a roundabout. FHWA proposes this change because the MUTCD provides considerable guidance and numerous examples of proper signing at roundabouts and the use of the sign as described in the statement is contrary to the definition of a roundabout and relevant MUTCD provisions.

141. FHWA proposes to renumber and retitle existing Section 2C.48 to ''2C.44 Traffic Signal Oncoming Extended Green Signs (W25–1, W25–2).'' FHWA proposes to delete the last sentence of Standard P1 regarding the sign shape and orientation because the design is standardized.

142. In Section 2C.45 (existing Section 2C.40) Merge Signs (W4–1, W4–5), FHWA proposes to add a new Guidance paragraph with recommendations for the orientation and location of the Merge signs. FHWA also proposes to add a new Figure 2C–11 illustrating the use of Merge signs.

Lastly, FHWA proposes to change the existing Guidance P7 to a Standard to prohibit the Merge sign from being used for a lane reduction rather than a merging roadway. FHWA proposes this change to clarify the purpose of the signs because standard signs already exist to sign for the condition of a lane termination and the Merge symbol sign is not intended for any general merging action. Rather, it is intended specifically for the condition in which two roadways merge, such as two ramps or a ramp and main highway.

143. In Section 2C.46 (existing Section 2C.41), ''Added Lane Signs (W4–3, W4–6),'' FHWA proposes to add a new Guidance paragraph with recommendations for the orientation and location of the Added Lane signs. FHWA also proposes to illustrate the use of the Added Lane signs on new Figure 2C–12.

[31] NTSB Safety Recommendation H–14–11, is available at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR1401.pdf.*

[32] Intersection Conflict Warning System Human Factors: Final Report, dated November 2016 can be viewed at the following internet website: *https://www.fhwa.dot.gov/publications/research/safety/16061/16061.pdf.*

[33] Synthesis of Non-MUTCD Signing can be viewed at the following internet website: *https://rosap.ntl.bts.gov/view/dot/34772/dot_34772_DS1.pdf.*

144. In Section 2C.47 (existing Section 2C.42), retitled ''Lane Ends Signs (W4–2, W9–1),'' FHWA proposes several changes to reflect the proposed deletion of the LANE ENDS MERGE LEFT (RIGHT) (W9–2) sign. FHWA proposes deleting this sign, and instead adds new Support and Guidance statements to clarify the use of the Lane Ends (W4–2) and RIGHT (LEFT) LANE ENDS (W9–1) signs, including how to use them together, where applicable, to warn road users of the reduction in the number of lanes. FHWA proposes a Guidance statement to clarify the Lane Ends (W4–2) sign should be used to indicate the approximate location of the start of the lane taper. FHWA proposes these changes and the deletion of the W9–2 sign to provide consistency in signing for a reduction in the number of lanes, as the W9–2 sign is a word message for which a symbol sign (W4–2) already exists. In addition, a research study [34] which examined the use of these signs, as well as new alternatives, showed that the W4–2 and W9–1 had the best recognition, while the W9–2 sign had a greater legibility distance.

FHWA proposes a new Option that allows the W9–1 sign to be located at the far-side of the intersection on low-speed roads in urban environments where space is limited at a signalized intersection. FHWA also proposes allowing supplemental RIGHT (LEFT) LANE ENDS (W9–1) signs upstream of the W9–1 that is installed at the advance placement distance.

FHWA proposes a new Guidance statement to recommend that if supplemental W9–1 signs are installed, a Distance plaque should be installed below the W9–1 sign.

145. FHWA proposes to add a new Section numbered and titled, ''2C.48 Lanes Merge Signs (W9–4, W4–8)'' and proposes new LANES MERGE (W9–4) and Single-Lane Transition (W4–8) signs to warn of the reduction of two lanes to one in the same direction of travel.

FHWA proposes new Guidance paragraphs for the Lanes Merge (W9–4) sign to be used to warn that the traffic lane is merging with the adjacent lane and a merging maneuver would be required, and for the Single-Lane Transition (W4–8) sign to be used to indicate the approximate location of the start of the lane taper.

146. FHWA proposes to add a new section numbered and titled, ''Section 2C.49 HEAVY MERGE FROM LEFT (RIGHT) Sign (W4–7).'' The new section contains an Option to use a new HEAVY MERGE FROM LEFT (RIGHT) XX FT Sign (W4–7) to provide supplemental warning to advise road users of congested lanes at interchanges. A sign with the legend THRU TRAFFIC MERGE LEFT (RIGHT) was proposed in the 2008 NPA but was not adopted in the Final Rule. FHWA received a request to include the THRU TRAFFIC sign based on the Synthesis of Non-MUTCD Signing,[35] which found that at least 11 State agencies currently use such a sign and it should therefore be added to the MUTCD. FHWA proposes to add the W4–7 with a HEAVY MERGE FROM LEFT (RIGHT) XX FT legend to Figure 2C–8 and Table 2C–2 as this legend depicts the warning to drivers more accurately of the potential for a large volume of entering traffic rather than the THRU TRAFFIC legend, which warns through traffic to vacate those lanes, because it implies that the lane is ending. The MUTCD already contains standard signs to indicate that a lane is either ending or is for exit traffic only.

147. FHWA proposes to renumber and retitle existing Section 2C.43 to ''Section 2C.50 RIGHT (LEFT) LANE FOR EXIT ONLY Sign (W9–7).'' FHWA also proposes to delete Standard P2 regarding the sign shape and color because the design is standardized.

In addition, FHWA proposes to add an Option statement that allows for the addition of a third line of legend that displays the distance to the exit if it is more than 1 mile away.

148. FHWA proposes to add a new section numbered and titled, ''Section 2C.52 Two-Way Traffic on a Three-Lane Roadway Sign (W6–5, W6–5a)'' with an Option and Standard statement associated with the new sign. FHWA proposes this new optional sign to provide agencies with a standardized sign to use in locations where such a sign may be necessary to provide road users with the proper warning for the roadway configuration.

149. In Section 2C.54 (existing Section 2C.49), ''Vehicular Traffic Warning Signs (W8–6, W11–1, W11–5, W11–8, W11–10, W11–11, W11–12P, W11–14, W11–15, and W11–15a),'' FHWA proposes eliminating sign W11–5a because the secondary version of the Farm Machinery sign is isometric and inconsistent with the standard symbol design principles.

FHWA also proposes to add the IN STREET and IN ROAD optional supplemental plaques to expand the options available to agencies to indicate that non-motorized users may be in the roadway. FHWA proposes to delete the SHARE THE ROAD supplemental plaque, as discussed below.

150. FHWA proposes to renumber and retitle existing Section 2C.08 as, ''Section 2C.59 Advisory Speed Plaque (W13–1P) and Confirmation Advisory Speed Plaque (W13–1aP)'' to reflect the proposed addition of a new use for the optional plaque to supplement a One-Direction Large Arrow Sign (W1–6) to remind road users of the advisory speed through the curve. The proposed W13–1aP plaque is redesignated from E13–1P, which is an existing plaque currently allowed beneath Exit Gore signs to confirm the advisory exit speed posted at an upstream location. FHWA proposes to resdesignate this plaque and expand its use to the similar application on the outside of the beginning of any alignment change following a Horizontal Alignment Advance Warning sign assembly. The proposed expanded use of this plaque would replace the existing Combination Horizontal Alignment/Advisory Speed signs in existing Section 2C.10. In concert with this change, FHWA proposes a new Standard paragraph limiting the allowable use of the Confirmation Advisory Speed plaque only to supplement a One-Direction Large Arrow (W1–6) or an Exit Gore (E5–1 series) sign and not as a separate sign installation. FHWA proposes this limitation on the use of the plaque because the plaque was designed and intended specifically for these two uses, which are to supplement, near the beginning of the alignment change, an advisory speed that is posted at the advance location in an Advance Warning sign assembly.

FHWA also proposes to delete existing Items A through C in Support P7 and all of Support P8, and instead refer to the Traffic Control Devices Handbook for information on established engineering practices for determining advisory speeds for a horizontal curves. As part of this change, FHWA proposes to add items A through E, which list established engineering practices.

151. In Section 2C.60 (existing Section 2C.62) NEW Plaque (W16–15P), FHWA proposes to delete Standard P2 prohibiting the NEW plaque from being used alone because Section 2C.57 (existing Section 2C.53) already contains a similar Standard.

FHWA also proposes to change Standard P3 to Guidance to give agencies more flexibility to retain the NEW plaque longer than 6 months after

[34] ''Comprehension and Legibility of Selected Service Symbol Signs Phase IV'' Final Report, dated December 2017 can be viewed at the following internet website: *https://pooledfund.org/Document/Download/7559.*

[35] The Synthesis of Non-MUTCD Signing can be viewed at the following internet website: *https://rosap.ntl.bts.gov/view/dot/34772/dot_34772_DS1.pdf.*

the regulation has been in effect, if necessary.

152. FHWA proposes to delete existing Section 2C.60 SHARE THE ROAD Plaque (W16–1P) and replace it with a new proposed Section 2C.66 IN ROAD and IN STREET Plaques (W16–1P, W16–1aP) that contains Option and Standard statements regarding the use of these optional signs to warn drivers to watch for other forms of slower transportation traveling along the highway, such as bicycles, golf carts, or horse-drawn vehicles. Since its adoption in the 2000 MUTCD, research [36] has shown that the ''share the road'' message when applied to bicyclists does not adequately communicate the responsibilities of either user group on the roadway. Road users are unclear whether ''share the road'' means that drivers should give space when passing or that bicyclists should pull to the side to allow drivers to pass. FHWA is proposing the IN ROAD/IN STREET plaques to replace the SHARE THE ROAD plaque based on this research and for consistency with all in road vehicle types.

153. FHWA proposes to add a new section numbered and titled, ''Section 2C.67 Except Bicycles Plaque (W16–20P).'' The new section contains an Option to use a new Except Bicycles plaque below a warning sign where it is appropriate to notify bicyclists that the conditions depicted by a warning sign are not applicable to bicycles. An example is a roadway which terminates as a dead end or cul-de-sac but serves as a continuous route for bicycle travel through the use of connecting paths or barrier opening and the plaque would be used to supplement a DEAD END or NO OUTLET warning sign. This section also includes a new Standard statement that if used with a warning sign, the plaque shall be a rectangle with a black legend and border on a yellow background, consistent with similar provisions for the color of supplemental plaques.

154. In Section 2C.71 (existing Section 2C.65) Object Markers for Obstructions Adjacent to the Roadway, FHWA proposes to add a new Option permitting the use of Type 2 or Type 3 object markers to mark an obstruction adjacent to the roadway. The existing MUTCD has a Standard that currently implies this optional use of Type 2 and Type 3 object markers. FHWA proposes this change to clarify the intent of the provisions.

FHWA also proposes to change existing Standard P2 and P3 to Guidance and revise the language regarding object markers applied to approach ends of guardrail and other roadway appurtenances to specify crash cushion terminals as the other roadway appurtenances. The revision also recommends that the Type 3 object marker should be directly affixed, without a substrate, and generally conform to the size and shape of the approach end of the guardrail or crash cushion. FHWA proposes this change because the term ''roadway appurtenances'' is not defined in the MUTCD and FHWA wants to eliminate any potential confusion that may occur between this Guidance paragraph and the existing Support statement in this section which lists numerous obstructions where object markers are applied.

Discussion of Proposed Amendments to Chapter 2D Guide Signs—Conventional Roads

As part of the reorganization to improve usability of the MUTCD, FHWA proposes to include subchapter headings in Chapter 2D to organize sections into related groupings. FHWA proposes the following subchapters in Chapter 2D and associated sections (referenced to the proposed section numbers): General Design (Sections 2D.01 through 2D.08), Route Signs and Auxiliary Plaques (Sections 2D.09 through 2D.28), Sign Assemblies (Sections 2D.29 through 2D.34), Destination and Distance Signs (Sections 2D.35 through 2D.44), Street Name and Parking Signs (Sections 2D.45 through 2D.48), Freeway Entrance Signs (Sections 2D.49 and 2D.50), Weigh Station, Truck, and Crossover Signs (Sections 2D.51 through 2D.54) and Other Guide Signs (Sections 2D.55 through 2D.59).

155. In Section 2D.01 (existing Section 2D.02), retitled, ''Scope of Conventional Road Guide Sign Standards and Application,'' FHWA proposes to relocate existing Guidance and Support statements regarding low-volume roads from Chapter 5D. FHWA proposes the change to place all related material regarding guide signs together.

FHWA also proposes a new Guidance statement recommending that the primary or control destinations displayed on guide signs be meaningful to road uses in navigation and orientation, and that such destinations be identifiable on official maps. FHWA proposes this change to provide consistency in the use of destinations on guide signs.

FHWA also proposes a new Support statement to indicate that guide signs, other than Street Name signs, are generally not used on low-volume rural roads, except as needed to guide road users back to major roadways.

FHWA also proposes to add new Support and Guidance statements, along with a new figure, describing signing for airport facility roadways. This information is based on a study by the National Academy of Sciences [37] that examined airport roadway user informational needs and limitations.

156. In Section 2D.05 (existing Section 2D.06), FHWA proposes to add a Standard statement that the minimum letter and numeral height of the principal legend on conventional road overhead signs be at least 12 inches in height for upper-case letters and 9 inches in height for lower-case letters. An Option is also proposed to allow 10.67 inches in height for upper case letters and 8 inches in height for lower-case letters for such roadways with posted speed limits of 40 miles per hour or less. FHWA proposes this change to ensure adequate letter height to meet road user legibility needs for conventional roadway overhead guide signs based on speed of travel.

157. FHWA proposes to add a new section numbered and titled, ''Section 2D.07 Abbreviations.'' FHWA proposes to relocate information from existing Section 2E.17 to Chapter 2D because it also applies to guide signs for conventional roadways. FHWA also proposes to add a new figure and two new tables that are specific to the use of the types of abbreviations described in this Section.

FHWA proposes a new Support statement identifying that the use of commonly recognized abbreviations for certain words can be useful in reducing the complexity of the sign message.

158. In Section 2D.08 Arrows, FHWA proposes to designate ''curved-stem arrows'' as ''Type E directional arrows'' and that they be associated exclusively with circular intersections. FHWA proposes this change to provide consistency in terminology throughout the Manual. In concert with this change, FHWA proposes several revisions within this section to reflect this terminology and to provide additional flexibility for agencies to represent

[36] The Article, ''Bicycles May Use Full Lane'' Signage Communicates U.S. Roadway Rules and Increases Perception of Safety,'' by George Hess and M. Nils Peterson, published August 28, 2015, can be viewed at the following internet website: *https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0136973#sec013.*

[37] ''Wayfinding and Signing Guidelines for Airport Terminals and Landside,'' TRB's Airport Cooperative Research Program (ACRP) Report 52, 2011, can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/165910.aspx.*

intended driver paths on guide signs for circular intersections.

159. In Section 2D.09 Numbered Highway Systems, FHWA proposes to revise the Standard regarding route system order preference to provide an exception to the order because there may be instances where a different prioritization might better accommodate driver expectancy. In concert with the Standard revision, FHWA also proposes to add an Option statement allowing the modification of the prioritization of route systems.

FHWA also proposes to add a Standard reflecting the existing requirement that Interstate route numbering be approved by FHWA consistent with 23 CFR 470.115(a).

160. In Section 2D.11 Design of Route Signs, FHWA proposes to revise the first Standard paragraph to clarify the requirement that Interstate Route, Off-Interstate Business Route, U.S. Route, State Route, County Route, and Forest Route sign legends are required to comply with existing requirements in Chapter 2A.

FHWA also proposes to revise the Standard paragraph regarding County Route sign dimensions to require a minimum size of 24 x 24 inches for consistency with the minimum sizes for other Route signs.

FHWA also proposes to revise Option paragraph 4 to designate the existing optional sign (Interstate Route sign that includes the State name) as M1–1a and to allow the optional use of this sign in place of the M1–1 sign when the Interstate Route sign is used in a Route Sign assembly. In concert with this change, FHWA proposes a new Standard statement limiting the use of the M1–1a sign to Route Sign assemblies to clarify that the allowable optional use does not extend to other types of signs, such as when the Interstate Route sign is used within a guide sign, to limit the informational load imposed on the road user and because the relative scale of the State name to other legend elements displayed on the guide sign would be considerably smaller.

FHWA also proposes to delete the Option P7 and P16 statements regarding Route Signs used on a green guide sign that allow for the use of a white or yellow background to improve contrast, because FHWA has revised the design of the Off-Interstate Business Route and County Route signs to include a wider border to address contrast.

FHWA also proposes to add a Standard statement to reiterate the existing requirement of the legend on State Route signs to conform to Standard Alphabets, for consistency. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement in Chapter 2A.

FHWA proposes to amend the subsequent Guidance paragraph to limit the use of complex graphics to maintain consistency.

FHWA also proposes to revise the Standard paragraph regarding Route Signs for parks and forest roads to clarify the existing requirement to comply with the existing provisions of Chapter 2A, and to clarify that the provisions for the design of park and forest Route signs apply to non-National Forest routes.

161. In Section 2D.12, retitled, ''Design of Route Sign Auxiliary Plaques,'' FHWA proposes to delete the Guidance paragraph regarding Route Signs of larger heights because the sizes are standardized based on roadway classification, corresponding to the Route Sign sizes.

FHWA also proposes to change the existing Guidance paragraph to a Standard regarding the color and design of a combination route sign with auxiliary plaques into a single guide sign, consistent with sign color requirements for guide signs elsewhere in the MUTCD.

162. In Section 2D.16, retitled, ''Auxiliary Plaque for Alternative Routes (M4–1P through M4–4P),'' FHWA proposes to modify the section title because the Option and Standard paragraphs contained within this section do not apply to the entire M4 series of signs.

163. In Section 2D.17, retitled, ''ALTERNATE Auxiliary Plaques (M4–1P, M4–1aP),'' FHWA proposes to add a Standard paragraph to prohibit the use of the M4–1P Series plaques to sign alternative routing not officially incorporated into the numbered highway system, such as alternative routings for incident management or emergency detours. FHWA proposes this additional paragraph to ensure the M4–1P Series plaques are used in a consistent manner with their stated meaning in this section.

164. In Section 2D.29 Route Sign Assemblies, FHWA proposes to add a Guidance paragraph and new figure recommending that when more than four Route signs are needed in a single Advance Route Turn or Directional assembly, the Route signs should be mounted in a Guide sign. FHWA proposes this guidance as this would reduce the significant informational load on the road user of such assemblies by reducing the repetition of the cardinal direction and directional arrows.

FHWA also proposes an Option paragraph allowing Route Signs to be omitted for routes that are part of an agency's internal numbering system, such as for maintenance or other purposes, and are not publicly mapped or intended to be used for navigational purposes by the general public. FHWA proposes this Option to allow agencies flexibility as to whether to post signs in certain areas.

165. In Section 2D.34 (existing Section 2D.35) Trailblazer Assembly, FHWA proposes to revise the Option statement to clarify the use of a Cardinal Direction auxiliary plaque only for routes that provide access to one direction of the route.

166. In Section 2D.35 (existing Section 2D.36) Destination and Distance Signs, FHWA proposes to relocate a Guidance paragraph previously contained in Section 5D.01 regarding destination names on low-volume roads.

167. In Section 2D.36 (existing Section 2D.37) Designation Signs (D1 Series), FHWA proposes to add a new Support paragraph to describe the use of overhead destination guide signs on multi-lane conventional roadways with complex or unusual roadway alignments to help drivers.

FHWA also proposes to add a new Option paragraph suggesting overhead signs using the Arrow-Per-Lane sign design configuration may be used to provide lane assignments for some or all lane designations at the approach to a multi-lane intersection for clarification.

168. FHWA proposes to add a new section numbered and titled, ''Section 2D.37 Overhead Arrow-Per-Lane Destination Guide Signs,'' to provide information, requirements, guidance, and a figure related to the use of these signs on multi-lane conventional roadway intersections, often associated with complex or unusual roadway alignments using innovative intersection designs to improve traffic flow and safety.

169. In Section 2D.39 (existing Section 2D.38) Destination Signs at Circular Intersections, FHWA proposes to revise the Support paragraph regarding the use of diagrammatic guide signs for circular intersections to help ensure that the basic principles of limiting the amount of legend and aligning the arrows with each destination are applied. FHWA proposes this clarification to aid road users in understanding the sign and navigation through the area.

170. In Section 2D.40 (existing Section 2D.39) Destination Signs at Jughandles, FHWA proposes to delete the Option allowing the use of diagrammatic guide signs depicting the

travel path and turns through several intersections, because diagrammatic signs are limited to circular or successive intersections.

171. FHWA proposes to add a new section numbered and titled, ''Section 2D.41 Destination Signs at Intersections with Indirect Turning Movements,'' that contains a Guidance paragraph regarding the use of guide signs and pavement markings to direct traffic, and a new figure illustrating examples of destination signs at intersections with indirect turning movements. FHWA proposes this new section to provide agencies with examples of proper signing for locations with displaced left turn and intercepted crossroad intersections, which are newer intersection designs and becoming more common in practice and provide for consistency.

172. In Section 2D.45 (existing Section 2D.43), retitled, ''Street Name Signs (D3–1, D3–1a),'' FHWA proposes to add a Guidance paragraph regarding the use of Street Name signs at intersections of freeway exit ramps with cross roads to help minimize the potential for wrong-way movements onto the freeway ramp.

FHWA also proposes to add Guidance regarding the engineering considerations that should be used to determine the letter heights used on Street Name signs at specific locations.

FHWA also proposes to revise the Support paragraph regarding minimum letter heights to clarify that the minimum letter heights apply to the roadway that each sign faces, rather than to the street that has its name displayed on the Street Name sign.

FHWA also proposes to add an Option paragraph to allow different letter heights in a sign assembly based on the speed limit in order to clarify that agencies may use different letter heights on different signs at the same intersection.

FHWA also proposes to revise existing Option P9 to clarify that the letter height of the street name descriptor, the directional legend, or any other supplemental legend on the D3–1 and D3–1a signs may be smaller than that of the street name itself, while maintaining the letter size proportions between the street name and supplemental information on the sign. In concert with this Option, FHWA proposes to add Guidance that smaller letter legend should be at least two-thirds of the letter height of the street name itself, but not less than 3 inches for the initial upper-case letters and not less than 2.25 inches for the lower-case letters for adequate legibility. In addition, FHWA proposes to change the remainder of the first sentence and the second sentence in existing Option in P9 regarding the use of conventional abbreviations for all information on the Street Name sign other than the street name itself to Guidance, and to provide a new table of acceptable street name descriptors and a table of street name descriptors that should not be used. FHWA proposes these changes to provide consistency with guide signs and to encourage the use of conventional abbreviations to reduce the size of the sign and for more rapid recognition.

FHWA also proposes to add a Guidance statement regarding the proportional letter height of a supplemental legend to be consistent with guide signs and the letter heights that are used.

FHWA also proposes to add Option and Guidance statements allowing the use of block or house numbers as a supplemental legend on Street Name signs and recommending the application of house numbers for the left and right blocks of the cross street.

FHWA also proposes to delete a sentence in existing P14 regarding requirements for sign color and retroreflectivity because allowable colors for the legend and border are already included in existing P18 of this section and requirements for retroreflectivity are covered in existing Section 2A.07.

FHWA also proposes to add a Guidance statement regarding the omission of the border on a post-mounted Street Name sign to clarify that the decision to omit the border should be based on factors related to providing for adequate recognition of the sign by road users.

FHWA also proposes to add a Guidance statement that recommends that Street Name signs display the street name on both sides of the sign to facilitate navigation for pedestrians.

FHWA also proposes to revise the Option regarding the use of arrows where the same road has two different street names. Additional information has been added to clarify that this option is not allowed where arrows would point in a movement direction that is not allowed.

FHWA also proposes to add a Guidance paragraph regarding streets or segments thereof that have been memorialized or dedicated. Second Street Name signs should not be used to display the memorial or dedication name. Memorial or Dedication signs should be located to minimize conspicuity the potential for confusion by road users.

Finally, FHWA proposes to add a Support statement referring users to Section 2I for information on the identification of streets at overcrossings and undercrossings.

173. In Section 2D.46 (existing Section 2D.44), retitled, ''Advance Street Name Signs (D3–2 Series),'' FHWA proposes to revise the Standard statement regarding the legend and background color of Advance Street Name signs to clarify that the use of alternative colors is prohibited, repeating an existing Standard statement from Section 2D.43. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement, to clarify that Advance Street Name signs must have green backgrounds.

174. In Section 2D.47 Parking Area Guide Sign (D4–1), FHWA proposes to revise the Standard paragraph to delete the design and color information for the sign, because design is standardized in accordance with the existing requirements in Chapter 2A.

175. In Section 2D.49 (existing Section 2D.45) Signing on Conventional Roads on Approaches to Interchanges, FHWA proposes to add a Support statement that provides reference to new figures that offer examples of guide signing for single-point urban intersection and transposed-alignment crossroads, which are becoming more common in practice.

176. In Section 2D.51 (existing Section 2D.49), WEIGH STATION Signing (D8 Series), FHWA proposes to add a Support paragraph that defines the areas where certain vehicles might be directed to stop to be weighed or inspected and that such an area can be permanent or a temporary mobile facility. FHWA adds this provision to give agencies more flexibility.

FHWA proposes to revise existing Standard P2, and reference the figure, to indicate the appropriate sequence of signs for Weigh Station signing on a conventional highway and revises the sign terminology to match the typical sequence of other types of guide signs. The resulting sign sequence includes Advance Weigh Station Distance, Weigh Station Next Right, and Weigh Station Exit Direction Signs. In concert with this change, FHWA proposes to add a Guidance statement recommending an Exit Gore sign with the same basic legend as the Weigh Station Exit Direction sign be used to emphasize the entrance to the weigh station. FHWA proposes these revisions to provide more clarity on Weigh Station signing.

FHWA also proposes to add an Option statement that allows the use of the alternate legend COMMERCIAL

VEHICLE INSPECTION AREA for the D8 series Weigh Station signs. FHWA proposes this revision to be consistent with the type of activity being conducted at the station.

FHWA also proposes to add a Standard statement indicating what when the WEIGH STATION legend of the D8 series signs is replaced with the COMMERCIAL VEHICLE INSPECTION AREA legend, the WEIGH STATION legend of the R13–1 sign shall be replaced with the alternate legend INSPECTION area. FHWA proposes this change for consistency in sign legends.

177. FHWA proposes to relocate and renumber existing Section 2D.54 as Section 2D.52 Crossover Signs (D13–1, D13–2). FHWA proposes to delete portions of existing Standard P2 and all of Standard P5 pertaining to the design of the Crossover and Advance Crossover signs because the language is unnecessary since the sign designs are standardized in accordance with the existing requirements in Chapter 2A.

178. In Section 2D.53 (existing Section 2D.51), retitled, ''Truck and Passing Lane Signs (D17–1, D17–2, D17–3, and D17–4),'' FHWA proposes to revise the existing Guidance statement to remove the word ''NEXT'' from a Truck Lane sign used immediately in advance of a truck lane in order to reserve the use of the word ''NEXT'' for areas where there is a series of extra lanes added along a highway for trucks to use, as proposed in the new Guidance statement. In concert with this change, FHWA proposes to recommend that the sign include a distance of ½ mile in the legend. As part of these changes, FHWA clarifies that a truck lane is a lane added to the right of the travel lane to be used by trucks and other slow-moving vehicles. This allows the faster vehicles to pass without leaving the travel lane.

FHWA also proposes to add Guidance statements describing the use of Passing Lane and Next Passing Lane signs in a similar manner as Truck Lane signs. As part of these changes, FHWA distinguishes that a passing lane is an added lane to the left of the travel lane to be used by vehicle passing those in the travel lane.

FHWA also proposes to delete the existing Option allowing alternate legends, because provisions for the use of Passing Lane signs are proposed in the new Guidance. In addition, because a climbing lane is simply another name for a truck lane, FHWA proposes to remove this option to improve on uniformity in signing.

FHWA also proposes a new Support statement to include a new figure that illustrates an example of signing for an intermittent passing lane. FHWA proposes to add this information to provide practitioners with needed guidance on the use of these signs, and their respective locations.

179. In existing Section 2D.54, renumbered and retitled, ''Section 2D.54 Emergency and Slow Vehicle Turn-Out Signs (D17–5 through D17–7),'' FHWA proposes to add a Guidance paragraph regarding the recommended use of emergency turn-out advance and directional signs including placement location ranges consistent with advance guide sign placement and deceleration distance for lower speed maneuvers.

FHWA also proposes to add a new figure illustrating an example of signing for an emergency turn-out.

180. In Section 2D.55 (existing Section 2D.50) Community Wayfinding Signs, FHWA proposes to add a Guidance paragraph recommending the evaluation of the entire existing system of signs for serviceability and general conformance with the Manual when a community wayfinding guide sign system is being considered. FHWA proposes this new Guidance because the condition and serviceability of existing higher priority signs, such as regulatory, warning, and major Designation signs, should have priority over the installation of the new community wayfinding signs.

FHWA also proposes to change the existing Guidance statement regarding the shape of wayfinding guide signs to a Standard to eliminate conflict with overall sign shape requirements.

FHWA also proposes to add a Guidance statement regarding the letters, numerals, and other characters should be composed of the Standard Alphabets in accordance with the provisions of Chapter 2A to maintain consistency of signs.

FHWA also proposes to add a Standard paragraph requiring conventional lettering style, prohibiting the use of italic, oblique, script, highly decorative, or other unusual forms. FHWA proposes this new Standard to help identify letter style types that, by their nature, would not meet the letter style requirements provided in this section for maintaining adequate legibility under driving conditions.

FHWA also proposes to revise the Standard paragraph pertaining to internet and email addresses to be consistent with changes made to the same provision in Section 1D.09.

181. FHWA proposes to retitle Section 2D.56 (existing Section 2D.53), ''Signing of Named Highways for Mapping and Address Purposes,'' to clarify the intent of the section.

FHWA also proposes to add a Support paragraph to provide information that distinguishes between highway names, which are used for navigation and mapping, and memorial, honorary, or secondary names, which are not considered to be highway names. This information is needed for agencies to understand the applicability of the Standard, Guidance, and Option statements in this section.

182. In Section 2D.57 (existing Section 2D.55), retitled, ''National Scenic Byways Sign and Plaque (D6–4, D6–4aP),'' FHWA proposes a new Support statement to indicate that direction along routes and to sites is related to touring maps rather than directional signing and route marking of the byway itself.

FHWA also proposes to add four Guidance paragraphs regarding the placement of signs displaying the name of the byway and associated byway Directional Assemblies. FHWA proposes these guidance statements to encourage uniformity and to separate Route Directional Assemblies from byway Directional Assemblies.

FHWA also proposes to add a Standard that prohibits the use of the Byway sign or plaque as part of a guide sign assembly, as these signs are intended only for use in independent Directional Assemblies. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement, consistent with the existing Standard requiring that other signs have primary visibility.

183. FHWA proposes to add a new section numbered and titled, ''Section 2D.58 State-Designated Scenic Byway, Historic Trail, and Auto Tour Route Signs,'' that contains relocated provisions from existing Section 2H.07, Auto Tour Routes, as well as new provisions for State scenic byway and historic trails. FHWA proposes this new Section to address inconsistencies in how these facilities are signed.

184. FHWA proposes to add a new section numbered and titled, ''Section 2D.59 EMERGENCY ROUTE and EMERGENCY ROUTE TO Signs and Plaques'' that contains provisions and accompanying figure for permanently signing emergency routes for the purposes of corridor management. FHWA proposes these changes based on Official Ruling No. 6(09)–42(I) [38] ''Signing for Rerouting Due to Traffic Incidents.''

[38] FHWA's Official Ruling No. 6(09)–42(I), April, 21, 2017, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/6_09_42.htm.*

Discussion of Proposed Amendments to Chapter 2E Guide Signs-Freeways and Expressways

185. As part of the reorganization to improve usability of the MUTCD, FHWA proposes to include subchapter headings in Chapter 2E to organize sections into related groupings. FHWA proposes the following subchapters in Chapter 2E: General, Sign Design, Installation, Guide Signing for Interchanges, Other Guide Signs, Signs for Intersections at Grade, and Interface with Conventional Roadways.

186. In Section 2E.01 Scope of Freeway and Expressway Guide Sign Standards, FHWA proposes to add Support, Option, Guidance, and Standard statements regarding the application of design provisions for freeway and expressway guide signs in tunnels, which can present unique challenges not encountered elsewhere due to the extended and continuous distances of constrained vertical and horizontal clearances in which to place signs. FHWA proposes these new provisions to provide flexibility to standard sign layouts when needed to accommodate such situations in tunnels.

187. In Section 2E.06 (existing Section 2E.09) Signing of Named Highways, FHWA proposes to change P1 from Support to Guidance to recommend, not just state, that signing of named highways should comply with provisions of Section 2D.56. FHWA proposes this change to convey more effectively what was intended by the existing Support statement.

188. In Section 2E.07 (existing Section 2E.13) Designation of Destinations, FHWA proposes to add Support and Guidance statements, as well as a new figure, regarding signing for destinations that are accessed from different exits in opposing directions of travel. FHWA proposes these new provisions to provide clarity and flexibility regarding the appropriate signing for destinations based on the local roadway network.

189. In Section 2E.08 (existing Section 2E.04) General, FHWA proposes to delete the Standard statement regarding standard traffic sign shapes and colors because the provisions are already covered in Chapter 2A. FHWA proposes this change to remove unnecessary and repetitive content and streamline the Manual to improve its usability.

190. In Section 2E.12 (existing Section 2E.14) Size and Style of Letters and Signs, FHWA proposes to revise the Standard paragraph regarding the minimum numeral and letter sizes to be as shown in the ''Overhead'' columns of Tables 2E–2 and 2E–4. FHWA proposes this change to clarify the application of the ''Overhead'' columns when a larger size is specified in the same tables based on interchange classification.

191. In Section 2E.14 (existing Section 2E.16) Sign Borders, FHWA proposes to relocate the Standard statement regarding the color of the sign border to Section 2A.14, because that section already contains information about sign borders, while maintaining the recommendations on border width, as that is commonly needed information for the larger size signs on these types of highways. FHWA proposes this change to remove unnecessary or repetitive content and streamline the Manual to improve its usability.

192. In Section 2E.15 (existing Section 2E.10), FHWA proposes to add a Support statement to describe the use of street names on Advance guide and Exit Direction signs, based on the number of interchanges that serve a community. FHWA proposes this new statement, including references to other sections with Chapter 2E, to provide users with additional information regarding proper and efficient community interchange signing.

193. In Section 2E.16 (existing Section 2E.17) Abbreviations, FHWA proposes to delete the Guidance and Standard paragraphs and replace them with a new Standard that requires abbreviations on freeway and expressway guide signs to comply with Section 2D.07. FHWA proposes this change to remove repetitive content and streamline the Manual to improve its usability.

194. In Section 2E.17 (existing Section 2E.18) Symbols, FHWA proposes to delete the Standard paragraph regarding symbol designs because it duplicates language in Section 2A.12.

FHWA also proposes to delete the Option statement permitting the use of educational plaques below symbol signs where needed. FHWA proposes this change because symbols, if used on freeway or expressway signs, are incorporated into the legend of the sign, and the addition of an educational plaque could distort and overly complicate the intended message.

195. In Section 2E.18 (existing Section 2E.19) Arrows for Interchange Guide Signs, FHWA proposes several editorial changes to attain consistency in the placement of arrows on Exit Direction guide signs, depending on their placement either overhead or post-mounted, and position over the exit lane. FHWA also proposes a new figure to illustrate the provisions.

196. In Section 2E.20 (existing Section 2E.26) Lateral Offset, FHWA proposes to add an exception to permit a narrower lateral offset for sign supports when shielded by a rigid barrier. FHWA proposes this change to provide greater design flexibility for agencies.

197. In Section 2E.21 (existing Section 2E.30) Interchange Guide Signs, FHWA proposes to change P3 from Guidance to Support, to provide references to applicable provisions related to sign descriptions and the order in which they appear at the approach to and beyond an interchange. FHWA makes this change because the provisions for each are contained in the individual sections.

FHWA also proposes to revise the wording of P4 to clarify the intent that the use of Supplemental Guide signing should be minimized.

198. In Section 2E.22 (existing Section 2E.31) Interchange Exit Numbering, FHWA proposes to provide specific requirements for exit number suffix assignments and order based on direction of travel and interchange numbering, while deleting a size requirement for the Exit Number plaque that is standardized in existing Table 2E–1. FHWA proposes this change to improve interchange exit numbering consistency in response to driver expectancy, and to reduce unnecessary duplication of information.

FHWA also proposes to change the existing Guidance statement regarding exit number plaques for right-side exits to a Standard for consistency in placement of exit number plaques and consistency with similar provisions for left-side exits.

199. In Section 2E.23 (existing Section 2E.33) retitled, ''Advance Guide Signs (E1 Series),'' FHWA proposes to add a new Standard requiring at least one Advance guide sign for all interchange classifications with two exceptions. FHWA proposes this change to clarify the intent of existing language, which confounds the criteria for locating the sign with the criteria for when to use the sign. FHWA believes it is important to provide at least one guide sign in advance of a freeway or expressway interchange because advance notice of exits provides road users the time necessary to change lanes to position themselves to take an exit safely, avoiding last-minute weaving conflicts and erratic maneuvers. This requirement has been implicit in subsequent sections but not as clearly stated for Advance guide signs as it is for Exit Direction signs.

FHWA proposes to modify P4 to recommend displaying distances to the nearest 100 feet on Advance guide signs less than ¼ mile from the exit. FHWA also proposes to change the last sentence from Guidance to Standard requiring, instead of recommending,

that fractions of a mile be displayed rather than decimals, for all cases to aid in quick recognition of the sign message. FHWA proposes this change to eliminate conflicts with other provisions of the Manual.

In addition, FHWA proposes to add a new Standard requiring that an Exit Number (E1–5P through E1–5eP) plaque be positioned at the top right-hand edge of the sign for numbered exits to the right. FHWA proposes this change clarifying the position of the plaque for consistency with similar provisions for Exit Direction signs.

FHWA also proposes to change P10 regarding omitting the word EXIT(S) from the distance message where interchange numbering is used from Guidance to Standard and incorporate the provision into P9. FHWA proposes this change for consistency in sign legend and to reduce unnecessary legend on signs.

FHWA proposes to revise the paragraph regarding the use of Interchange Sequence signs, clarifying that the recommended distance of 800 feet is between the theoretical gores of successive interchange entrance and exit ramps. FHWA proposes this change because the existing language is ambiguous and can imply that the distance is between the interchange crossroads, which is not relevant to the locations of ramps between which signs can be located.

Lastly, FHWA proposes to delete the Option statement allowing the W16–16P plaque to be installed below the Advance guide sign. FHWA proposes this change because the current language does not promote uniformity. The provision for locating the W16–16P at the top of sign is Guidance, which provides sufficient flexibility for an agency to decide differently based on engineering factors when necessary. FHWA believes that the presence of an Exit Number plaque is not sufficient justification for a categorical Option.

200. In Section 2E.24 (existing Section 2E.40) retitled, ''Interchange Sequence Signs (E9–1 Series, E9–2 Series),'' FHWA proposes to change the existing Option statement regarding signing for closely spaced interchanges to a Support to be consistent with the language provided in existing Sections 2E.33 and 2E.50.

FHWA also proposes to switch the order of existing Guidance P3 and P2 and revise the language to match that of Section 2E.23 Advance Guide Signs with respect to the use of Interchange Sequence signs where there is less than 800 feet between the theoretical gores of successive interchange entrance or exit ramps.

FHWA also proposes to change P5 from Support to Standard to describe the proper use of Interchange Sequence signs and require the display of the next two or three interchanges by name or route number with distances to the nearest ¼ mile. FHWA proposes this change because, by definition, these signs are intended for use in a series and to provide consistency in the signing for the sequence of the closely spaced interchanges.

201. In Section 2E.25 (existing Section 2E.36) retitled, ''Exit Direction Signs (E4 Series),'' FHWA proposes to change the existing Guidance statement regarding placement of the exit number plaque on signs for numbered exits to the right to a Standard. FHWA proposes this change to provide consistent placement of exit number plaques for numbered exits to the left and right. This proposed change is a companion to the existing requirement that exit number plaques for numbered exits to the left are required to be on the left-hand edge of the sign, thereby meeting driver expectation in similar situations.

FHWA also proposes to change P14 from an Option to Guidance to recommend, instead of allowing, the overhead Exit Direction sign for the second exit to be placed either on the overcrossing structure or on a separate structure immediately in front of the overcrossing structure. FHWA proposes this change for consistency with signing provisions for cloverleaf interchanges and to clarify the fact that overhead mounting is recommended in this situation.

In addition, FHWA proposes to add a new Option allowing the use of warning beacons with the E13–2 sign panel. In concert with this change, FHWA also proposes to add a Standard requiring the warning beacons to be placed at least 12 inches from the edges of the E13–2 sign panel, from the edge of the sign, and from any other legend within the guide sign, to provide adequate space around the beacons to reduce glare that can adversely impact the legibility of the sign legend, consistent with existing provisions in Chapter 4L of the MUTCD.[39] FHWA proposes these changes because the use of warning beacons is implied by Figure 2E–7 (existing Figure 2E–31), but no provisions previously existed in Chapter 2E that would allow the beacons within the sign face.

Similar to the change discussed in the previous item, FHWA proposes to delete the Option statement regarding the placement of the W16–16P plaque because it does not promote uniformity.

202. In Section 2E.26 (existing Section 2E.37) retitled, ''Exit Gore Signs and Plaque (E5–1 Series),'' FHWA proposes to clarify that Exit Gore signs are required for each ramp that departs from the main roadway of a freeway or expressway.

FHWA also proposes to modify P5 to specify a height of 4 feet above the ground line for installing the optional Type 1 object markers on supports to Exit Gore signs.

203. In Section 2E.27 (existing Section 2E.12) retitled, ''Pull-Through Signs (E6–1 Series and E6–2 Series),'' FHWA proposes to revise the Guidance statement to indicate that Pull-Through signs should not be used at exits that are signed with Overhead Arrow-Per-Lane or Diagrammatic guide signs. FHWA proposes to add this exception because signing for option lanes is unique, and because either the Overhead Arrow-per-Lane or Diagrammatic guide sign designs are required to be used for all freeway and expressway splits that include an option lane, and both of those sign designs already provide the through roadway direction guidance to road users.

204. In Section 2E.28 (existing Section 2E.24) Signing for Interchange Lane Drops, FHWA proposes to add an Option statement allowing the exit arrow to be positioned to the left or right of the words ''EXIT ONLY'' when the position of the sign panel is constrained. FHWA proposes this change to provide agencies flexibility in sign design where needed due to size constraints.

FHWA also proposes to modify Standard P6 to clarify that in retrofit situations where the E11–1a and E11–1b sign panels are used, the references to the white down arrow apply to Advance guide signs. FHWA also proposes to add a provision regarding placement of the E11–1a and E11–1b sign panels when used on Exit Direction signs. Similarly, FHWA proposes to clarify that the position specified for the E11–1c sign panel requirement for retrofit situations applies to Advance guide signs.

FHWA proposes to add a new Guidance provision to accommodate lane drop situations where it is impossible to locate an Advance guide sign either overhead or above the dropped lane for the down arrow to point to the dropped lane. This provision is intended to be used sparingly and only in limited situations. To compensate for this otherwise inconsistent condition, the addition of a post-mounted warning sign is recommended.

[39] Information on the concept of irradiation and disability glade can be viewed at the following internet website: *https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1444-0938.2003.tb03080.x.*

Lastly, FHWA proposes to add a Guidance statement, and accompanying example figure, recommending the use of overhead and or post-mounted warning signs where a mainline lane is dropped immediately after an exit ramp. FHWA proposes this recommendation to provide additional warning to road users of a lane drop.

205. In Section 2E.29 (existing Section 2E.43) Signing by Type of Interchange, FHWA proposes to delete the Standard that requires interchange guide signing to be consistent for each type of interchange along a route, because there are instances where the signing for similar interchanges along a route would need to vary due to interchange spacing and other geometric features. In concert with this change, FHWA proposes to revise the Guidance to recommend that the signing layout be similar for interchanges of the same type.

FHWA also proposes to add a new Guidance provision recommending that the main roadway major guide signing should be determined by the specific interchange type for that particular direction of travel where a single interchange combines a different type of ramp configuration for each direction of travel.

FHWA proposes to add two figures to this section to provide practitioners with examples for interchange signing. Figure 2E–15 shows an example of signing for a complex interchange that combines intermediate interchange ramps within a major interchange, and Figure 2E–16 shows an example of signing for an interchange exit ramp with a downstream split.

206. In Section 2E.31 (existing Section 2E.48) Diamond Interchange, FHWA proposes to delete P2 regarding the EXIT message because the requirements are redundant with Section 2E.22 (existing Section 2E.31) and Section 2E.23 (existing Section 2E.33).

FHWA also proposes to delete P5 Option regarding the use of Advisory Exit Speed signs based on an engineering study, and revise to refer instead to the provisions contained in Chapter 2C that cover the Advisory Exit Speed signs to determine when they are necessary. FHWA proposes this change to remove redundant and potentially conflicting information, thus streamlining the Manual and improving its ease of use.

Lastly, FHWA proposes a new Guidance provision to recommend that a Destination guide sign be placed along the ramp where traffic is allowed to turn in either direction onto the crossroad. FHWA proposes this provision, which reflects common practice, to accommodate the road user's expectancy of positive, continuous guidance in signing to a destination that is displayed on the highway on an approach to an interchange.

207. In Section 2E.32 (existing Section 2E.49) Diamond Interchange in Urban Area, FHWA proposes to revise the existing Option provision regarding closely spaced interchanges to clarify that the distances under consideration are those specified in another Section of Chapter 2E. FHWA proposes this change to improve the usability of the Manual.

208. In Section 2E.33 (existing Section 2E.45) Cloverleaf Interchange, FHWA proposes to revise the Standard statement to remove redundant information contained in Section 2E.23 (existing Section 2E.33) and Section 2E.26 (existing Section 2E.37).

209. In Section 2E.34 (existing Section 2E.46) Cloverleaf Interchange with Collector-Distributor Roadways, FHWA proposes to revise the existing Option provision regarding exit numbering to Guidance. FHWA proposes this change to accommodate driver expectancy by more consistently numbering these types of interchanges and more readily facilitate navigation, in concert with other changes in this Chapter to make exit numbering more consistent. FHWA believes that Guidance should still provide sufficient discretion to States in those limited situations where conditions might warrant.

210. In Section 2E.35 (existing Section 2E.47) Partial Cloverleaf Interchange, FHWA proposes to delete P3 regarding post-mounted Exit Gore signs because the requirement is redundant with Section 2E.26 (existing Section 2E.37).

211. FHWA proposes to add a new section numbered and titled, ''Section 2E.36 Collector-Distributor Roadways for Successive Interchanges,'' with Support and Guidance statements, along with a new Figure 2E–21, describing signing for collector-distributor roadways that provide access to multiple interchanges. FHWA proposes this new section to assist agencies with signing these configurations.

212. In Section 2E.37 (existing Section 2E.44) Freeway-to-Freeway Interchange, FHWA proposes to change the existing Standard paragraph regarding splits where the off-route movements to the left to a Support statement to refer users to Section 2E.23 for the use of the Left Exit Number plaque. Similarly, FHWA proposes to add a reference to Section 2E.39 and Section 2E.40 for use of Overhead Arrow-per-lane or Diagrammatic guide signs for freeway splits with an option lane and for multi-lane freeway-to-freeway exits having an option lane.

FHWA also proposes to add a Standard requiring the signing for the roadway for the off-route to be signed as an exit from the main route, requiring that signs comply with Section 2E.22 to provide continuity in exit numbering along the route, and that the distance messages on the Advance guide signs comply with Section 2E.23. FHWA proposes this change for signing consistency and continuity in navigational guidance, which reduces potential confusion to road users, thus improving operation and safety.

FHWA proposes to delete the Option regarding the omission of the control city on Pull-Through signs because there is no requirement to display the control city on a Pull-Through sign.

FHWA proposes to change P8 from an Option to a Guidance statement to recommend that the Advisory Exit Speed (W13–2) be used where an engineering study shows that it is necessary. FHWA proposes this change to be consistent with the same change in Section 2E.31 (existing Section 2E.48).

Finally, FHWA proposes to delete the Option regarding extra emphasis of an especially low advisory ramp speed because it is redundant with Section 2E.25 (existing Section 2E.36).

213. FHWA proposes to add a section numbered and titled, ''Section 2E.38 Freeway Split with Dedicated Lanes,'' to provide Standard and Guidance paragraphs regarding freeway splits with dedicated lanes to accompany Figure 2E–24 (existing Figure 2E–34). FHWA proposes this new section to provide important information about guide signing for freeway splits with dedicated lanes that was previously implied by existing 2E.14, but not described in the text.

214. In Section 2E.40 (existing Section 2E.21) Design of Overhead Arrow-per-Lane Guide Signs for Option Lanes, FHWA revises P2 to clarify the requirement to use Overhead Arrow-per-Lane guide signs at ''reconstructed'' locations on freeways and expressways. In accordance with Official Ruling No. 2(09)–5(I),[40] a ''reconstructed'' location is defined as one where the replacement of an existing sign support structure is necessitated by reconstruction.

FHWA proposes to add an Option statement and accompanying figure permitting signs indicating destinations to be added along unusually long gore areas with narrow lane marking tapers. FHWA proposes this to allow agencies

[40] FHWA's Official Ruling No. 2(09)–5(I), October 22, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_09_5.htm.*

to add these signs to reinforce positive guidance.

FHWA also proposes to add an Option permitting the use of warning beacons with the E13–2 sign panel when used on an Overhead Arrow-per-Lane guide sign, consistent with similar changes proposed for Exit Direction signs.

215. In Section 2E.41 (existing Section 2E.22) Design of Freeway and Expressway Diagrammatic Guide Signs for Option Lanes, FHWA proposes to add a Standard statement clarifying that it is not allowed to use a diagrammatic guide sign on the mainline to depict a downstream split of an exit ramp. FHWA proposes this change to clarify the existing provisions, which allow only the depiction of the simplified geometric configuration at the exit departure, but not beyond the bifurcation, to avoid an undue informational load imposed on road users. FHWA proposes to include this clarification to address situations that have been observed in practice.

FHWA also proposes to add an Option permitting the use of warning beacons with the E13–2 sign panel when used on a Diagrammatic guide sign, consistent with similar changes proposed for Exit Direction signs.

As an alternative to these changes, FHWA proposes to delete in its entirety Section 2E.41 and the concept of Freeway and Expressway diagrammatic guide signs for option lanes. FHWA offers this alternative proposal because most States have now had experience implementing overhead arrow-per-lane signs, which have been shown to be superior to diagrammatic signs at option lanes, especially for older road users; and because FHWA also proposes the Partial-Width Overhead Arrow-per-Lane sign (Section 2E.42), which would allay concerns expressed in response to the NPA for the 2009 MUTCD regarding excessive sign sizes or costs at non-major interchange exits with an option lane. This alternative proposal would retain the diagrammatic sign concept for conventional roads and for circular roads to show general or relative direction, but not lane use indicated by lane lines within the diagrammatic arrow, as diagrammatic signs have been shown to be ineffective for that purpose. FHWA seeks comment from the public on this alternative proposal, including the technical merits, advantages and disadvantages, and comparative cost information.

216. In Section 2E.42 (existing Section 2E.23) Signing for Intermediate and Minor Interchange Multi-Lane Exits with an Option Lane, FHWA proposes to add a Guidance statement as well as revise existing Guidance statements recommending the use of a modified form of the Overhead Arrow-per-Lane guide signs at exit locations with an option lane that also carries the through route. FHWA also proposes to add figures to provide examples. FHWA proposes these revisions to provide practitioners with provisions to sign this type of exit, which can often be confusing to road users, in a uniform, consistent manner.

217. In Section 2E.45 (existing Section 2E.34), retitled, ''Next Exit Plaques (E2–1P, E2–1aP),'' FHWA proposes to delete the Option statement regarding the Next Exit plaque with one or two lines because the designs are standardized. In addition, FHWA proposes to incorporate the Support information regarding the desirable use of the Next Exit plaque designs into a Guidance statement because the language establishes a preferred practice.

218. FHWA proposes to add a section numbered and titled, ''Section 2E.48 Post-Interchange Travel Time Sign (E7–4 Series)'' with Support and Standard paragraphs regarding a new Post-Interchange Travel Time Sign. FHWA proposes this new sign series because at certain locations on freeways and expressways it may be more meaningful to road users to display the travel time rather than the distance to a destination, and to standardize the sign designs to ensure that an undue informational load is not imposed on the road user.

219. FHWA proposes to add a section numbered and titled, ''Section 2E.49 Distance and Travel Time Sign and Comparative Travel Time Sign (E7–5, E7–6)'' with Support, Standard, and Guidance paragraphs regarding the new Distance and Travel Time Sign (E7–5) and the Comparative Travel Time Sign (E7–6). FHWA proposes these new signs because some locations on freeways and expressways might benefit from a travel time message displayed with the distance or comparative travel times for alternative routes to a common destination, and to standardize the sign designs to ensure that an undue informational load is not imposed on the road user.

220. In Section 2E.50 (existing Section 2E.35), retitled, ''Supplemental Guide Signs (E3 Series),'' FHWA proposes to add a new Guidance paragraph recommending limiting Supplemental guide signs to situations where there is a demonstrated need to sign for more than two primary destinations from an interchange. FHWA proposes this change because, consistent with the established guidelines for the use of Supplemental guide signs, most interchanges would not have a need for Supplemental guide signs, and it is important to limit amount of information provided to drivers to that which is necessary for basic navigational purposes.

FHWA also proposes to relocate and revise existing Guidance P5 to earlier in the section, recommending that Supplemental guide signs should not be used unless the destination meets the criteria established by the State or agency policy. FHWA proposes this addition because use of a policy is important to establishing and retaining signing consistency and signing is for justified destination only.

FHWA proposes to revise existing Guidance to limit the number of lines of destination information to no more than three, retaining the limit of the number of destinations to two, consistent with other destination guide signs.

FHWA proposes to add a new Guidance recommending that a Supplemental guide sign not be installed in the same location with or where it would detract from guide signs for a different interchange.

FHWA proposes to add a Standard that prohibits signing more than four supplemental traffic generator destinations from a single interchange along the main roadway, consistent with the limitation on the number of Supplemental guide signs and the number of destinations allowed on each sign allowed at each interchange.

FHWA proposes to add a Standard that prohibits the installation of supplemental guide signs at the same location as Advance guide, Exit Direction, or other signs related to the exit. FHWA adds this Standard because the function of a Supplemental guide sign is to supplement the major guide signs at a separate location with non-primary destination information so as not to increase the informational load displayed on the Advance guide and Exit Direction signs.

FHWA also proposes to add a Standard that classifies guide signs for recreational or cultural interest destinations as Supplemental guide signs, except where the interchange provides direct access to such a destination and is therefore displayed on the Advance guide and Exit Direction signs.

Finally, FHWA proposes several changes near the end of the section to reflect the results of a human factors evaluation of pictographs [41] that revealed that pictographs are not effective, resulting in longer or additional glances, or both, toward

[41] ''Sports Logo Evaluation Report,'' Perez, W. *et al.,* November 2011.

Guide signs on which they are used, and the subsequent termination of Official Ruling No. 2–650(E).[42] FHWA proposes to delete the Option statement allowing pictographs on a Supplemental guide sign and add a Standard statement that prohibits the use of pictographs on supplemental guide signs, except for transit system pictographs on the Park—Ride supplemental guide sign, and add a Guidance statement regarding the use and size of transit pictograph and the carpool symbol on the Park-Ride Supplemental guide sign. Finally, FHWA proposes to delete existing Standards P8, P10, and P11 regarding the use of pictographs as general conditions on the use of pictographs would be addressed in Chapter 2A. Since there would be no provision explicitly allowing use of a pictograph, such use, therefore, would be prohibited.

221. In Section 2E.51 (existing Section 2E.41) retitled, ''Community Interchanges Identification Signs (E9–4 Series, E9–5 Series),'' FHWA proposes to add a Guidance statement recommending that the legend displayed on the Advance Guide and Exit Direction signs for each interchange should be consistent with the interchange names displayed on the Community Interchanges Identification sign, and that the name of the community should not be repeated on the Advance guide and Exit Direction signs. FHWA proposes this new Guidance to maintain uniformity in signing for Community Interchanges.

222. In Section 2E.52 (existing Section 2E.42), retitled, ''NEXT XX EXITS Sign (E9–3 Series),'' FHWA proposes to add a Guidance statement recommending that the legend displayed on the Advance Guide and Exit Direction signs for each interchange should not display the region or area name that is displayed on the NEXT XX Exits sign. FHWA proposes this new Guidance to maintain uniformity in this type of signing and to reduce the informational load within a guide sign sequence.

223. In Section 2E.53 (existing Section 2E.54) Weigh Station Signing, FHWA proposes to add Support, Standard, Option and Guidance statements, as well as a new figure, to provide provisions for the standard sign sequence for a Weigh Station on an expressway or freeway to align better with typical signing conventions used on these types of roadways and to provide flexibility in the legend to allow an alternate message COMMERCIAL VEHICLE INSPECTION AREA, where appropriate. These changes are in concert with proposed changes in Chapter 2D. As part of these changes, FHWA proposes to delete the existing Standard statement, since the proposed new text replaces the existing standard.

224. In Section 2E.54 (existing Section 2E.27) Route Signs and Trailblazer Assemblies, FHWA proposes to delete the Standard statement regarding the color of the route sign shield for the Interstate Highway System sign, as the design is standardized and must comply with the existing provisions of Chapter 2A.

225. In Section 2E.55 (existing Section 2E.28) Eisenhower Interstate System Signs (M1–10, M1–10a), FHWA proposes to incorporate the existing Guidance into the Standard that follows. This change is consistent with the intent of the design of the M1–10a sign, which uses a letter style designed for facilities that are not part of an Interstate main roadway or ramps. FHWA believes the M1–10 sign provides sufficient opportunity for agencies to sign Interstates and agencies may use this sign in place of the M1–10a sign if they wish to have a single standard, as the M1–10a sign is not required to be used.

226. FHWA proposes a new section numbered and titled, ''Section 2E.56 Signs for Route Diversion by Vehicle Class'' that includes Support, Guidance, and Option statements and an associated figure showing an example of signing for a route diversion based on vehicle class. FHWA proposes these provisions to create a more uniform approach to diversion signing based on vehicle class.

227. In Section 2E.57 (existing Section 2E.29) Signs for Intersections at Grade, FHWA proposes to replace the existing Option with a paragraph allowing exit numbering to be maintained when a freeway or expressway route is interrupted by a short segment of at-grade intersections. FHWA proposes this change because the existing Option is inconsistent with grade-separated roadway signing principles and the new Option allows continuity in navigation and signing along the length of an otherwise grade-separated route.

Discussion of Proposed Amendments to Chapter 2F Toll Road Signs

228. As part of the reorganization to improve usability of the MUTCD, FHWA proposes to include subchapter headings in Chapter 2F to organize sections into related groupings. FHWA proposes the following subchapters in Chapter 2F: General, Regulatory Signs, Warning Signs, and Guide Signs. FHWA proposes to include a list at the beginning of the section to assist users in finding the appropriate sections.

229. In Section 2F.02, FHWA proposes to retitle the section ''Sizes of Toll Road Signs and Electronic Toll Collection (ETC) System Pictographs'' to reflect the proposed relocation of material from existing Section 2F.04 to this section.

230. In Section 2F.03, FHWA proposes to retitle the section, ''Color'' to reflect the content of the section more accurately.

231. In Section 2F.04 (existing Section 2F.05) Regulatory Signs for Toll Plazas, FHWA proposes to change Option P8 pertaining to speed limit sign placement at toll plazas to Guidance to describe the intent of the provision better.

232. In Section 2F.05 (existing Section 2F.12) retitled, ''Electronic Toll Collection (ETC) Account-Only Regulatory Sign and Plaque (R3–31, R3–32P),'' FHWA proposes to change the ETC Account-Only and NO CASH sign designations from auxiliary to regulatory sign and plaque for consistency with a similar change to toll auxiliary signs.

233. In Sections 2F.06 through 2F.09, FHWA proposes to add the Take Ticket (W9–6e) Advance Warning sign, Take Ticket (W9–6bP, W9–6gP) advance warning plaque, Stop Ahead Take Ticket (W9–6f) warning sign, and Stop Ahead Take Ticket (W9–6hP) warning plaque, respectively. FHWA proposes these new signs and plaques to provide practitioners with a standard sign for use on those facilities where tickets are issued to determine the length of travel for assessing toll fees.

In Sections 2F.06 through 2F.09, FHWA also proposes to delete the last sentence of the Standard requiring that the legend PAY TOLL shall be replaced with a suitable legend such as TAKE TICKET where road users entering a toll ticket facility are issued a toll ticket.

In Sections 2F.06 through 2F.08, FHWA also proposes to add Guidance that a Take Ticket Advance Warning sign should be installed overhead at approximately 1 mile and ½ mile in advance of mainline toll plazas to provide sufficient advance warning to road users of this required action.

234. In Section 2F.10 retitled, ''LAST EXIT BEFORE TOLL Warning Plaques (W16–16P, W16–16aP),'' FHWA proposes to add a new W16–16aP plaque as a two-line alternative to the W16–16P plaque. FHWA proposes this change to provide agencies design flexibility where the plaque is used above a narrow-width guide sign.

FHWA also proposes to require the Exit Number Plaque, if used, to be installed above the LAST EXIT BEFORE

[42] FHWA Official Ruling No. 2–650(E), ''Sports Team Logos on Guide Signs.''

TOLL plaque for numbered exits. FHWA proposes this change to reiterate and clarify the existing requirements in Chapter 2E for the position of the Exit Number plaque. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement.

FHWA proposes to delete the Standard, since the design of the W16–16P is standardized and compliance is required in accordance with the existing provisions of Chapter 2A.

235. In Section 2F.11 retitled, ''TOLL Warning Plaque (W16–17P),'' FHWA proposes to change the TOLL auxiliary sign from the Marker series (M4–15) to a warning plaque and change the designation of the sign accordingly. FHWA proposes this change because the yellow background with black legend ''TOLL'' is used to call drivers' attention to the tolled condition of a highway or highway segment to which they are being guided and is not consistently used in the same manner as an auxiliary sign.

236. In Section 2F.12 (existing Section 2F.13) Toll Facility and Toll Plaza Guide Signs—General, FHWA proposes to add an Option to allow a State Toll Route system sign to be used in lieu of the State Route sign in combination with the TOLL warning plaque. FHWA proposes this change to allow those States that have developed a unique Route Sign design for tolled State highways to continue to use those types of signs whose designs conform to the prescribed criteria, rather than requiring a separate auxiliary sign.

FHWA also proposes to add a Standard statement requiring State Toll Route signs to incorporate the word TOLL into its design using the same letter height, legend, background colors, and overall plaque dimensions specified for the W16–20P plaque. FHWA proposes this change to maintain uniform legibility criteria for either method.

In addition, FHWA proposes to supplement an existing Standard statement prohibiting the modification of Interstate, Off-Interstate, and U.S. Route signs for tolled facilities. FHWA proposes this change to maintain uniformity of these signs because they apply to national systems. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement, as modification of these signs has never been allowed.

FHWA also proposes to modify existing Standard P20 to require, rather than allow as an Option, the incorporation of the Toll Taker (M4–17) symbol panel in signs for attended lanes at toll plazas. In concert with this change, FHWA also proposes changing the Standard for word messages such as FULL SERVICE, CASH, CHANGE, or RECEIPTS to an Option to supplement the required symbol panel. FHWA proposes this change to standardize and use symbols in place of word messages where a symbol has been developed that provides at least equivalent levels of comprehension, legibility, and recognition, based on relevant research.[43]

Lastly, FHWA proposes to add a Standard statement requiring the use of an Overhead-Arrow-Per-Lane Guide sign in advance of a location where the mainline lanes split to separate traffic entering Open-Road ETC lanes from lanes entering a toll plaza where other methods of payment are accepted and an option lane is provided at the split. FHWA proposes this standard to be consistent with the use of Overhead-Arrow-Per Lane Guide signs in Chapter 2E where there is a split in the highway with an option lane.

237. FHWA proposes to add a new section numbered and titled, ''Section 2F.13 Electronic Toll Collection (ETC) Signs—General,'' that contains information from paragraphs 9 through paragraph 17 of existing Section 2F.13.

FHWA also proposes to relocate the existing Option statement regarding the use of a toll highway by non-registered toll account program drivers to new Section 2F.18.

238. In Section 2F.17 Guide Signs for Entrances to ETC Account-Only Facilities, FHWA proposes to relocate and modify an Option statement from existing Section 2F.18 to permit a separate information sign displaying the route number, TOLL warning panel, and the legend NO CASH within the sequence of the advance guide signs on the approach to the entrance to an ETC Account-Only facility, which is already depicted in existing Figure 2F–6. FHWA proposes this change to provide agencies flexibility to use additional advance signing if needed.

FHWA also proposes an Option to allow the Exit Gore signs for entrance ramps to ETC Account-Only facilities to incorporate the pictograph of the ETC payment system with the word ONLY in the header panel or plaque. FHWA proposes this change to allow agencies to reinforce that an ETC account is required to use the facility.

239. FHWA proposes to add two new sections numbered and titled, ''Section 2F.18 Guide Signs for Entrances to ETC-Only Facilities'' and ''Section 2F.19 Guide Signs for ETC-Only Entrance Ramps to Non-Toll Highway'' that contain provisions related to guide signs on facilities that are electronically tolled but do not require an ETC account. FHWA proposes to add these sections because of the increasing use of ETC-Only facilities. The proposed new provisions are intended to provide consistent and uniform signing, much of which is already depicted in existing figures within this Chapter.

240. In proposed new Section 2F.18, FHWA proposes to include a new Standard regarding signs used to identify ETC-Only facilities that collect tolls by post-travel billing of registered vehicle owners through postal mail, including if an ETC account program registration is also accepted. In concert with this change, FHWA proposes to add an Option allowing the addition of a plaque with the legend NO CASH on these signs.

FHWA also proposes to include an Option statement providing flexibility to display pictographs for other accepted ETC toll programs on separate information signs if the post-travel billing program also allows payment through those ETC accounts without restriction in the agencies' primary ETC program.

FHWA also proposes to add an Option statement for flexibility regarding signs that may be used to let motorist know if a surcharge is added to the toll amount for those not registered in toll account program.

241. In proposed new Section 2F.19, FHWA proposes to add Standard statement requiring guide signs for these ramps to comply with the provisions of 2F.18 to ensure consistency in signing between toll facilities and ramps.

FHWA also proposes to add an Option statement allowing a NO–TOLL panel to be included on the top of the Exit Gore sign for an exit that provides access to the facility without charging a toll to provide clarification to the drivers.

Discussion of Proposed Amendments to Chapter 2G Preferential and Managed Lane Signs

242. In Section 2G.01 Scope, FHWA proposes to add a new Standard statement excluding bike lanes from the provisions of the Chapter unless otherwise provided. FHWA proposes this change because, in general, information specific to bike lanes is included in Part 9.

243. In Section 2G.03 Regulatory Signs for Preferential Lanes—General, FHWA proposes to revise Option P14 to

[43] Traffic Control Devices Pooled Fund Study: Comprehension and Legibility of Selected Symbol Signs, Phase III, dated June 2012 is available at the following internet website: *https://www.pooledfund.org/details/study/281.*

increase the minimum vertical clearance from 14 feet to 17 feet for post-mounted preferential lane regulatory signs on a median barrier where lateral clearance is limited. FHWA proposes this change for consistency with Standard P15 which references a requirement in Section 2A.18 to provide a 17-foot minimum vertical clearance for overhead signs that are over the lane or shoulder. FHWA proposes similar changes in 2G.08, ''Warning Signs on Median Barriers for Preferential Lanes,'' and Section 2G.10, ''Preferential Lane Guide Signs—General.''

FHWA also proposes to delete Option P19 and Standard P20 allowing the HOV abbreviation or the diamond symbol on signs because all the standard signs for HOV lanes include the diamond symbol and therefore the option is not needed.

Lastly, FHWA proposes to relocate paragraphs 23 through 26 from Section 2G.03 to Section 2G.16.

244. In Section 2G.04 retitled, ''Vehicle Occupancy Definition Signs (R3–10 Series and R3–13 Series),'' FHWA proposes to remove Guidance paragraphs 4 and 5, because the legend format of these signs is standardized and must comply with existing requirements of Chapter 2A.

FHWA also proposes to change the Standards in paragraphs 9 and 10 and add an Option to allow, rather than require, the placement interval of ½ mile for R3–11a and R3–10 signs along the length of an HOV lane where access is denied, to provide agencies greater flexibility.

Finally, FHWA proposes to revise the last Guidance statement to specify that the Preferential Lane regulatory sign sequence spacing of 800 to 1,000 feet is applicable to freeways and expressways and proposes to recommend that sign spacing on conventional roads should be determined by engineering judgment based on speed, block length, distances from adjacent intersections, and other site-specific considerations. FHWA proposes these changes due to the differences in types and speeds of conventional roads and the need to provide agencies with more flexibility to provide appropriate signing based on site-specific conditions.

245. In Section 2G.05 retitled, ''Preferential Lane Operation Signs (R3–11 Series, R3–14 Series),'' FHWA proposes to change the Guidance statement regarding the size of post-mounted R3–11 series signs to a Support statement to describe why the sizes are standardized.

FHWA also proposes to add a Guidance statement regarding increasing the height of the R3–11 series signs for locations where regulations are in place more than one time period of the day to accommodate additional lines of legend.

In addition, FHWA proposes to change the requirement to show 24 HOURS when a preferential lane restriction is in effect on a full-time basis to an Option. FHWA proposes this change because typically traffic regulations are assumed to be in effect on a full-time basis. However, FHWA retains the option to use the 24 HOURS legend because there are situations where it is necessary to reinforce that a restriction is in place at all times as part of a change in operation or where several facilities in the same area have different hours of operation.

FHWA proposes to add a new Option statement that allows the use of posted mounted Periods of Operation (R3–11 series) signs instead of overhead Periods of Operation (R3–14 series) signs on conventional roads with preferential lane operations. FHWA proposes this option to provide clarity to an existing provision.

FHWA proposes to delete existing Guidance P13 recommending the use of overhead or post-mounted Period of Operations signs at periodic intervals along the length of a contiguous or buffer-separated preferential lane where continuous access with the adjacent general-purpose lanes is provided, because the use of these signs is required a Section 2G.05 Standard.

Finally, FHWA proposes to delete existing Option P15 regarding the use of overhead Periods of Operation (R3–14 series) signs at the beginning or entry points and/or at intermediate points along preferential lanes on conventional roads, because stating this as an Option is unnecessary.

246. In Section 2G.07 retitled, ''Preferential Lane Ends Signs (R3–12a, R3–12b, R3–12c, R3–12d, R3–12g, R3–12h, R3–15b, R3–15c, R3–15e),'' FHWA proposes to specify that the requirements for installing a Preferential Lane Ends sign ½ mile in advance of the termination of the lane or where it becomes a general-purpose lane apply specifically to freeways and expressways. FHWA also proposes to add a new Guidance statement to determine the location of the Preferential Lane Ends sign on conventional roads based on engineering judgment. FHWA proposes these changes due to the differences in types and speeds of conventional roads and to provide agencies with more flexibility to provide appropriate signing based on site-specific conditions.

247. In Section 2G.11 retitled, ''Signing for Initial Entry Points to Preferential Lanes,'' FHWA proposes to add a new Standard to require an Advance Guide sign approximately 1 mile in advance of the entry point where a general-purpose lane becomes a preferential lane that does not provide continuous access with the adjacent general-purpose lanes. FHWA also proposes to require a yellow panel with black legend and border displaying a down arrow and the word ONLY on the Advance Guide and Entrance Direction signs and to add a new Figure to illustrate an example of these signs. FHWA proposes this change to provide road users with sufficient advance notice to change lanes if they desire to continue in the general-purpose lanes, consistent with signing for dropped lanes at interchanges.

FHWA also proposes to indicate that several of the Standards and Guidance in this section apply to freeways and expressways, because such provisions are not appropriate for conventional roads.

248. In Section 2G.17 (existing Section 2G.16) Signs for Priced Managed Lanes—General, FHWA proposes to delete the last Standard statement regarding the use of the diamond symbol because it is redundant with the provisions of Section 2G.03.

249. In Section 2G.19 (existing Section 2G.18) Guide Signs for Priced Managed Lanes, FHWA proposes to add a new Standard statement and accompanying figure prohibiting the use of ETC-account pictographs on the primary guide sign directing traffic to the managed lane when registration in a toll-account program is not required for travel in a managed lane in which tolls are charged. In such cases, FHWA proposes that the purple header panel shall be replaced with a warning header panel with a black legend and border on yellow background displaying the word TOLL. FHWA proposes this change to provide consistency in signing for toll facilities where registration is not required for travel for the purpose of improving traffic efficiency and safety.

FHWA also proposes to add an Option provision allowing the legend TOLL BILLED BY MAIL ONLY on a separate information sign within the sequence of primary guide signs in advance of an entrance to the managed lane if the managed lane does not accept toll payments from an ETC account system and collects tolls only by post-travel billing of registered vehicle owners.

FHWA proposes to add another Option allowing pictographs of the accepted ETC account programs and the

legend TOLL BILLED BY MAIL on a separate information sign within the sequence of primary guide signs in advance of an entrance to the managed lane if the managed lane accepts payments from registered ETC accounts but does not require registration to use the lane.

250. In new Section 2G.20, Signs for Part-Time Travel on a Shoulder—General, FHWA proposes to add a Support statement regarding the general applicability of part-time travel on shoulders and factors to consider when planning traffic control for such operations. FHWA also proposes to add a figure showing an example of signing for part-time travel on a shoulder.

FHWA proposes a Standard stating that shoulders open to travel on a permanent full-time basis shall be signed and marked as a standard travel lane to be consistent with other travel lanes open on a full-time basis and to accommodate the expectancy of road users.

251. In new Section 2G.21, Regulatory Signs and Plaques for Part-Time Travel on a Shoulder, FHWA proposes a Standard requiring signs and plaques to notify road users of the periods of operation that travel is allowed on a paved shoulder. FHWA proposes to require the use of a Part-Time Travel on Shoulder Operation (R3–51) sign where traffic is allowed to travel on the shoulder during certain fixed periods of operation and the use of the Part-Time Travel on Shoulder Variable Operation (R3–51d) sign with two flashing beacons mounted above it when the period of operation is variable. FHWA proposes these two signs to provide road users with specific signing that distinguishes between fixed period and variable operation, along with beacons to indicate when use of the shoulders is allowed for variable operation. FHWA also proposes to require the use of Selective Exclusion plaques to convey any restriction on certain types of vehicles.

FHWA also proposes an Option to allow an EMERGENCY STOPPING ONLY OTHER TIMES (R3–51cP) plaque to be mounted below the R3–51 sign if the Selective Exclusion plaques are not used.

FHWA proposes Guidance recommending the use of the TRAVEL ON SHOULDER BEGINS ½ MILE (R3–52c) sign be used in advance of the location where part-time travel on the shoulder first begins followed by the DO NOT DRIVE ON SHOULDER (R4–17) sign appropriately spaced downstream in order to provide road users with additional information regarding the use of the shoulder.

FHWA also proposes a Standard requiring use of the TRAVEL ON SHOULDER ENDS (R3–52A), END TRAVEL ON SHOULDER (R3–52), and DO NOT DRIVE ON SHOULDER (R4–17) signs, appropriately sequenced, to indicate the termination of the shoulder travel allowance. FHWA proposes this sequence of signs to provide consistency in signing and improve safety at all locations that allow part-time travel on shoulder by providing a common understanding of when shoulder travel is no longer allowed.

FHWA also proposes Guidance regarding the BEGIN EXIT LANE (R3–56) sign, the EMERGENCY STOPPING ONLY (R8–7) sign, and the TO TRAFFIC ON SHOULDER (R3–57P) plaque used at the beginning of deceleration lanes where traffic is allowed to enter during the periods that travel is prohibited on the shoulder, at turnouts provided for emergency stopping during periods when travel is allowed on the shoulder, and below YIELD signs where traffic on an entrance ramp is required to yield to traffic using the shoulder, respectively. FHWA proposes these recommendations to provide traffic control devices to manage traffic more effectively in these circumstances.

252. In new Section 2G.22, Warning Signs for Part-Time Travel on a Shoulder, FHWA proposes Guidance to use the TRAFFIC USING SHOULDER (W3–9) sign at entrances to freeways and expressways where part-time shoulder travel is allowed in order to provide adequate warning to entering traffic.

FHWA also proposes to add an Option to use the W3–9 sign on conventional roads where traffic that is required to stop for or yield to the through street or highway on which part-time travel is allowed on the shoulder, to provide flexibility for this sign's use.

253. In new Section 2G.23, Guide Signs for Part-Time Travel on a Shoulder, FHWA proposes a Standard that the Advance and Exit Direction guide signs shall be modified to include a blank-out or changeable EXIT ONLY message if an interchange lane drop is created during the periods when a shoulder is open to travel. This is to ensure adequate warning to road user and create consistency with requirements for such guide signs in similar lane configurations.

FHWA also proposes a Standard requiring other Guide signs used in conjunction with these facilities to be compliant with the provision of Chapters 2D and 2E to ensure consistency of all guide signs on the roadway.

FHWA also proposes Guidance recommending the use of Emergency Turn-Out directional signs (D17–6) where turnouts are provided for emergency stopping to provide road users with notice of where stopping is allowed in the case of an emergency.

254. In new Section 2G.24, Lane-Use Control Signals for Part-Time Travel on a Shoulder, FHWA proposes an Option to allow the use of overhead lane-use control signals to indicate when a shoulder is open or closed to travel.

FHWA also proposes a Standard that when lane-use control signals are used for part-time travel on a shoulder, they shall follow the provisions of Chapter 4T; that lane-use control signals are not required to be used on adjacent travel lanes; and that a steady red X signal indication shall be used to close the shoulder to all travel except emergencies. FHWA also proposes to require that when part-time travel on a shoulder is allowed for variable periods of operation, lane-use control signals shall be used and evenly spaced approximately evenly ½ mile or less and centered over the shoulder to indicate the status of the shoulder travel allowance. FHWA proposes the use of the green down arrow during times when travel is allowed on the shoulder, a yellow X just before the shoulder is to be closed to travel, and a red X when shoulder travel is discontinued. As part of this proposal, FHWA proposes to require that during the period when the shoulder is open to travel, a lane-use control signal that continuously displays a yellow X be used approximately ½ mile in advance of the location where part-time travel on the shoulder ends, and then displays a red X when the travel on shoulder ends. In addition, FHWA proposes to require the use of a lane-use control signal with a red X display at all times at the location where part-time travel on the shoulder ends. For part-time travel on shoulder with variable periods of operation, FHWA proposes an Option allowing the use of post-mounted TRAVEL ON SHOULDER ALLOWED WHEN FLASHING (R3–51d) signs with flashing beacons be used lieu of the lane-use control signals at the same intervals. FHWA also proposes an Option allowing the use of the TRAVEL ON SHOULDER ON GREEN ARROW ONLY (R3–51e) sign with a lane-use control signal. The R3–51e sign may be mounted adjacent to the signal head, elsewhere on the signal support, or post-mounted next to, or in advance of, the signal. FHWA proposes these additions to provide consistency with other lane-use control signal applications.

255. In new Section 2G.25, Lane-Use Control Signals for Active Lane Management on Freeway and Expressways, FHWA proposes a Standard that lane-use control signals used in this application shall be compliant with the provisions of Chapter 4T to ensure consistency across all applications to road users.

FHWA also proposes an Option to allow a steady yellow X signal indication to be displayed on one or more lane-use control signals in advance of the steady yellow X signal indication required before on the last signal before the point of lane closure. FHWA proposes this to provide flexibility where more advance warning of a lane closure ahead is considered necessary.

FHWA also proposes a Standard that lane-use control signals shall be used only to supplement temporary traffic control devices when used during a planned road closure. FHWA proposes this language to clarify the existing requirement for temporary traffic control devices in this application as provided for in Part 6 of the MUTCD.

FHWA also proposes Guidance on spacing lane-use control signals at ½ mile intervals, or closer spacing when certain geometric conditions exist, or when intervening interchange ramps are not adequately served by ½-mile spacing. This is to ensure road users have adequate warning of lane-use restrictions at all times.

FHWA also proposes Guidance to minimize the combining of lane-use control signals with overhead sign structures. This is proposed to minimize the informational load on the road user and avoid conflict or incorrect messaging.

256. In new Section 2G.26, Variable Speed Limits for Active Traffic Management on Freeways and Expressways, FHWA proposes a Standard requiring the regulatory speed display on a changeable speed limit signs comply with Paragraph 2 of Section 2B.22 of the MUTCD. This is proposed to ensure that variable speed limit sign designs are consistent across all roadways to improve recognition, which leads to better traffic operations and increased safety.

FHWA also proposes to add Guidance that the location and positioning of Variable Speed Limit signs should associate the speed displayed on them to the lane or lanes intended to be regulated to avoid potential confusion as to the applicability of the speed limit.

FHWA also proposes Guidance that variable speed limit signs, in addition to post-interchange placement, should be spaced based on an engineering study considering multiple factors including known congestion points to adjust the operating speed to minimize the extent of vehicle queuing and improve safety.

Discussion of Proposed Amendments to Chapter 2H General Information Signs

257. In Section 2H.01 (existing Section 2H.02) retitled, ''Scope,'' FHWA proposes to add a Standard indicating there are circumstances where descriptive messages not relevant to navigation and orientation shall not be included in the legends of General Information signs. This clarification is needed to ensure that traffic control devices are employed only for their intended purpose of regulating, warning, and guiding road users.

FHWA proposes to revise existing P3 to provide an exception for the color and shape of State Welcome signs, Acknowledgement signs, and Alternative Fuels Corridor signs, rather than jurisdictional boundary signs.

FHWA also proposes to re-designate all signs in this Chapter to be consistent with the alphanumeric designations for all other signs in the Manual.

258. In Section 2H.02 (existing Section 2H.01) Sizes of General Information Signs, FHWA proposes to revise the Option allowing sign sizes to be larger than those contained in Table 2H–1 to add an exception that larger sizes may not be used where a maximum allowable size is specified. FHWA proposes this change to restrict the use of over-sized signs only to those situations where appropriate.

FHWA also proposes to delete the Recycling Collection Center (I–11) symbol sign from the MUTCD because residential and curbside recycling make the need for this sign obsolete and separate Recycling Centers, apart from waste disposal facilities, generally do not exist anymore.

FHWA proposes to relocate existing Standard P14 regarding the height of a pictograph on a political boundary General Information sign to new Section 2H.05 to consolidate information in one location.

259. FHWA proposes to add a new Section 2H.03 titled, ''Airport Signs,'' which contains portions of existing Section 2H.02. FHWA proposes to add a new Standard prohibiting the use of airport pictographs or other graphical representation of the specific airport with or in place of the specific airport name on guide signs. FHWA proposes this change in concert with similar changes throughout the Manual based on human factors research [44] [45] that demonstrated observers generally required longer reading times for signs that added pictographs, while the pictographs themselves did not improve comprehension of the sign message.

In addition, FHWA proposes to change the provision regarding trailblazer signs from a Standard to Guidance to recommend, and not require, these signs prior to the airport guide signs. FHWA proposes this change to make the provisions more flexible in applying engineering judgment in specific situations.

260. In Section 2H.04 (existing Section 2H.03) Traffic Signal Speed Sign (I1–1), FHWA proposes to add a new Standard requiring the electronic-display changeable section of the Traffic Signal Speed sign to be a white legend on a black opaque or green background. FHWA proposes this change to provide uniformity for this portion of the sign, consistent with the provisions for changeable message signs that allow the background portion of the sign to match the static sign.

FHWA also proposes to remove the Standard describing the minimum size of the Traffic Signal Speed Sign as that information is contained in existing Table 2H–1.

261. FHWA proposes to add a new section numbered and titled, ''Section 2H.05 Jurisdictional Boundary (I2–1) Signs,'' to provide Option, Guidance, Standard and Support statements specifically related to Jurisdictional Boundary signs, which are referred to as Political Boundary signs in the current MUTCD. FHWA proposes this new section in concert with the proposed change in Section 2H.01 (existing Section 2H.02) to differentiate between State Welcome signs and Jurisdictional Boundary signs.

262. FHWA proposes to renumber and retitle section 2H.04 Miscellaneous Information Signs (I2–2) to, ''Section 2H.06, Geographic Feature (I2–2) Sign,'' and to make appropriate sign title changes throughout this section to have the sign title better align with the stated intent of these signs, which is to orient road users on the roadway based on geographic features.

263. FHWA proposes to add a new section numbered and titled, ''Section 2H.07 State Welcome Signs,'' to provide information regarding the design, placement, and function of State Welcome signs, which have a different purpose from Jurisdictional Boundary signs that identify and mark State lines. The new section contains provisions for

[44] FHWA Official Ruling No. 2–650(E), ''Sports Team Logos on Guide Signs.''

[45] ''Sports Logo Evaluation Report,'' Perez, W. *et al.,* November 2011.

the location, display, and size of State Welcome signs.

264. FHWA proposes to add a new section numbered and titled, ''Section 2H.08 Future Interstate Signs (I2–4, I2–4a),'' to provide provisions for Future Interstate Route and Future Interstate Corridor signing along an existing route that has been designated to be reconstructed as an Interstate route or along an existing route adjacent to a corridor through which an Interstate route will be constructed. The new section contains provisions for the location, spacing, and legend of Future Interstate and Future Interstate Corridor signs. In concert with this change, FHWA amends 23 CFR part 470, subpart A, appendix C, ''Policy for the Signing and Numbering of Future Interstate Corridors Designated by Section 332 of the NHS Designation Act of 1995 or Designated Under 23 U.S.C. 103(c)(4)(B).'' Specifically, FHWA proposes to delete the existing text of the section entitled, ''Sign Details,'' and instead refer to the MUTCD for any criteria involving highway signing for this purpose.

265. FHWA proposes to add a new Section numbered and titled, ''Section 2H.09 Project Information Sign (I2–5)'' with Support and Standard statements related to signs that are used to provide limited information about ongoing highway construction projects. FHWA proposes this section to standardize the design and use of signs provided for in 23 CFR 635.309(o). In concert with this change, FHWA proposes to amend 23 CFR 635.309(o) to refer to the MUTCD for any criteria involving Project Information signs.

266. FHWA proposes to add a new section numbered and titled, ''Section 2H.10 Grade Separation Identification Signs (I2–43, I2–43a),'' to provide Option and Guidance on these signs used for identifying a grade separation from another highway or transportation facility such as a railway, bikeway, or pathway.

267. In Section 2H.11 (existing Section 2H.05), retitled, ''Reference Location Signs (D10–1 through D10–3) and Intermediate Reference Location Signs (D10–1a through D10–3a),'' FHWA proposes to revise the Option to indicate that Intermediate Reference Location (D10–1a to D10–3a) signs may also be installed at two tenths of a mile or one-half mile intervals.

FHWA also proposes to delete two Standard Statements in this section describing the sign design requirements as these designs are standardized and must comply with the existing provisions of Chapter 2A.

268. In Section 2H.12 (existing Section 2H.06), retitled, ''Enhanced Reference Location Signs (D10–4) and Intermediate Enhanced Reference Location Signs (D10–5),'' FHWA proposes to add a Standard statement to clarify that the display of a decimal point and zero numeral is required on Intermediate Enhanced Reference Location (D10–5) signs used at the integer mile point. FHWA proposes this addition to improve recognition of the sign message through the use of a consistent numbering nomenclature and provide consistency with the same requirement in Section 2H.10 for Reference Location Signs (D10–4) and Intermediate Reference Location Signs (D10–5).

FHWA also proposes to remove the allowance of blue background enhanced reference location signs, requiring them to be green, to establish uniformity.

FHWA also proposes to remove the sign design provisions for these signs as the designs are standardized and are required to comply with the existing provisions of Chapter 2A.

269. FHWA proposes to relocate Section 2H.07, ''Auto Tour Route Signs,'' to Chapter 2D and combine with Section 2D.57, ''State-Designated Scenic Byway, Historic Trail, and Auto Tour Route Signs.''

270. In Section 2H.13 (existing Section 2H.08) retitled, ''Acknowledgment Signs and Plaques (I20 Series),'' FHWA proposes several revisions to reflect FHWA Order No. 5160.1 A,[46] that cancels FHWA Order 5160.1,[47] both of which are related to FHWA Policy on Sponsorship Acknowledgement and Agreements within the Public Right-of-Way. FHWA proposes this change to minimize the number of additional signs and informational load imposed on road users.

FHWA proposes to change the Guidance related to acknowledgment sign policy provisions to a Standard to ensure sign design and placement of these signs does not conflict with other provisions in the MUTCD.

FHWA also proposes to add a Standard requiring that Acknowledgment signs and plaques have a white legend on a blue background and be independent post-mounted roadside installations only and not be overhead-mounted. This change is proposed to ensure these signs are consistent with other service type signs and maintain their purpose of acknowledging sponsors of services only.

FHWA proposes to add an Option allowing new Rest Area and Welcome Center Acknowledgement signs (I20–4 and I20–4a) that provides the name of the rest area and welcome center sponsor. In concert with this change, FHWA proposes a new Standard prohibiting the names or representations of specific products or services provided by the sponsor within the rest area to be included on the sign. FHWA also proposes to add a Standard prohibiting the use of program names or slogans on rest area guide signs or other traffic control devices.

FHWA proposes to revise the Standard paragraph regarding acknowledgment signs and plaque designs to include additional provisions related to orientation, dimension, area of the sign, and sizing the sign based on standard sizes specified in Table 2I–1. FHWA proposes these changes so that the MUTCD provisions for these signs are consistent with FHWA Order 5160.1A [48] and sign size requirements established earlier in this Chapter.

FHWA proposes an Option paragraph allowing for the name of the municipality or neighborhood in which the sponsoring outlet of a business is located if there are multiple locations in the same area. FHWA proposes this change to allow for the acknowledgment of the specific franchisee in cases in which the corporation itself is not the sponsor.

FHWA proposes to add an Option permitting Acknowledgement plaques to be mounted below General Service signs to acknowledge a sponsor of a corridor- or region- based highway-related service including Radio-Weather Information (D12–1), Radio-Traffic Information (D12–1a), TRAVEL INFO CALL 511 (D12–5 and D12–5a), and Roadside Assistance (D12–6) signs. In concert with this change, FHWA proposes Standard paragraphs prohibiting the installation of an Acknowledgment plaque in conjunction with other signs or traffic control devices and limiting the legend that can be displayed on an Acknowledgment plaque.

271. FHWA proposes to add a new section numbered and titled, ''Section 2H.14 Alternative Fuels Corridor Sign'' to provide Standard, Option, Guidance,

[46] FHWA Order 5160.1A, issued April 7, 2014, can be viewed at the following internet website: *https://www.fhwa.dot.gov/legsregs/directives/orders/51601a.cfm.*

[47] FHWA Order 5160.1, issued March 13, 2012, can be viewed at the following internet website: *https://www.fhwa.dot.gov/legsregs/directives/orders/51601.cfm.*

[48] FHWA Order 5160.1A, issued April 7, 2014, can be viewed at the following internet website: *https://www.fhwa.dot.gov/legsregs/directives/orders/51601a.cfm.*

and Support provisions for the use of Alternative Fuels Corridor signs. FHWA also proposes new Figures 2H–9 and 2H–10 to illustrate Alternative Fuels Corridor Sign Assembly examples and an Alternative Fuels Corridor Signing layout example, respectively. This section adds the provisions of FHWA policy memorandum entitled, ''MUTCD—Signing for Designated Alternative Fuels Corridors,'' dated December 21, 2016.[49]

Discussion of Proposed Amendments to Chapter 2I General Service Signs

272. In Section 2I.02 General Service Signs for Conventional Roads, FHWA proposes a new Standard paragraph limiting the use of the Hospital sign to facilities that operate on a full-time basis. FHWA proposes this change to accommodate the expectation of road users that a hospital operates on a full-time basis. In concert with this change, FHWA proposes an Option paragraph allowing the Emergency Medical Services sign to be used for medical care facilities that operate only on a part-time basis.

273. In Section 2I.03 General Service Signs for Freeways and Expressways, FHWA proposes a new Guidance paragraph recommending the use of D9–18 or D9–18a signs for numbered interchanges. FHWA also proposes new Support and Option statements regarding motorist expectations for facilities providing alternative fuels, as well as policy criteria for alternative fuel vehicles to address issues specific to alternative fuel vehicles.

FHWA also proposes to change the Standard requiring sign space be left blank for future services to a Guidance to provide agencies with greater flexibility based on the agency's knowledge of local conditions.

274. In Section 2I.04 retitled, ''Interstate Oasis Signing (D5–12 Series),'' FHWA proposes to delete the Guidance recommending that names or logos of businesses designated as Interstate Oasis not be included in the Interstate Oasis sign and instead proposes to add a new Option permitting the name of the business designated as an Interstate Oasis to be provided below the Interstate Oasis legend on the D5–12 sign if Specific Service signing is not used at the interchange. FHWA proposes this change based on experience with signing for the Interstate Oasis areas and recognizing that it may be appropriate to include business names.

FHWA proposes to delete Guidance text indicating that Interstate Oasis signs should have a white legend with a letter height of at least 10 inches and a white border on a blue background as the designs of these signs are standardized and must comply with the existing provisions of Chapter 2A.

FHWA proposes to delete the Interstate Oasis symbol panel, along with the related Standard, based on poor comprehension of the symbol and the fact that no State currently uses the symbol.

Finally, FHWA proposes to add a new Interstate Oasis Directional (D5–12b) sign to provide road users the direction and distance to the Interstate Oasis from an exit ramp.

275. In Section 2I.08, retitled, ''Tourist Information and Welcome Center Signs (D5–7 Series, D5–8),'' FHWA proposes to revise the Guidance statement regarding the supplemental signs installed with Tourist Information or Welcome Center signs to suggest limiting the number of supplemental sign panels to three (3). FHWA proposes this change for consistency with other provisions in Part 2 related to the amount of information on a sign legend and driver comprehension, thus minimizing the informational load imposed on drivers.

276. In Section 2I.09, retitled, ''Radio Information Signing (D12–1 Series),'' FHWA proposes to add two new signs: (1) A Radio-Traffic Information (D12–1a) sign and (2) an Urgent Message When Flashing (D12–1bP) plaque. FHWA also proposes to add an Option statement allowing the Urgent Message When Flashing plaque to be mounted below a D12–1 or D12–1a sign when supplemented by warning beacons that flash only when a message related to adverse travel conditions is being broadcast. FHWA proposes these changes to provide additional signs that may be beneficial to agencies that provide radio services. As discussed in the following two items, FHWA proposes to create two new sections that contain material from existing Section 2I.09 to assist practitioners better in finding information.

277. FHWA proposes add a new section, numbered and titled, ''Section 2I.10 Channel 9 Monitored Sign (D12–3)'' containing existing Option and Standard statements from Section 2I.09 pertaining to the Channel 9 Monitored Sign (D12–3).

278. FHWA proposes a new section, numbered and titled, ''Section 2I.11 EMERGENCY CALL XX Sign (D12–4)'' containing an existing Option statement from Section 2I.09 pertaining to the EMERGENCY CALL XX Sign (D12–4).

279. In Section 2I.12 (existing Section 2I.10), ''TRAVEL INFO CALL 511 Signs (D12–5, D12–5a),'' FHWA proposes to revise the Option statement to allow a pictograph of the transportation agency, or the travel information service or program to be displayed in place of the TRAVEL INFO CALL 511 legend on the D12–5a sign. This is proposed to provide agencies greater flexibility in program identification.

FHWA also proposes to delete the Guidance paragraph related to the maximum pictograph height and add a new Standard establishing the maximum height of the transportation agency or travel information service or program pictograph to be the height of the 511 pictograph that would otherwise be used on the D12–5a sign for the type of roadway it is located. FHWA proposes this change to provide uniformity in the size of travel information signing.

280. FHWA proposes to add a new section numbered and titled, ''Section 2I.13 Roadside Assistance Sign (D12–6),'' which would permit the use of a new Roadside Assistance sign along a highway that is served by an authorized road assistance program with authorized service vehicles and personnel that provide roadside vehicle repair assistance to road users free of charge. FHWA proposes this change to provide agencies with a consistent sign that would be recognized by road users.

281. In Section 2I.14 (existing Section 2I.11), retitled, ''Carpool and Ridesharing Signing (D12–2),'' FHWA proposes to revise the existing Standard to add a maximum horizontal dimension of 30 inches for consistency with similar applications to maintain primacy of other more critical signs.

FHWA also proposes to remove the existing Guidance pertaining to legend, border, and background colors as the design requirements of this sign are standardized and must comply with the existing provisions of Chapter 2A.

282. FHWA proposes to add a new section numbered and titled, ''Section 2I.15 Signing for Truck Parking Availability (D9–16b through D9–16e),'' with Option, Standard, Support, and Guidance statements, as well as two new figures, related to the use of Truck Parking Availability General Service signs that may be used to display the number of available truck parking spaces at roadside areas such as rest areas, welcome centers, and weigh stations, and at facilities off a highway that are open to the public and provide parking for commercial vehicles.

[49] FHWA Policy Memorandum, ''MUTCD—Signing for Designated Alternative Fuels Corridors,'' issued December 21, 2016, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/policy/alt_fuel_corridors/index.htm.*

Discussion of Proposed Amendments to Chapter 2J Specific Service Signs

283. FHWA proposes to replace ''logo'' with ''business identification'' signs throughout Chapters 2J and 2K to recognize that a word legend can and often is used in lieu of a logo to identify the business on the Specific Service sign. This generally occurs when the business to be identified does not have a logo, their logo is not widely recognized, or their logo is otherwise unsuitable for display on the sign. The reclassification does not change the allowance for a business or service provider to use a corporate logo on a Specific Service sign.

284. In Section 2J.01 Eligibility, FHWA proposes to delete the 24-hour Pharmacy Specific Service category because there has been little demand and most pharmacies that did obtain a logo on a Specific Service sign have since withdrawn from the associated agency program. Instead, the 24-hour pharmacy would remain as General Service only. FHWA also proposes to remove references to 24-hour pharmacies from Section 2J.02.

FHWA also proposes to remove alternative fuels from the qualifications for a GAS business identification sign panel to eliminate any potential driver expectancy confusion should a facility offer one or more of the many alternative fuels only and not gasoline.

FHWA also proposes to change existing Guidance P10 to Standard, because it is important for States to have a statewide policy for Specific Signing for the program to be successfully implemented in a consistent manner. Such policies already exist in a majority of the States.

285. In Section 2J.02 Application, FHWA proposes to delete 24-hour Pharmacy Specific Service category from Standard P2 because there has been little demand and most pharmacies that did obtain a logo on a Specific Service sign have since withdrawn from the associated agency program. FHWA also proposes to revise existing P2 to address the display of distances explicitly to eligible facilities on the Specific Service signs on the approach to the interchange. While this practice has never been allowed, FHWA proposes this language to provide clarification based on the results of official experimentation and studies demonstrating that the display of distances requires too much time to read and reduces the effectiveness of these signs.

FHWA also proposes to add a new Standard statement prohibiting the inclusion of business identification sign panels for alternative fuel facilities on GAS Specific Service Signs for those facilities that offer only alternative fuels, but not gasoline. This addition is because driver expectancy for businesses on the GAS sign is that the business sells gasoline, even if one of the several alternative fuels might also be available. In concert with this change, FHWA also proposes to add a Support paragraph identifying the option to sign for alternative fuel facilities with General Service signs and directing users to Chapter 2I for more information on those provisions.

FHWA also proposes Standard, Guidance, and Support statements limiting the allowable number of business identification sign panels for each Specific Service to six and recommending that when there are more than six eligible facilities for one or more categories of service, General Service signs for those services should be used instead. The proposed Support statement explains that Specific Service signs are intended for areas primarily rural in character, and that when services at an interchange are abundant, the character of the area is no longer primarily rural and the need to identify specific types or brands of facilities is generally unnecessary and General Service signs would be more appropriate.

FHWA also proposes to add a Guidance statement recommending that the ATTRACTION Specific Service sign should have no more than four business identification sign panels. FHWA proposes to explain in the Support statement that, because of the considerable variation in the types of attractions found on these signs, and the fact that many do not include well known services or national logos, it is generally more difficult and requires significantly more time to decipher between types of attractions shown on an ATTRACTION sign than for other categories of Specific Service signs where the types of facilities are more uniform.

FHWA also proposes to revise existing Standard P3 to clarify that configurations or arrangements of logo sign panels other than those listed are not allowed.

FHWA proposes to add a new Guidance and a new Option statement recommending that if a service is no longer available from an interchange or intersection, then the legend displaying the service type and direction information should be removed, or may only be covered if there is indication that this service may become available in the near future. This is proposed so that the road user does not misinterpret the sign as indicating that this type of service is still available, similar to the message on a General Service sign.

Finally, FHWA proposes to add a new Figure 2J–1 to illustrate an example of General Service Signs in Conjunction with Specific Service Signs.

286. In Section 2J.03 Logos and Business Identification Sign Panels, FHWA proposes to add a Guidance statement recommending that graphic or trademarked logos used on a logo sign panel should be consistent with the on-premise business identification signs at the location of the business that are visible from the roadway. FHWA proposes this recommendation to provide consistency between the logo sign panel and the signing on the business and accommodate driver expectancy and positive guidance.

FHWA also proposes to delete the Option allowing the border to be omitted where business identification symbols or trademarks are used alone for a logo. FHWA proposes this change to ensure consistent apparent size and visibility of the individual logos.

FHWA also proposes to revise the Standard regarding supplemental messages on logo sign panels to prohibit specifically additional amenities or products unrelated to the service category because those items are considered promotional advertising. FHWA proposes this revision to clarify the existing provisions, which do not allow for such messages.

FHWA also proposes to add a new Standard explicitly prohibiting the display of messages related to the promotion or availability of logo space on Specific Service signs.

Further, FHWA proposes to add an Option to clarify that supplemental messages identifying an alternative fuel available may be added only to the business identification sign panels on the GAS Specific Services sign for a gas facility that provides that alternative fuel in addition to, rather than in lieu of, gasoline. FHWA proposes this change as a clarification of the Option provision allowing supplemental messages for essential motorist information and to accommodate driver expectancy of the nature of the services displayed.

FHWA also proposes to revise the Guidance provision regarding the legend and background colors of the supplemental messages, recommending they be a black legend on a yellow background for that portion of the business identification sign panel. FHWA proposes this change to make it easier for motorists to recognize supplemental information that is critical to their decision making.

FHWA also proposes to delete the Option and Standard for the alternative circular RV ACCESS supplemental message to standardize the RV ACCESS supplemental message for consistency.

Finally, FHWA proposes to revise the Standard regarding business identification sign panel displays to prohibit a panel from displaying more than one name or identification logo/trademark for the same business and to prohibit marketing slogans. This Standard also does not allow a sign panel to be used to display messages related to the promotion or availability of adding a business identification sign panel. FHWA proposes this change because promotional advertising is not allowed on traffic control devices.

287. In Section 2J.06 Signs at Interchanges, FHWA proposes a revision to the Standard indicating that Specific Service signs shall not be used at freeway-to-freeway interchanges, except at ramps that also provide access to a conventional road within that interchange. FHWA proposes this to ensure drivers are not confused by indicating a service is available on the freeway itself.

To complement the existing Guidance providing recommended minimum spacing between Specific Service ramp signs, FHWA also proposes recommended minimum spacing between Specific Service ramp signs and other signs along the ramp. FHWA proposes this change to ensure that adequate spacing between critical destination, warning, and regulatory signs along the ramp is maintained.

Finally, FHWA proposes to add a new Figure 2J–6 to illustrate an example of Specific Services Signing for a Conventional Road Accessed within a Freeway-to-Freeway Interchange.

288. In Section 2J.07 Single-Exit Interchanges, FHWA proposes to revise Standard P2 to clarify that the provision applies only to those ramps that allow a traffic to turn in either direction of the crossroad. FHWA proposes this clarification to provide greater flexibility to agencies by not requiring the ramp signs when the ramp requires all traffic to turn in one direction of the crossroad, resulting in cost savings to agencies and participating businesses.

FHWA proposes to change the Guidance statement to an Option statement to allow, rather than recommend that Specific Service ramp signs display distances to a facility when not visible from the ramp intersection. FHWA proposes this change to provide agencies greater flexibility in determining whether to display the distance on Specific Service ramp signs.

FHWA also proposes to add a Guidance statement that recommends distances of less than ¼ mile, when displayed, be displayed to the nearest 1/10 mile.

Finally, FHWA proposes to delete the Option allowing the use of an exit number plaque on Specific Service signs in advance of an interchange, because the standardized sign already contains the exit number.

289. FHWA proposes to add a new section numbered and titled, ''Section 2J.09 Collector-Distributor Roadways for Successive Interchanges,'' to include Support, Guidance, and Standard statements regarding signing for a collector-distributor roadway that provides access to multiple interchanges. This proposal includes requirements and recommendation on the number and location of signs based on the number of service facilities available at the multiple interchanges. FHWA proposes this new Section to address the application of mainline Specific Service signing when more than one interchange is accessed from the collector-distributor roadway.

FHWA proposes to add a new Figure 2J–7 to illustrate an example of Specific Services Signing from Collector-Distributor Road.

290. In Section 2J.11 (existing Section 2J.10) Signs at Intersections, FHWA proposes to delete Standard P1 that requires that the specific service information be incorporated into the tourist-oriented directional signs at intersections on conventional roads or expressways when both tourist-oriented directional signs and Specific Service signs are needed. FHWA proposes removing this requirement to provide agencies the flexibility to provide continuity of information on these sign types as may be expected by road users. FHWA also proposes to add Guidance recommending that sufficient space be provided between these different types of signs used at the same intersection so that the road user is not overloaded with information, and a requirement that if sufficient space is not available to add these signs to the other guide, warning, and regulatory signs that either or both of these service sign types shall not be used.

FHWA also proposes to revise the Guidance to remind users that the use of Specific Service signs in non-rural or conventional roadways is subject to an engineering study in compliance with Section 2J.01.

291. In renumbered Section 2J.12 Signing Policy, FHWA proposes to change to a Standard the recommendation that each highway agency that elects to use Specific Service signs establish a general signing policy and add a requirement for a Statewide policy on the eligibility of service providers. FHWA proposes this change to ensure that States have a policy on eligible businesses for their Specific Service sign program that provides businesses equitable and consistent qualifications for signs, thereby meeting road user expectations while maintaining the recommendations on minimum sign policy criteria to be considered.

Discussion of Proposed Amendments to Chapter 2K Tourist-Oriented Directional Signs

292. In Section 2K.01 Purpose and Application, FHWA proposes to revise the requirement in Standard P4 to clarify that tourist-oriented directional signs shall be limited to use on rural highways. FHWA also proposes to change the terminology from ''rural conventional roads'' to ''rural highways'' to match that used for such facilities as provided in Section 1C.02 for clarity.

FHWA also proposes to delete the requirement in Standard P5 that the specific service information be incorporated into the tourist-oriented directional signs at intersections on conventional roads or expressways when both tourist-oriented directional signs and Specific Service signs are needed. This is proposed for consistency with the removal of the same requirement in Section 2J.11 (existing Section 2J.10).

293. In Section 2K.02 Design, FHWA proposes to add a new Standard requiring recreational and cultural interest area symbols to be white on a brown background. In addition, business identification sign panels shall not exceed 24 inches in width and 15 inches in height. FHWA proposes these requirements to comply with sign colors as required in Chapter 2A and ensure the business identification sign panels are proportional in size with a tourist-oriented sign.

294. In Section 2K.04 Arrangement and Size of Signs, FHWA proposes to change the Guidance regarding the maximum number of signs installed in each assembly from four to three to be consistent with guidance provided in Section 2E.10 that no more than two destination names or street names should be displayed on any Advance Guide sign or Exit Direction sign, and consistency with research completed by the Quebec Ministry of Transport [50] that

[50] The research report can be viewed at the following internet website: *http://conf.tac-atc.ca/english/resourcecentre/readingroom/conference/*

found road users cannot adequately process the information when more than three destination panels are present in a sign assembly.

295. In Section 2L.01 Description of Changeable Message Signs, FHWA proposes to add a paragraph to the Support statement to clarify that Changeable Message Signs (CMS) are traffic control devices, and therefore fundamental principles for the design and application apply, regardless of the type of message. The statement further explains that Chapter 2L is not a stand-alone chapter and criteria and use of engineering processes in other areas of the MUTCD also apply to CMS.

FHWA proposes to relocate and revise Standard P3 to Section 2L.02, because this language applies to the applications of CMS and not the description of them.

FHWA proposes to add a new Standard prohibiting information other than inventory or maintenance-related information from being displayed on the front or back of a CMS or portable CMS. This prohibition also includes names or logos of the manufacturer either in the message display or on the exterior housing. FHWA proposes this change to ensure the traffic control messages displayed on these signs are not compromised by other miscellaneous or promotional information, consistent with the provisions for all traffic control devices.

296. In Section 2L.02 Applications of Changeable Message Signs, FHWA proposes to relocate and revise Standard P3 from Section 2L.01 because this language applies to the applications of CMS and not the description of them. As part of the revisions, FHWA proposes to clarify that CMS are to display only information as provided for in this chapter and other types of messages not related to traffic control and not provided for in this chapter shall not be displayed on CMS. FHWA proposes this additional language to promote uniformity in the use of CMS and to discourage the use CMS to display messages not provided for in the MUTCD, ensuring that the CMS adhere to the basic principles of an effective traffic control device that are stated in the existing provisions of Part 1.

FHWA also proposes to change existing Option P2 to a Guidance and move the statement earlier in this section to clarify the types of messages to be used on CMS in support of the proposed Standard relocated from Section 2L.01.

FHWA also proposes to add a new Guidance statement recommending that CMS not be used in place of static guide sign messages except for blank-out type signs used to display regulatory, warning, and guidance information that routinely reoccurs but only on a part-time basis. In addition, only elements of a sign that are subject to change should be in an electronic display. FHWA proposes these changes to help ensure consistency in sign design by controlling the potential variability of information that should not change on a sign.

In addition, FHWA proposes to delete Support Item D, messages pertaining to control at crossing situations, from the list of types of messages for which CMS are applicable. FHWA proposes this change, because ''control at crossings'' is not well understood and such messages would be covered under the other more general categories within the list, such as ''Warning situations'' or ''Traffic regulations.''

FHWA proposes to change existing Guidance P3 to a Standard to require that agencies that have permanently installed or positioned CMS have a policy regarding their use and the display of all types of messages used on CMS. Such policies shall define the types of messages that would be allowed, the priority of messages, the syntax of messages, the timing of messages, and other important messaging elements to ensure messages displayed meet the basic principles that govern the design and use of traffic control devices in general and traffic signs in particular as provided for in the MUTCD. In concert with this change, FHWA proposes that State and local agencies that use CMS that are not permanently installed or positioned should develop and establish a similar policy. FHWA proposes these changes in order to ensure urgent and real-time traffic operational and safety messages developed to address varying roadway and traffic conditions are easily understood, timely, and relevant.

FHWA proposes to include recommendations specific to the display of AMBER alerts, including limiting the length of messages, and details, such as description of persons, vehicles or license plate numbers. In addition, FHWA proposes to add a new Standard paragraph prohibiting other ''alert'' messages that are not related to traffic or travel conditions that are not otherwise permitted in P2. FHWA proposes this to emphasize that AMBER alert messages are a result of a statutory requirement and are the only ''alert'' exception to the statute that requires traffic control devices to be related to traffic control.

FHWA also proposes to revise Support P4 to clarify examples of acceptable traffic safety campaign supporting and transportation-related messages.

FHWA also proposes to add new Guidance and Standard paragraphs regarding the appropriate and allowable use of traffic safety campaign messages on CMS displays. FHWA proposes this new language to clarify that safety and transportation-related messages should be clear and direct, and meaningful to the road user on the roadway that the message is displayed. FHWA recommends that messages with obscure meaning, references to popular culture, that are intended to be humorous, or otherwise use nonstandard syntax, not be displayed because they can be misunderstood or understood only by a limited segment of road users and, therefore, degrade the overall effectiveness of the sign as an official traffic control device. FHWA proposes in the Standard that only traffic safety campaign messages that are part of an active, coordinated safety campaign that uses other media forms as its primary means of outreach be displayed on CMS. Based on the widely varying views that have been expressed on the topic of uses of CMS and message content, including the use of unconventional syntax and humor, FHWA requests that commenters provide sufficient detail and explanation of how their position would maintain the uniformity and effectiveness of CMS for their intended purpose of displaying real-time traffic regulatory, warning, or guidance information. FHWA requests that commenters address, in particular, the use of CMS for messages outside the scope of traffic-related messages, such as those that are intended only to modify driver behavior, the frequency and extent of use for this purpose, and its overall effect on the efficacy of traffic messages when displayed. Specific references should be made to the proposed MUTCD text and the explanation provided in this document. In addition, FHWA requests that commenters provide supporting objective and empirical data, such as those from human factors evaluations, engineering studies, and similar nonsubjective assessments.

FHWA also proposes Support, Standard, and Guidance statements regarding the use of messages related to homeland security and emergencies that affect traffic patterns, movement, or present other situations that are atypical. FHWA proposes these statements to provide provisions for messaging on CMS for such events

conf2010/docs/j4/audet.pdf.

Proposed Amendments to Chapter 2L Changeable Message Signs

while maintain the integrity of and respect for CMS as a traffic control device.

FHWA also proposes to add Guidance that safety campaigns using CMS should include coordinated enforcement efforts when penalties or enforcement warnings are part of the CMS message displayed to road users. FHWA proposes this to maintain the credibility of these signs and improve safety.

297. In Section 2L.03 Legibility and Visibility of Changeable Message Signs, FHWA proposes to add a Guidance statement specifying that changeable message regulatory and warning signs displayed individually or as part of the legend of a larger sign should conform to the minimum size requirements as the static versions of those signs. FHWA also proposes to add a Figure illustrating an example. FHWA proposes this change to ensure that all components of a sign legend's legibility are maintained for all road users.

298. FHWA proposes to change the title of existing Section 2L.04 to ''Design Characteristics of Messages,'' to describe better the content of the section.

FHWA proposes to add a new Standard paragraph requiring portable CMS used as an arrow board with flashing or sequential display for a lane closure to conform with provisions in Section 6F.61. FHWA proposes this change for consistency of device operation used for the same application, because a CMS used in this manner is operating as an arrow board, which is allowed to have dynamic display.

FHWA proposes to add a new Standard paragraph requiring all message displays on CMS, whether for regulatory, warning, or guidance information on traffic operations, or for other allowable message types as defined in the section, follow the same design and display principles found in the MUTCD used for other traffic control signs, except as provided elsewhere in this chapter. FHWA proposes this Standard to promote uniformity in the display of CMS and maintaining its effectiveness as a traffic control device.

FHWA also proposes to provide Guidance that warning beacons should not be used on CMS for the purpose of drawing attention to certain types of messages over others, but instead should be limited to those messages that are critical to real-time conditions on a more frequent basis. FHWA proposes this provision to ensure that CMS maintain the same level of respect of road users expected of all traffic control devices at all times, regardless of message being displayed.

FHWA also proposes to revise Guidance P6 regarding CMS word message lettering heights to clarify what types of CMS the letter heights apply to, and to clarify that the provisions do not apply to blank-out signs.

FHWA also proposes to change existing Guidance P15 regarding legend color when there is a black background to a Standard for sign consistency since changeable message signs can accommodate multiple colors.

FHWA also proposes to delete the last sentence of Support P17 regarding newer technologies of CMS and add reference to a new figure that provides a comparative example of the effects of varying pixel densities.

FHWA also proposes to revise Guidance P18 to recommend where an LED matrix is used to form the changeable legend, signs with pixel spacing greater than 20mm should display only word legends, and no symbols or route shields. FHWA proposes this change based on a review of manufacturer products and visual inspections of the appearance of legends on these types of signs, which indicate that these signs do not provide adequate resolution to display symbols with sufficient clarity for road user instant recognition and therefore should only be use for word messages.

299. In Section 2L.05 Message Length and Units of Information, FHWA proposes to revise Standard P4 to clarify that when a CMS contains more than one message phase, each phase shall be communicated so that the road user may understand each phase by itself regardless of the sequence in which it is read, and the message shall have the same meaning regardless of the sequence it is read. FHWA proposes this change, because it is important that road users be able to understand the intent of the message if they can only read one of the phases or when the phases are read in different order.

FHWA proposes to delete Standard P5 since the text is already covered in Section 2L.04.

FHWA proposes to change Guidance P8 to an Option to clarify that adding additional CMS is an option available to agencies for displaying longer messages that would require more than two phases, which is the most number of phases allowed on a CMS.

FHWA proposes to change and relocate Guidance P9 regarding abbreviations within a CMS message to a Standard. FHWA proposes this change because the provisions contained in the referenced Section are Standards.

FHWA also proposes to add a Support paragraph that provides reference to two proposed new tables that list examples of message construction for CMS. FHWA proposes these tables to ensure that message recognition, comprehension, and effectiveness is maintained for all road users.

300. FHWA proposes a new section numbered and titled, ''Section 2L.06 Frequency of Display of Messages.'' In this new section, FHWA proposes Support and Guidance paragraphs to address the potential for habituation to changeable message signs due to excessive use for the display of messages that are not related to real-time traffic conditions.

301. FHWA proposes a new Section 2L.07 titled, ''Travel Time Messages.'' In this new Section, FHWA proposes a Guidance paragraph limiting the number of travel times displayed to one when destination and distance are used as the point of reference, also proposing an Option to display up to two travel times when reference-location-based exit numbering is used as the point of reference in place of destination and distance. FHWA proposes this new Section based on the established principles regarding informational load and the road user's ability to process information while operating a vehicle in traffic.

302. FHWA proposes a new section numbered and titled, ''Section 2L.08 Traffic Safety Campaign Messages.'' In this new section, FHWA proposes Support, Guidance, and Standard paragraphs describing the display of traffic safety campaign messages as an ancillary use of CMS. FHWA proposes a Guidance paragraph recommending that traffic safety campaign messages be coordinated with the national safety campaigns on NHTSA's communications calendar. Lastly, FHWA proposes a Standard paragraph that requires traffic control messages to have primacy over traffic safety campaign messages. FHWA proposes this new Section to ensure that CMS be used only for their intended purpose and that traffic-related messages take precedence over other types of allowable messages.

303. In Section 2L.09 (existing Section 2L.06) retitled, ''Location of Permanent Changeable Message Signs,'' FHWA proposes to add a Support paragraph that provides reference to factors that should be considered when deciding on proposed locations for CMS. FHWA proposes this change as proper location of signs helps ensure that message recognition, comprehension, and sufficient reaction time is maintained for all road users.

Discussion of Proposed Amendments to Chapter 2M Recreational and Cultural Interest Area Signs

304. In Section 2M.02 Application of Recreational and Cultural Interest Area Signs, FHWA proposes to add a new Standard paragraph requiring that standard symbols prescribed outside of this section within the Manual that are used on a roadway outside of a recreational and cultural interest area shall use the design and size as prescribed. FHWA proposes this change to clarify existing standards that prohibit the use of alternative symbol signs. The legend and color of the sign shall be as prescribed for the standard symbol sign. In concert with that change, FHWA proposes to add a table, referenced in the Support statement, that indicates which symbols are for use only within recreational and cultural interest area facilities.

305. In Section 2M.04 General Design Requirements for Recreational and Cultural Interest Area Symbol Guide Signs, FHWA proposes to add two new Standard statements requiring that symbols contained in Chapters 2H and 2I used in conjunction with recreational and cultural interest area signing on roadways outside a recreational and cultural interest facility shall have the legend and background color of the symbol sign as prescribed in those respective chapters. FHWA proposes this change as a clarification that the standard colors for General Information and General Service signs are applicable even when located with a recreational or cultural interest area destination and that brown as a sign background color applies only to recreational and cultural interest destinations or activities.

306. In Section 2M.06 Use of Educational Plaques, FHWA proposes to delete the Guidance recommending that the educational plaque remain in place for at least 3 years after the initial installation. FHWA proposes this deletion to provide agencies with greater flexibility and for consistency with similar provisions elsewhere in the MUTCD.

307. In Section 2M.07, retitled, ''Use of Prohibitive Circle and Diagonal for Non-Road Applications,'' FHWA proposes to revise Standard P1 to provide reference to the existing requirements of Chapter 2A to ensure consistency in sign design.

308. In Section 2M.08 Placement of Recreational and Cultural Interest Area Symbol Signs, FHWA proposes to delete Option P3 regarding the placement of the symbol on the Wildlife Viewing Area sign. FHWA proposes this deletion to ensure consistency in sign designs.

309. In Section 2M.09 Destination Guide Signs, FHWA proposes to change the Guidance paragraph regarding the shape and colors of destination guide signs to a Standard and limit the shape of Supplemental Guide signs to rectangular with an Option to use a trapezoidal shape sign on conventional roadways. In concert with this change, FHWA also proposes to add a Standard describing the required shape of the trapezoidal sign when used with a directional arrow. FHWA proposes these changes to eliminate a conflict with existing standards that define the exclusive uses of sign shapes in Chapter 2A and does not result in a new requirement.

310. In Section 2M.10 Memorial or Dedication Signing, FHWA proposes to delete the Option language related to the installation of memorial or dedication signing along the mainline if installation off the main roadway is not practical. FHWA proposes this change because an Option is not needed for deviation from a Guidance paragraph based on engineering judgment and the provisions for locating such signs on the highway are provided in the existing Standard provision.

FHWA also proposes to revise and expand the existing Guidance statement and change an existing Option to Guidance regarding the design of memorial or dedication signs. FHWA also proposes to add a Guidance paragraph referencing Section 2A.03 for locating memorial or dedication signs to ensure adequate visibility of higher priority signs.

Finally, FHWA proposes to add a new Standard prohibiting memorial or dedication signs from displaying a legend that implies that the highway has been officially renamed. FHWA proposes this change to ensure positive guidance, consistency, and minimization of confusion in the information displayed to road users along a particular route.

Discussion of Proposed Amendments to Chapter 2N Emergency Management Signs

311. In Chapter 2N, retitled, ''Emergency Management Signs,'' FHWA proposes to revise the designations of all standard signs to conform to the dual-numbering convention used throughout the rest of the MUTCD. For example, EM–1 would be redesignated EM1–1. This change would result in each Section's title reflecting a revised sign numbering convention.

312. In Section 2N.02, retitled, ''Design and Use of Emergency Management Signs,'' FHWA proposes to revise Standard P2 to clarify that signs normally in place that conflict with Emergency Management signs shall be removed or covered until such time as the Emergency Management signs are no longer necessary. FHWA proposes to expand the Standard to indicate that except for Evacuation Route signs, Emergency Management signs that are no longer necessitated by the emergency shall be promptly removed and signs that normally provide guidance, warning, or regulation that were removed or covered during the emergency shall be promptly displayed again. FHWA proposes these changes to provide clarity in the appropriate use of Emergency Management signs.

FHWA also proposes to change Standard P3 to a Support statement regarding the Federal Government providing guidance to the States as necessitated by changing circumstances because it is outside the scope of the MUTCD to make such a requirement that does not involve traffic control devices.

313. In Section 2N.03, retitled, ''Evacuation Route Signs (EM1 Series),'' FHWA proposes to delete certain design information provided in Standard P1 because the design is standardized and must comply with the existing provisions of Chapter 2A.

FHWA proposes to relocate Option text regarding Advance Turn and Directional Arrow auxiliary plaques to Standard P3. The new Standard text would require that Advance Turn and Directional Arrow auxiliary signs have a white arrow and border on a blue background when used with EM1–2 series signs to provide consistency with similar provisions of Chapter 2D, which requires the colors of auxiliary plaques to be consistent with the route sign in a directional assembly.

FHWA also proposes to delete the Option permitting the use of an approved Emergency Management symbol near the bottom of an Evacuation Route sign because the Civil Defense pictograph is no longer used in emergency management applications.

FHWA also proposes to change the Standard statement to a Guidance statement regarding placement of the Evacuation Route sign in advance of an approved evacuation route.

Finally, FHWA proposes to add a Guidance statement recommending the use of the specific Evacuation Route (EM1–2 series) be limited to areas where different evacuation conditions use different evacuation routes to minimize unnecessary use of additional sign legends and associated auxiliary plaques instead of the general Evacuation Route (EM1–1) sign.

314. In Section 2N.04, retitled, ''Area Closed Sign (EM2–1),'' FHWA proposes to change the Standard to a Guidance to recommend, rather than require, the provisions related to AREA CLOSED sign placement, to provide agencies with flexibility.

315. In Section 2N.05, retitled, ''Traffic Control Point Sign (EM2–2),'' FHWA proposes to change the usage provisions of the first three paragraphs in the Standard statement to Guidance to provide agencies with greater flexibility. FHWA also proposes to delete the Standard describing the design of the TRAFFIC CONTROL POINT sign, because the design is standardized.

Discussion of Proposed Amendments to Part 3—Pavement Markings

Discussion of Proposed Amendments Within Part 3—General

316. FHWA proposes to reorganize Part 3 to improve the continuity and flow of information regarding the application of markings in the MUTCD by relocating various paragraphs and sections throughout the part, dividing long sections into several sections each having a clearly understandable title and function, and creating a new Chapter 3C Crosswalks to compile information across multiple chapters into one location. The proposed reorganization is reflected in the descriptions below.

Discussion of Proposed Amendments Within Chapter 3A

317. In Section 3A.01 (existing Section 3A.02) Standardization of Application, FHWA proposes to relocate existing P2 to Part 1 to make this provision applicable to all traffic control devices. FHWA proposes this change because all traffic control devices, not just markings, should be in place prior to the opening of any new highway or private road open to public travel.

318. In Section 3A.02 (existing Section 3A.04) Materials, FHWA proposes changing existing P2 from Support to Option because the use of clumps or droplets of material is permissible and the statement is more appropriate as an Option.

FHWA also proposes to relocate existing P5 to Section 3G.04 (existing Section 3F.04) because it describes delineator placement.

319. In Section 3A.03 (existing Section 3A.05) Colors, FHWA proposes to clarify that the use of black markings is an Option that can be used to enhance the contrast of markings on a light-colored pavement.

FHWA also proposes to relocate information regarding purple markings to Chapter 3F (existing Chapter 3E) Markings for Toll Plazas and Chapter 3H (existing Chapter 3G) Colored Pavement and retain a reference to those locations.

In addition, FHWA proposes to change existing P7 from Option to Standard since markings that simulate official route signs, when used, shall have the same colors as those used for the signs. FHWA proposes this change to ensure uniformity in the application that aids in recognition of the message.

320. In Section 3A.04 (existing Section 3A.06) Functions, Widths, and Patterns of Longitudinal Pavement Markings, FHWA proposes to add Item E to the list of general functions of longitudinal lines to clarify the functions of dotted lane lines and dotted lines used as a lane line or edge line extensions.

In the list of widths and patterns of longitudinal lines, FHWA proposes to indicate that 6-inch wide lines are to be used for freeways, expressways, and ramps as well as for all other roadways with speed limits greater than 40 mph and that 4- to 6-inch wide lines are to be used for all other roadways. FHWA proposes this change to improve visibility and consistency on ''high speed'' facilities and based on research showing improved machine vision detectability.[51] [52]

FHWA also proposes to change the definition of a wide line to at least 8 inches in width if 4-inch or 5-inch normal lines are used, and at least 10 inches in width if 6-inch normal lines are used. This change is proposed to clarify the definition based on varying practices for ''normal'' width lines and to reduce the impact on agencies that use 6 inch lines as their ''normal'' width.

Also, FHWA proposes to expand the definition for a double line to clarify that the pavement surface must be visible between the lines except when contrast markings are used based on FHWA's Official Ruling No. 3(09)-41(I).

In addition, FHWA proposes to add a new Guidance statement regarding the width of the discernible space separating the parallel lines of a double line so that they can be recognized as a double line rather than two, separate disassociated single lines.

Discussion of Proposed Amendments Within Chapter 3B

321. In Section 3B.01, retitled, ''Yellow Center Line Pavement Markings,'' FHWA proposes revising P6 to specify that reversible lanes and two-way left turn lanes are exceptions to the requirement for two normal solid yellow lines for undivided roadways with four or more lanes. The proposed provisions explicitly state exceptions that are currently implied in existing Section 3B.03.

322. FHWA proposes a new section numbered and titled, ''Section 3B.02 Warrants for Yellow Center Lines'' comprised of existing P9 through P13 from existing Section 3B.01. FHWA proposes this change to make it easier to locate the warrant information.

323. In Section 3B.03 (existing Section 3B.02), retitled, ''No-Passing Zone Pavement Markings,'' FHWA proposes to change the second and third sentences in existing P4 from Standard to Support because they contain design information and not traffic control device requirements and are supported by an NCHRP research report.[53]

FHWA also proposes to change existing P9 from Option to Support because no-passing zone signing information is contained in Part 2.

In addition, FHWA proposes deleting existing P14–P16 since they are redundant with existing provisions contained in Section 3B.12 (existing Section 3B.09).

324. FHWA proposes to separate existing Section 3B.03 into two new sections, titled, ''Section 3B.04 Yellow Pavement Markings for Reversible Lanes'' and ''Section 3J.03 Islands Designated by Pavement Markings'' to separate the content for islands into the chapter devoted to marking and delineation of islands.

325. FHWA proposes a new section numbered and titled, ''Section 3B.05 Pavement Markings for Two-Way Left-Turn Lanes'' containing P3 through P5 from existing Section 3B.03 and P28 through P30 from existing Section 3B.20.

FHWA also proposes to add a new Guidance paragraph to discourage extending two-way left-turn lane markings to intersections and proposes to add a Support statement indicating that two-way left turn lanes can be transitioned to exclusive left turn lanes. FHWA proposes to modify Figure 3B–7 to correspond to the new recommendations. FHWA proposes this

[51] ATSSA Report, ''Evaluation of the Effects of Pavement Marking Width on Detectability by Machine Vision: 4-Inch vs 6-Inch Markings'' 2018 can be viewed at the following internet website: *https://s3.amazonaws.com/media.atssa.com/Communications/Booklet_2018PMForMV4vs6in_FinalReport.pdf.*

[52] NCHRP 20–106(6) Report in Progress ''Road Markings for Machine Vision'' 2019 can be viewed at the following internet website: *https://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=4004.*

[53] NCHRP Report 605, ''Passing Sight Distance Criteria'' 2008, can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_605.pdf.*

change to improve intersection safety by minimizing conflict between corresponding left-turn movements.

326. In Section 3B.06 (existing Section 3B.04), retitled, ''White Lane Line Pavement Markings,'' FHWA proposes to expand existing P25 by changing existing P26 from Option to Guidance to recommend, rather than just allow, solid white lane lines on approaches to intersections to separate adjacent mandatory turn lanes, and to add a recommended use of solid white lane lines at toll collection points to separate toll lanes, payment methods, channelized movements, or obstructions.

FHWA also proposes to add an Option paragraph allowing solid white lane lines to separate contiguous through traffic lanes on an approach to an intersection, to separate through traffic lanes from auxiliary lanes, and on approaches to crosswalks across multi-lane roadways, reflecting a common current practice.

In addition, FHWA proposes to add new Option and Support paragraphs for providing curved transitions where an edge line, channelizing line, or dotted extension line changes direction. FHWA proposes this change based on the recognition that many agencies currently use curved, rather than angular, transitions for changes in direction.

327. FHWA proposes a new section numbered and titled, ''Section 3B.07 White Lane Line Markings for Non-Continuing Lanes'' consisting of P6–P19, and P23 of existing Section 3B.04. FHWA proposes to revise existing Standard P13 to add a new Item C requiring a wide dotted white lane line in advance of freeway route splits with an option lane. FHWA proposes this change to provide consistency with existing requirements for similar situations in which traffic in one of the lanes must depart from the main route. In concert with this change, FHWA proposes to add Drawing E showing an example of a route split with option lane to Figure 3B–10 Examples of Applications of Freeway and Expressway Lane-Drop Markings.

FHWA also proposes to change two Options to Standards requiring dotted white line extensions for deceleration lanes at exit ramps and for acceleration lanes at entrance ramps based on recommendations from the National Committee on Uniform Traffic Control Devices' (NCUTCD) CAV Task Force and NCHRP 20–102(06).[54]

328. In Section 3B.08 (existing Section 3B.05), retitled, ''Channelizing Lines,'' FHWA proposes to change existing P2 from Option to Support because the information about channelizing lines provides general information and does not provide an option.

FHWA also proposes to add two new Standard paragraphs requiring channelizing lines on both sides of the neutral area for bifurcations created from open-road tolling lanes that bypass a conventional toll plaza and on both sides of the neutral area formed at access and egress points to and from a managed-lane facility. FHWA proposes this change to guide road users around the neutral area either to general purpose lanes or the tolling and/or managed lanes.

In addition, FHWA also proposes to modify existing P3 to change ''channelizing lines'' to ''neutral area'' regarding the requirement that other markings in the area be white. In addition, FHWA proposes a new Support listing chevron markings, retroreflective raised pavement markers, and internally illuminated raised pavement markers as items within the neutral area, with section references.

329. In Section 3B.09 (existing Section 3B.06), FHWA proposes to add a Guidance recommending that edge lines on two-lane roadways should be at least 6 inches wide, regardless of the width of the normal line used on the roadway. FHWA proposes to modify existing P2 from Standard to Guidance to recommend against, instead of prohibit, the use of edge line markings through intersections or major driveways. FHWA proposes this change to provide additional practitioner flexibility.

FHWA also proposes to add exceptions for dotted edge line extensions and the part of the intersection with no intersection approach (such as the top of a T-intersection) since these are locations where edge lines are commonly used in practice.

330. In Section 3B.11 (existing Section 3B.08), retitled, ''Application of Pavement Markings Through Intersections or Interchanges,'' FHWA proposes to change part of P1 requiring that pavement markings extended into or continued through an intersection or interchange be the same width from Standard to Guidance. FHWA proposes this change because the combination of the provision with the existing Option in P2 is more appropriate as Guidance and the application can be determined using engineering judgment.

FHWA also proposes to relocate to this section an existing Standard requiring that extensions of center lines through intersections, if used, shall be dotted lines. This Standard is an existing requirement contained only in a Note on existing Figure 3B–13 (D) Examples of Lane Extensions through Intersections. This Note is proposed for deletion from the figure to avoid duplication.

FHWA proposes to relocate P2 from Section 3B.09 (existing Section 3B.06) and change from Standard to Guidance for restricting the use of edge line extensions through intersections. FHWA also proposes to relocate and revise P5 from Section 3B.09 (existing Section 3B.06) for maintaining edge lines at driveways that do not meet the definition of an intersection. FHWA proposes the relocations to consolidate provisions regarding markings through intersections.

Also, FHWA proposes to modify Standard P6 to provide an exception to allow solid lines to extend edge lines through intersections or major driveway when there is no intersecting approach. FHWA proposes this change based on feedback from designers so markings will send intended effect and not communicate a conflict where none exists, and to provide additional user flexibility for situations like the top of a T-intersection when the prohibition of solid lines through the intersection is not applicable.

In addition, FHWA proposes to add a new Guidance paragraph recommending that solid lines not be used to extend edge lines into or through intersections or major driveways except through that part of the intersection with no intersecting approach (such as at the top of a T-intersection). FHWA proposes this change to provide drivers a visual cue of side street traffic.

Further, FHWA proposes to delete existing Guidance P8 because the information is related to design and not traffic control device uniformity.

331. In Section 3B.12 (existing Section 3B.09), retitled, ''Lane-Reduction Transitions,'' FHWA proposes to revise the Standard P3 to state the criteria for lane-reduction transitions more clearly, rather than referring to the Figure, which contains elements that are required, recommended, and optional.

FHWA also proposes to add a new Guidance paragraph and list for recommended markings for lane-reduction transitions, comprising information throughout the Section and contained in existing Figure 3B–14.

[54] NCHRP 20–106(6) Report in Progress ''Road Markings for Machine Vision'' 2019 can be viewed at the following internet website: *https://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=4004.*

FHWA also proposes to delete all the notes in Figure 3B–14 and retitle it to ''Examples of Applications of Lane Reduction Transitions.''

In addition, FHWA proposes to add a new Option paragraph permitting the minimum taper length to be less than 100 feet on roadways where operating speed is less than 25 mph based on common practice and to provide practitioner flexibility on low speed roadways.

332. In Section 3B.13 (existing Section 3B.10), Approach Markings for Obstructions, FHWA proposes to add a new Option paragraph allowing the minimum taper length to be less than 100 feet on site roadways open to public travel where the operating speed is less than 25 mph based on engineering judgment to provide practitioner flexibility on low speed roadways.

333. In Section 3B.17 (existing Section 3B.14) Raised Pavement Markers Substituting for Pavement Markings, FHWA proposes to upgrade existing Guidance P8 from existing Section 3B.11 to a Standard and relocate it to Section 3B.17, to require that non-retroreflective raised pavement markers shall not be used alone, without supplemental retroreflective or internally illuminated markers, as a substitute for other types of pavement markings due to lack of retroreflectivity and difficulty for machine vision systems.

334. FHWA proposes to delete existing Section 3B.15 Transverse Markings because transverse markings are already defined in Part 1 and the section does not provide information related to the application or operation of traffic control devices.

335. In Section 3B.18 (existing Section 3B.23), retitled, ''Curb Markings for Parking Regulations,'' FHWA proposes to change P2 related to curb markings for parking regulations from Standard to Guidance to allow engineering judgment to determine if signs should be provided based on site conditions.

FHWA also proposes to change P6 from Support to Guidance because yellow and white curb markings used frequently for curb delineation and visibility of parking regulations should be established through the installation of standard signs and the provision is more appropriate as a recommendation.

336. In Section 3B.19 (existing Section 3B.16), Stop and Yield Lines, FHWA proposes to change existing P3 from Option to Standard to require, rather than just allow, a Yield (R1–2) sign, Yield Here to Pedestrians (R1–5 or R1–5a), or Bikes Yield to Pedestrians (R9–6) sign, or some other traffic control device that requires vehicles to Yield when installing a yield line. This change clarifies ambiguity in the previous Option statement that the pavement marking cannot be installed without an enforceable regulatory sign.

FHWA also proposes a new Support paragraph to provide a reference to Section 9B.12 regarding a sign signing applicable to bicycles also subject to a yielding requirement at a crosswalk.

337. In Section 3B.20, retitled, ''Word, Symbol, and Arrow Pavement Markings—General,'' FHWA proposes to add a new Option paragraph allowing pavement words, symbols, and arrows to be reduced in size no less than ¼ size, but in relative proportion to the associated full-size word, symbol, or arrow on roadways where the operating speed is less than 25 mph to provide practitioner flexibility on low speed roadways.

FHWA also proposes to delete existing Standard P3 because it not needed to explain that word, symbol, and arrow markings shall be white, except as otherwise provided.

338. In new Section 3B.21 titled, ''Word Pavement Markings'' that is comprised of P5, P7, P14, P15, P26, P32, and P33 from existing Section 3B.20, FHWA proposes to delete the existing Standard P14 that allows the word STOP to be used in conjunction with a stop line but does not require a STOP sign. FHWA proposes this change because the MUTCD explicitly does not apply to driving aisles within parking areas per Section 1A, and a STOP sign is required with a stop line for all situations that are covered by the MUTCD.

Also, FHWA proposes to revise existing Guidance P5 to note that the bicycle detector symbol is not intended to be 6 feet or more in height.

In addition, FHWA proposes to delete the second sentence of existing paragraph 26 since this is related to traffic control design and not uniformity of the application.

FHWA also proposes to add a new Option paragraph allowing the ONLY word marking to be used or to supplement a preferential lane work or symbol marking based on common practices.

339. In new Section 3B.22 titled, ''Symbol Pavement Markings'' that is comprised of P12, P16, P17, P18, and P19 from existing Section 3B.20, FHWA proposes two Guidance statements related to the use of route shield markings in option lanes based on a TTI study.[55]

FHWA also proposes to add a new Option paragraph allowing the use of a pedestrian symbol pavement marking that may be used on portions of facilities such as shared-use paths that are reserved exclusively for pedestrian use.

340. In Section 3B.25 (existing Section 3B.24), retitled, ''Chevron and Diagonal Markings,'' FHWA proposes to delete the term ''crosshatch'' and instead just use the words ''chevron'' and ''diagonal'' to describe the marking better and provide more situations where each can be used.

FHWA also proposes to change the existing Option paragraph into separate Guidance paragraphs for chevron and diagonal markings to recommend the intended applications for each. FHWA based this on the NCUTCD CAV Task Force and Automated Driving Systems Task Force joint recommendations that were approved by the Markings Technical Committee in June 2019.

In addition, FHWA proposes to add a new Guidance paragraph recommending white markings for diagonal markings used in on-street no-parking zones and a new Option to allow lines used for diagonal markings in no-parking zones to be 4 inches wide.

Further, FHWA proposes to modify a Guidance paragraph to recommend that the lines used for chevron and diagonal markings to be at least 4 inches wide on roadways where the operating speed is less than 25 mph to provide practitioner flexibility on low speed roadways.

341. In Section 3B.27 (existing Section 3B.19) Parking Space Markings, FHWA proposes to revise the Standard by adding the phrase ''on-street'' to describe the parking space markings that shall be white. FHWA proposes this change to clarify that off-street parking space markings, such as those used in shopping center parking lots, are not governed by the MUTCD as provided in Item C of Paragraph 3 in the existing Introduction.

342. FHWA proposes to delete existing Section 3B.21 Speed Measurement Markings because they are not traffic control devices. In concert with this change, FHWA proposes to remove the optional speed measurement marking shown on Figure 3B–10, ''Examples of Applications of Freeway and Expressway Lane-Drop Markings.''

343. In Section 3B.28 (existing Section 3B.22) Speed Reduction Markings, FHWA proposes to change the second sentence in P3 from

[55] TTI Report FHWA/TX–10/0–5890–1 ''Guidelines for the Use of Pavement Marking Symbols at Freeway Interchanges'' 2009, can be viewed at the following internet website: *https://static.tti.tamu.edu/tti.tamu.edu/documents/0-5890-1.pdf.*

Standard to Guidance regarding longitudinal spacing between speed reduction markings. FHWA proposes this change to allow engineering judgment to determine the longitudinal pattern of the markings based on the site conditions.

344. In Section 3B.29 (existing Section 3B.25) Speed Hump Markings, FHWA proposes to add a new Option paragraph allowing discontinuing center line markings, lane line markings, and edge line markings on the profile of the speed hump.

FHWA also proposes to add a new Standard paragraph requiring installing crosswalk markings when a speed hump specifically incorporates a crossing movement for pedestrians, bicycles, or equestrians.

345. FHWA proposes adding a new section numbered and titled, ''Section 3B.31 Markings for Diamond Interchange with Transposed Alignment Crossroad'' which contains Standards, Guidance, and Support for markings used at these types of interchanges. FHWA proposes to add this information based on an FHWA research study [56] that has shown that there is potential for wrong-way movements, especially at the crossing points, at these unconventional interchanges. The new information contains proposed Standards for edge lines, lane use arrows, and wrong-way arrows as well as a restriction for flush median islands. The section also contains proposed Guidance recommending edge and lane line extensions through the crossing points and a Support paragraph referencing crosswalk and pedestrian movement information in Section 3C.11 and 9G.05. FHWA also proposes to add Figure 3B–29 to illustrate an example of markings at this type of interchange.

Discussion of Proposed Amendments Within New Chapter 3C

346. In Section 3C.01 (existing Section 3B.18), retitled, ''General,'' FHWA proposes to change a Support statement to a Standard paragraph requiring crosswalk markings at non-intersection crossing locations to improve safety for pedestrians at locations where vehicles may not expect pedestrian crossings. The previous Support required crosswalk markings to mark the crosswalk legally at non-intersection locations. FHWA proposes to revise this Support into a Standard to identify clearly the requirements of crosswalk markings at non-intersection locations.

FHWA also proposes to add a new Standard paragraph requiring that paving materials used to function as transverse lines to establish a marked crosswalk shall be white and retroreflective. FHWA also proposes that the paving materials be required to use a white additive in the mixture to produce a white surface. FHWA proposes this change to improve target value and visibility of the crosswalk for pedestrian safety and to fulfill the retroreflectivity requirement for traffic control devices, when paving materials, instead of pavement markings, are used to define the marked crosswalk.

347. FHWA proposes to add a new section numbered and titled, ''Section 3C.02 Applications of Crosswalk Markings,'' containing P7–P10 of existing Section 3B.18. FHWA proposes to modify Guidance P8 regarding criteria for engineering studies for crosswalk across uncontrolled roadways to include pedestrian ages, and to change ''posted or statutory speed limit'' to ''speed limit or the 85th-percentile speed.''

FHWA also proposes to revise Guidance P9 to discourage the installation of crosswalks across uncontrolled roadways at locations with posted speed limits 40 mph or greater and locations where there is a crash threat due to multiple lane crossings or limited sight distance. FHWA proposes this change to reduce pedestrian crash potential and based on an FHWA study.[57]

348. FHWA proposes to add a new section numbered and titled, ''Section 3C.03 Design of Crosswalk Markings,'' containing P4, P11, P12, and P17 of existing Section 3B.18. FHWA also proposes to add new Standard paragraphs requiring a minimum width of 6 feet for marked crosswalks and a minimum width of 8 feet for crosswalks at non-intersections and where the posted speed limit is 40 mph or greater. FHWA proposes this change to improve the visibility and recognition of pedestrian crosswalks.

FHWA also proposes to modify Guidance P11 to recommend using high-visibility crosswalk markings at marked crosswalks at non-intersection locations to reduce pedestrian crash potential. FHWA further proposes to reduce the second Guidance sentence in P11 to an Option regarding improving visibility by parking prohibitions on the approach to marked crosswalks.

In addition, FHWA proposes changing P17 from a Guidance to Standard requiring, rather than recommending, crosswalk markings to be located so that the curb ramps are within the extension of the crosswalk markings, where curb ramps are provided. FHWA proposes this change to accommodate users with visual disabilities better.

Lastly, FHWA proposes to add a new Guidance paragraph recommending that transverse crosswalk markings extend the full width of the pavement or edge of intersecting crosswalk to discourage diagonal crossing between crosswalks. FHWA proposes these changes to provide consistency in crosswalk applications.

349. FHWA proposes to add a new section numbered and titled, ''Section 3C.04 Basic Crosswalks,'' with new Support and Option paragraphs to provide information about basic crosswalks, which are comprised of two parallel transverse lines. FHWA also proposes to provide a new Figure 3C–1 illustrating basic crosswalks.

350. FHWA proposes to add a new section numbered and titled, ''Section 3C.05 High-Visibility Crosswalks,'' to provide Support, Option, Standard, and Guidance paragraphs about the various types of high-visibility crosswalks including longitudinal bar, perpendicular, and double-paired designs. FHWA proposes this section to provide agencies with three standard alternatives to improve crosswalk visibility when desired consistent with an FHWA research study.[58] FHWA also proposes to illustrate these crosswalk types in Figure 3C–2.

351. FHWA proposes to add new sections numbered and titled, ''Section 3C.06 Longitudinal Bar Crosswalks,'' ''Section 3C.07 Perpendicular Crosswalks,'' and ''Section 3C.08 Longitudinal Bar Pair Crosswalks,'' to provide provisions related to the design and spacing for the three new types of high-visibility crosswalks.

352. FHWA proposes to create a new Section numbered and titled, ''Section 3C.10 Crosswalks for Exclusive Pedestrian Phases that Permit Diagonal Crossings,'' for crosswalks for exclusive pedestrian phases that permit diagonal crossing, containing P16 of existing Section 3B.18. FHWA also proposes to add a new Guidance paragraph recommending that the segments of the crosswalk markings that facilitate the

[56] ''Alternative Intersections/Interchanges: Informational Report (AIIR)'' FHWA–HRT–06–090, April 2009, can be viewed at the following internet website: *http://www.fhwa.dot.gov/publications/research/safety/09060/.*

[57] FHWA Report FHWA–HRT–04–100 ''Safety Effects of Marked versus Unmarked Crosswalks at Uncontrolled Locations'' 2005 can be viewed at the following internet website: *https://www.fhwa.dot.gov/publications/research/safety/04100/.*

[58] ''Crosswalk Marking Field Visibility Study'' FHWA–HRT–10–068, November 2010, can be viewed at the following internet website: *http://www.fhwa.dot.gov/publications/research/safety/pedbike/10068/index.cfm.*

diagonal crossing should not use high-visibility crosswalk markings since diagonal crossings are typically permitted only when all vehicular movements are stopped at a signalized intersection and because high-visibility diagonal markings through the intersection could be confusing to turning vehicles.

353. FHWA proposes to add a new section numbered and titled, ''Section 3C.11 Crosswalks at Diamond Interchanges with a Transposed Alignment Crossroad'' to provide Support, Guidance, and Option paragraphs regarding pedestrian movements through these unconventional interchanges. FHWA proposes this new section based on information contained in a research study [59] that found that pedestrian movements require special considerations to avoid violating driver expectancy or disorienting pedestrians. FHWA proposes to add a new Figure 3C–3 to illustrate locations of pedestrian crossings at diamond interchanges with a transposed alignment crossroad.

Discussion of Proposed Amendments Within Chapter 3D (Existing Chapter 3C)

354. FHWA proposes to retitle Chapter 3D (existing Chapter 3C) to ''Circular Intersection Markings'' because the provisions apply to a variety of circular intersections, not just roundabouts.

355. In Section 3D.01 (existing Section 3C.01) General, FHWA proposes to modify Guidance P3 to recommend that markings should supplement signs to help road users select the proper lane in the approach to the circular roadway to avoid changing lanes through the departure of the circular roadway based on an NCHRP Report.[60]

356. In Section 3D.02 (existing Section 3C.02) White Lane Line Pavement Markings for Roundabouts, FHWA proposes two new Option paragraphs related to longer lane lines and striped buffer spaces to help vehicles navigate the roundabout.

357. In Section 3D.04 (existing Section 3C.04) Yield Lines for Roundabouts, FHWA proposes to upgrade part of existing Option P1 to a Standard to require that a yield line be used on the entries before entering multi-line roundabouts. For single-lane roundabouts, the Option remains to allow a yield line on the entry before entering the roundabout.

358. FHWA proposes to add a new section numbered and titled, ''Section 3D.06 Arrow Pavement Markings for Roundabouts'' containing revisions to P1 and P4–P6 from existing Section 3C.06. FHWA proposes new Guidance paragraphs to recommend not using lane-use arrows on single-lane approaches to circular intersections. FHWA also proposes to add Guidance for two-lane approaches to circular intersections and for approaches with dual left or dual right turns. FHWA proposes these changes to improve consistency in the application of lane-use arrows at circular intersections based on an NCHRP study.[61]

In addition, FHWA proposes to add a new Standard paragraph prohibiting lane-use arrow pavement markings between a crosswalk and wide dotted line(s) entering the circular roadway. FHWA proposes this change because road users need adequate advance notification of the permitted movements within each lane and this area of the approach is often obscured by stopped vehicles.

Further, FHWA proposes to change the Option P6 to Guidance to recommend, rather than just allow, lane-use arrows on the roundabout approaches to match the type of arrows (normal or elongated) used on the corresponding regulatory lane-use signs, to improve consistency between signing and markings for better driver comprehension.

Discussion of Proposed Amendments Within Chapter 3E (Existing Chapter 3D)

359. FHWA proposes to revise the title of Chapter 3E (existing Chapter 3D) to ''Preferential Lane Markings for Motor Vehicles'' to exclude bicycles and move all bicycle lane information to Part 9.

360. In Section 3E.02 (existing Section 3D.02), retitled, ''Longitudinal Markings,'' FHWA proposes to revise P3 to reference Table 3E–1 (existing Table 3D–1), create a new Table 3E–2 Standard Edge and Center Line Markings for Counter-Flow Preferential Lanes, revise P9 and P10 to reference new Table 3E–2, and remove redundant text. FHWA proposes to make these changes to clarify the preferential lane marking requirements and improve readability.

FHWA also proposes to add a new Guidance paragraph recommending that buffer space for a conventional road should be designed so that it is not misinterpreted as a bicycle lane or other type of lane.

In addition, FHWA proposes to add new Figure 3E–4 to illustrate an example of pavement markings used for counter-flow preferential lanes on divided highways.

361. In Section 3E.03 (existing Section 3D.01) Preferential Lane Word and Symbol Markings, FHWA proposes to change existing P3 regarding preferential lane longitudinal markings, word, and symbol markings at the downstream end of the lane from Standard to Guidance to provide agencies the flexibility to determine the ideal location based on site conditions.

FHWA also proposes to revise Standard P6 and combine with P2 and remove Item C. Bicycle Lane since preferential lanes for bicycles are covered in Part 9 and no longer apply in this Chapter and Section. FHWA also proposes to add BUS STOP and TAXI STAND as required word markings for their respective uses in preferential lanes based on common practices.

In addition, FHWA proposes to change P7 regarding preferential lanes with two or more permitted uses in the same lane from Standard to Guidance to remove the requirement for providing both symbols or words and instead allow engineering judgment to prioritize and select either symbols or word markings, or both.

Lastly, FHWA proposes new Standard and Support paragraphs restricting the use of word or symbol markings denoting motorcycle and Inherently Low Emission Vehicles (ILEV). FHWA proposes this change because motorcycle and ILEV vehicle use is communicated using regulatory signing to complement high occupancy vehicle regulations and simplifies enforcement functions.

362. FHWA proposes to add a new section numbered and titled, ''Section 3E.04 Markings for Part-Time Travel on a Shoulder'' to provide Standard, Guidance, Option, and Support paragraphs for situations where shoulders are designated for use during peak hour conditions to increase roadway capacity. FHWA proposes this change based on a Transit Cooperative Research Program Report [62] as well as to address increasing needs of agencies to

[59] ''Alternative Intersections/Interchanges: Informational Report (AIIR)'' FHWA–HRT–09–060, April 2010, can be viewed at the following internet website: *http://www.fhwa.dot.gov/publications/research/safety/09060/09060.pdf.*

[60] ''Roundabouts: An Informational Guide'' NCHRP Report 672, 2010 can be viewed at the following internet website: *http://www.trb.org/Publications/Blurbs/164470.aspx.*

[61] ''Roundabouts: An Informational Guide, Second Edition'' NCHRP 672, 2010, can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_672.pdf.*

[62] ''A Guide for Implementing Bus On Shoulder (BOS) Systems'' TCRP Report 151, 2012, can be viewed at the following internet website: *http://www.trb.org/Publications/Blurbs/166878.aspx.*

add roadway capacity in constrained urban areas.

FHWA also proposes to add a new Figures 3E–5 and 3E–6 to illustrate an example of markings for part time travel on a shoulder.

Discussion of Proposed Amendments Within Chapter 3F (Existing Chapter 3E) Through Chapter 3K (Existing Chapter 3J)

363. FHWA proposes to add a new section numbered and titled, ''Section 3F.02 Longitudinal Markings'' consisting of P5–P8 from existing Section 3E.01. In this section, FHWA proposes to add two new Guidance paragraphs recommending solid white lane line markings to separate toll lanes, payment methods, or to channelize movements at toll plazas and that the solid lines should begin at the upstream end of the full-width toll lane and continue to the toll plaza.

In existing P6 from existing Section 3E.01, FHWA proposes to change part of the Standard paragraph for maximum widths of purple solid longitudinal markings to Guidance to provide additional practitioner flexibility.

364. In Section 3G.03 (existing Section 3F.03), retitled, ''Application,'' FHWA proposes to add a new Guidance paragraph recommending using delineators of the appropriate color to indicate lane-reduction transitions where either an outside or inside lane merges into an adjacent lane. FHWA proposes this change to provide consistency in the application of delineators proposed in other Sections.

365. In Section 3H.01 (existing Section 3G.01), retitled, ''Standardization of Application,'' FHWA proposes to add two new Standard paragraphs limiting the use of colored pavement only where it supplements other markings and prohibiting colors other than those specified in Chapter 3H (existing Chapter 3G) Colored Pavement. FHWA proposes this change to improve upon the previously established widespread system of uniformity in the application of colored pavement.

366. FHWA proposes to add a new section numbered and titled, ''Section 3H.02 Materials'' to add new Option, Standard, Guidance, and Support paragraphs related to retroreflectivity, minimizing the loss of traction, differentials in skid resistance, and abnormal wear in colored pavement. FHWA proposes this section to provide agencies with information to assist in the selection of appropriate colored pavement materials to improve road user safety.

367. FHWA proposes to add a new section numbered and titled, ''Section 3H.03 Aesthetic Treatments in Crosswalks,'' with P2 and P6 from existing Section 3G.01 and to add new Standard, Guidance, Option, and Support paragraphs describing appropriate use of aesthetic treatments within crosswalks and to provide examples of acceptable materials and patterns. FHWA also proposes to add a new Figure 3H–1 to illustrate examples of acceptable materials for interior portions of crosswalks. FHWA proposes these changes to reflect FHWA's Official Ruling No. 3(09)–24(I),[63] which was issued in response to a trend by some agencies toward installing aesthetic treatments on roadway pavement that include bright colors, visually complex graphics, images, or words. FHWA believes that this proposed section is necessary because it is important that these treatments not resemble or interfere with the uniform appearance of traffic control devices, which could confuse and distract road users. FHWA's longstanding position is that these treatments, which are intended to draw the attention of the road user, can distract from the task of operating a vehicle or crossing the roadway as a pedestrian, and that many of the goals of an agency installing these treatments can be accomplished through other means that do not alter or compromise the uniform appearance of traffic control devices.

Based on the varying views that the public has expressed on this topic, FHWA requests that commenters provide sufficient detail and explanation of how their position would maintain the uniformity and recognition of crosswalk markings. Since these types of aesthetic treatments oftentimes are installed with the stated purpose of improving safety (in addition to establishing community identity or for ''placemaking'' purposes), FHWA requests comment on how allowing more intricate designs and bright colors around standardized crosswalk markings improves the safety or operations at and around the crosswalk, while maintaining the recognition of the crosswalk. FHWA requests that commenters support their position by providing quantifiable and objective data, such as from human factors evaluations, about the safety and operation of vehicular and street traffic, safety and navigation of pedestrians, any assessments of the effects of nonstandard designs on pedestrians with low visual acuity or other vision impairments, and the ability of machine vision of autonomous vehicles to detect accurately and react appropriately to the markings as a crosswalk or, if not installed with a crosswalk, other type of marking.

368. FHWA proposes to add a new section numbered and titled, ''Section 3H.04 Yellow-Colored Pavement'' to include Standard paragraphs limiting use of yellow-colored pavement to flush or raised median islands separating traffic flow in opposite directions, left-hand shoulders of divided highways, and left-hand shoulders of one-way streets or ramps.

FHWA also proposes to add Standard paragraphs restricting yellow-colored pavement from being incorporated into reversible lanes, two-way left-turn lanes, or channelizing islands where traffic travels in the same general direction on both sides to be consistent with other provisions—existing and proposed—in the Manual.

In addition, FHWA proposes to add an Option paragraph to indicate where yellow-colored pavement may be applied along a roadway.

Further, FHWA proposes to add a new Figure 3H–2 to illustrate an example of the use of yellow-colored pavement.

369. FHWA proposes to add a new section numbered and titled, ''Section 3H.05 White-Colored Pavement'' to include Standard paragraphs limiting use of white-colored pavement to flush or raised island where traffic passes on both sides in the same direction, right-hand shoulders, exit gore areas, and entrance gore areas.

FHWA also proposes to add a Guidance paragraph recommending certain limitations on its use and Option paragraphs stating where it may be applied along a roadway to be consistent with other provisions—existing and proposed—in the Manual.

Further, FHWA proposes to provide a new Figure 3H–3 to illustrate an example of the use of white-colored pavement.

370. FHWA proposes to add a new section numbered and titled, ''Section 3H.06 Green-Colored Pavement for Bicycle Facilities'' to include Standard paragraphs establishing the use of green-colored pavement for a variety of bicycle facilities and prohibiting its use on shared-use paths, shared-lane markings, crosswalks, and on separated bicycle lanes on an independent alignment.

FHWA also proposes Option paragraphs stating where green-colored pavement can be applied and Guidance

[63] FHWA's Official Ruling No. 3(09)-24 (I), dated August 15, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/3_09_24.htm.*

recommending installation of regulatory and guide signing with green-colored pavement.

Further, FHWA proposes to provide a new Figure 3H–4 and revise Figures in Part 9 to illustrate examples of green-colored pavement. FHWA proposes these changes based on Interim Approval No. 14.[64]

371. FHWA proposes to add a new section numbered and titled, ''Section 3H.07 Red-Colored Pavement for Public Transit Systems'' to include Standard paragraphs establishing the use of red-colored pavement for lanes where general purpose traffic is not allowed and requiring regulatory signs establishing the allowable use of the lane.

FHWA also proposes Option paragraphs stating where red-colored pavement can be applied and a Guidance paragraph recommending red-colored pavement not be used on public transit facilities separated from the roadway or on exclusive alignments.

In addition, FHWA proposes to provide a new Figure 3H–5 to illustrate an example of the use of red-colored pavement. FHWA proposes these changes based on Interim Approval 22[65] and the results of multiple experimentations across the country, including in the following jurisdictions: City of Chicago, IL; the City of New York, NY; the District of Columbia; the City of Santa Rosa, CA; and San Diego County, CA.

372. FHWA proposes to add a new section numbered and titled, ''Section 3H.08 Purple-Colored Pavement for Electronic Toll Collection (ETC) Account-Only Preferential Lanes'' to include Standard paragraphs limiting use of purple-colored pavement to lanes approaching toll plazas that are restricted to registered ETC accounts and lanes approaching an Open Road Tolling (ORT) collection facility, and prohibiting its use on an approach that also facilitates other payment methods downstream.

FHWA also proposes Standard paragraphs regarding the use of longitudinal and edge lines to flank the purple-colored pavement.

In addition, FHWA proposes an Option paragraph allowing its use for the entire length of the toll lane or ORT collection facility or for only a portion (or portions). Further, FHWA proposes to provide a new Figure 3H–6 to illustrate an example of the use of purple-colored pavement.

373. In Section 3I.01 (existing Section 3H.01) Channelizing Devices, FHWA proposes to add an Option paragraph to clarify that orange-colored channelizing devices are allowed to emphasize pavement markings outside of temporary traffic control zones, as long as the devices are not permanent. FHWA proposes to add this Option to facilitate use of channelizing devices in emergency incidents and planned special events, because it is usually not practical for police officers or other authorized personnel to obtain and deploy channelizing devices that match the color of the existing pavement markings.

FHWA also proposes to delete P5 since this information is related to maintenance and not related to traffic control device uniformity.

374. FHWA proposes to add a new section numbered and titled, ''Section 3I.02 Tubular Markers'' to include Standard, Guidance, and Option paragraphs to provide size requirements and recommended spacing. FHWA proposes this change because the use of tubular markers have become more common and to enhance uniformity.

375. FHWA proposes to revise the title of Chapter 3J (existing Chapter 3I) to ''Marking and Delineation of Islands and Curb Extensions'' to be more descriptive on the content regarding islands in this Chapter.

376. In Section 3J.02 (existing Section 3I.02) Approach-End Treatment, FHWA proposes modifying existing P1 to recommend either an approach-end treatment, or curb markings, or both at the ends of islands first approached by traffic. FHWA proposes this change to improve operations and safety at islands and decision points, and to meet driver expectation when encountering these facilities.

FHWA also proposes to revise P3 to add a recommendation for raised bars or buttons that project more than 1 inch above the pavement surface to be marked with retroreflective materials. FHWA proposes this change to enhance conspicuity.

377. FHWA proposes to add a new section numbered and titled, ''Section 3J.03 Islands Designated by Pavement Markings'' to include new Standard paragraphs for pavement marking color requirements for islands and to clarify criteria for islands previously located throughout Part 3. FHWA also proposes a new Option paragraph allowing both chevron and diagonal markings of the same color within the same island. FHWA proposes these changes to improve consistency in the application of islands designated by pavement markings.

378. FHWA proposes to add a new section numbered and titled, ''Section 3J.04 Curb Markings for Raised Island'' to include existing P7–P12 from existing Section 3B.23 and P2 of existing Section 3I.04.

FHWA also proposes to change P10 from Support to Option to allow curb markings to be discontinued where the curbs of the islands become parallel to the direction of traffic flow or where the island is illuminated or marked with delineators, based on engineering judgment or study.

In addition, FHWA proposes to change P11 from Support to Option to allow curb markings to be omitted at openings in a continuous median island based on engineering judgment or study.

379. FHWA proposes to add a new section numbered and titled, ''Section 3J.05 Pavement Markings for Raised Islands'' to include a Standard, Options, Guidance, and Support paragraphs for the application of approach-end treatments, channelizing lines, edge lines, and chevron or diagonal markings for raised islands. FHWA proposes these changes to improve consistency in the application of markings for raised islands, to improve operations and safety at islands and decision points, and to meet driver expectation when encountering these facilities.

FHWA also proposes to provide a new Figure 3J–3 to illustrate an example of the use of diagonal markings in buffer areas between the channelizing line and the raised island.

380. FHWA proposes to add a new section numbered and titled, ''Section 3J.07 Curb Extensions Designated by Pavement Markings'' to include Support, Standard, Guidance, and Option paragraphs for the application of curb extension pavement markings. FHWA proposes these changes to improve consistency in the application of markings for curb extensions and uniformity when the application of pavement markings is to be used.

381. FHWA proposes to delete existing Section 3I.03 Island Marking Application and existing Section 3I.04 Island Marking Colors since the paragraphs were either relocated to other sections, are redundant with other MUTCD provisions, or are not related to uniformity.

Discussion of Proposed Amendments to Part 4 Highway Traffic Signals

382. FHWA proposes to reorganize Part 4 by dividing some existing long chapters and sections into several chapters and/or several sections, each

[64] FHWA's Interim Approval IA–14, April 15, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia14/index.htm.*

[65] FHWA's Interim Approval IA–22, December 4, 2019, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interim_approval/ia22/index.htm.*

having a clearly understandable title, and by moving certain material to new locations within Part 4 to consolidate similar information in one place. In some cases, this involves the proposed creation of new chapters and sections that do not exist in the 2009 MUTCD. FHWA believes this proposed reorganization would create a more logical flow of information and make it easier for users to find the content they need. In addition, FHWA proposes to delete text from various sections where such material duplicates or is very similar to existing text in other sections within Part 4 or elsewhere in the MUTCD. These reorganizations and elimination of redundancies are editorial in nature and do not significantly change the technical content or meaning, except as otherwise discussed below.

383. FHWA proposes to allow the optional use of three-section signal faces using flashing yellow arrow (FYA) signal indications that use the middle section to show both the FYA and the steady yellow arrow in Section 4F.08 (existing Section 4D.02) retitled, ''Signal Indications for Protected/Permissive Mode Right-Turn Movements in a Shared Signal Face'' and Section 4F.15 (existing Section 4D.24) retitled, ''Signal Indications for Protected/Permissive Mode Right-Turn Movements in a Separate Signal Face.'' This change would allow agencies to convert existing three-section protected-only left- and right-turn signal faces to three-section FYA signal faces, and provide more opportunities to implement variable mode left- and right-turn phasing.

Similarly, FHWA also proposes to allow the option of displaying both the FYA and the steady yellow arrow in the same section for five-section shared left-turn/right-turn signal faces operating in protected/permissive mode in Section 4F.02 (existing Section 4D.17) Signal Indications for Left-Turn Movements—General, 4F.09 (existing Section 4E.21) Signal Indications for Right-Turn Movements—General, and Section 4F.16 (existing Section 4D.25) retitled, ''Signal Indications for Approaches with Shared Left-Turn/Right-Turn Lanes and No Through Movement.'' FHWA proposes these changes based on Interim Approval 17,[66] FHWA's Official Ruling No. 4(09)–15(I),[67] and supporting research.[68] FHWA also proposes revisions to various paragraphs and sections throughout the part to reflect these proposed changes.

384. FHWA proposes to add a new section numbered and titled, ''Section 4A.05 Meanings of Bicycle Symbol Signal Indications.'' This section defines the meaning of the proposed bicycle traffic signal indications for bicyclists, described in proposed Chapter 4H, based on Interim Approval 16.[69]

385. In Section 4A.08 (existing Section 4D.34) Use of Signs at Signalized Locations, FHWA proposes to change P5 from Standard to Guidance to provide agencies flexibility, based on engineering judgement, to achieve an appropriate balance in visibility for both traffic signal signs and traffic signal faces. The proposed text maintains priority for the visibility of the traffic signal faces.

386. In Section 4B.02, retitled, ''Basis of Installation of Traffic Control Signals,'' FHWA proposes to add a Guidance paragraph recommending against using traffic control signals to penalize drivers who are speeding. FHWA proposes this change because speeding issues should be addressed through a programmatic approach and through roadway design features, rather than through traffic control signals.

387. FHWA proposes to delete existing Section 4B.05 Adequate Roadway Capacity because the information does not relate to traffic control uniformity and instead discusses roadway design philosophy and therefore is not appropriate in the MUTCD.

388. In Section 4B.05 (existing Section 4B.04) Alternatives to Traffic Control Signals, FHWA proposes to clarify in Option Item M that to reduce vehicular conflicts, a roundabout is an alternative to a traffic control signal. In addition, FHWA proposes to add a Support statement referencing Part 8 regarding installation of roundabouts in proximity to grade crossings. FHWA proposes these changes to reflect Official Change Request 4(09)–76(C).

389. In Section 4C.01 Studies and Factors for Justifying Traffic Control Signals, FHWA proposes to add an exception for temporary traffic signals to the Standard paragraph requiring an engineering study to justify a traffic control signal. FHWA also proposes to clarify in Guidance P10 that if a minor-street approach has an exclusive left-turn lane, the approach should either be analyzed as a two-lane approach based on the sum of the traffic volumes using both lanes or as a one-lane approach based on only the traffic volume in the approach lane with the highest volume. FHWA also proposes to change P12 from Guidance to Option to allow agencies to determine whether a location with a wide median is considered as one or two intersections for a signal warrant analysis based on the site-specific conditions. FHWA proposes these changes to allow additional flexibility.

In addition, FHWA proposes to add a Guidance statement referring to the alternatives to traffic control signals listed in Section 4B.05. FHWA proposes this change to reflect Official Change Request 4(09)–76(C) and to remind users of the Manual that there are several alternatives to traffic control signals.

390. In Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, Section 4C.03 Warrant 2, Four-Hour Vehicular Volume, Section 4C.04 Warrant 3, Peak Hour, Section 4C.05 Warrant 4, Pedestrian Volume, Section 4C.06 Warrant 5, School Crossing, Section 4C.07 Warrant 6, Coordinated Signal System, Section 4C.08 Warrant 7, Crash Experience, Section 4C.09 Warrant 8, Roadway Network, and Section 4C.10 Warrant 9, Intersection Near a Grade Crossing, FHWA proposes to change all paragraphs describing the application of the signal warrant criterion to be considered in an engineering study for installing a new traffic control signal from Standard to Guidance. FHWA proposes this change to provide agencies flexibility in performing signal warrant analyses.

391. In Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, Section 4C.03 Warrant 2, Four-Hour Vehicular Volume, Section 4C.04 Warrant 3, Peak Hour, and Section 4C.08 Warrant 7, Crash Experience, FHWA proposes to change the description of minor-street approaches from higher volume to more critical based on FHWA's Official Ruling No. 4(09)–59(I).[70]

392. In Section 4C.05 Warrant 4, Pedestrian Volume, FHWA proposes to add an Option allowing the criteria to be applied separately to each direction of vehicular traffic where there is a

[66] FHWA's Interim Approval IA–17, August 12, 2014, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia17/index.htm.*

[67] FHWA's Official Ruling No. 4(09)-15(I), December 12, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_15.htm.*

[68] ''Evaluation of the Flashing Yellow Arrow (FYA) Permissive Left-Turn and Yellow Arrow Change Indications in Protected/Permissive Left-Turn Control: The Impact of Separate and Shared Yellow Signal Sections and Head Arrangements,'' NCHRP Project 20–07/Task 283, June 2014, can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/171653.aspx.*

[69] FHWA's Interim Approval IA–16, December 24, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia16/index.htm.*

[70] FHWA's Official Ruling No. 4(09)–59(I), September 12, 2016, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/4_09_59.htm.*

divided street having a median of sufficient width for pedestrians to wait. This option is a variation of the second sentence of Item B in Paragraph 2 of Section 4C.05 in the 2003 MUTCD and is proposed by FHWA based on Official Ruling No. 4(09)–25(I).[71]

FHWA also proposes to change P4 prohibiting the application of the Pedestrian Volume warrant if the distance to the nearest traffic control signal or Stop sign is within 300 feet from Standard to Guidance. FHWA proposes this change to provide more flexibility for agencies when considering installation of traffic signals for pedestrian crossings.

393. In Section 4C.08 Warrant 7, Crash Experience, FHWA proposes to revise Item B in P2 to include updated signal warrant criteria for 1-year and 3-year periods, crash type, and severity, as well as major street speed and intersection location. In conjunction with this change, FHWA proposes to add additional Support language regarding the critical minor-street volume, and a new Option paragraph that accompanies new tables related to criteria for considering traffic control signals in rural areas. FHWA proposes these changes based on Interim Approval 19[72] and findings contained in a research study.[73]

394. In Section 4D.01 General, add a new Standard paragraph requiring the design and operation of traffic control signals to take into consideration the needs of all modes of traffic to enhance mobility and safety for all modes of travel.

FHWA proposes to add a new Guidance paragraph recommending that covers placed over traffic control signal faces not in operation include the backplate if it has a yellow retroreflective strip. The new paragraph also recommends that if a traffic signal with a retroreflective backplate is turned away it should not be oriented such that the backplate border will reflect light back to road users on any approaches to the intersection. FHWA proposes this change based on Official Ruling No. 4(09)–1(I).[74]

FHWA also proposes to change P7 restricting signalizing midblock crosswalks if they are located within 300 feet of the nearest traffic control signal from Standard to Guidance. FHWA proposes this change to provide more flexibility for agencies when considering placement of midblock crosswalks.

395. In Section 4D.02 (existing Section 4D.03) Provisions for Pedestrians, FHWA proposes to delete P2 in concert with the new Standard added in Section 4D.01 and relocate and revise P1 and relocate P3 from existing Section 4E.03 to this Section.

FHWA also proposes to delete Standard P3 and add a new Guidance paragraph recommending pedestrian signal heads at each marked crosswalk at a location controlled by a traffic control signal.

Finally, FHWA proposes to revise existing Guidance in P4 to align better with the recommendation for an engineering study with specific factors for consideration as outlined in Section 4K.01.

396. FHWA proposes to add a new section numbered and titled, ''Section 4D.03 Provisions for Bicyclists,'' with an Option to allow bicycle signal faces to be used where it is desired to provide separate signal indications to control bicycle movements at a traffic control signal, and a reference to new Chapter 4H Bicycle Signal Faces. FHWA proposes this change due to the increasing bicycle activity and bicycle infrastructure deployment throughout the Country and based on Interim Approval 16.[75]

397. In Section 4D.05 (existing Section 4D.12) Visibility, Aiming, and Shielding of Signal Faces, FHWA proposes to change P1, P2, P3, P7, and P13 from Standard to Guidance to provide agencies flexibility in locating signal faces.

FHWA also proposes to add a new Standard prohibiting the use of ancillary legends on signal face backplates. FHWA proposes this change because backplates are used to improve the contrast between the traffic signal and its surroundings, and adding a legend reduces the contrast and could reduce driver comprehension. Section 2B.60 (existing Section 2B.53) allows the installation of signs adjacent to signal faces to provide the purpose or operation, as needed.

398. In Section 4D.06 (existing Section 4D.13) Lateral Positioning of Signal Faces, FHWA proposes to add a new Guidance paragraph recommending locating separate turn signal faces at least 3 feet, horizontally and vertically, from the nearest traffic signal face for a different movement on the same approach. FHWA proposes this change to minimize driver confusion and enhance signal visibility.

FHWA proposes to change P7 from Standard to Guidance to provide agencies flexibility in locating signal faces.

FHWA also proposes to revise Standard P10 for supplemental post-mounted signal faces to clarify that the intent is to prohibit the display of left-turn arrows to the right of adjacent through and right-turn lanes, and not to prohibit such a display if an opportunity is available to post-mount a signal face that is to the immediate right of the left-turn lanes. FHWA proposes a similar change for the display of right-turn arrows.

399. In Section 4D.07 (existing Section 4D.14) Longitudinal Positioning of Signal Faces, FHWA proposes to delete Item A.3 of P1 because it redundant with information contained in Section 4D.06 (existing Section 4D.13).

FHWA also proposes to change the existing Item B of P1 from Standard to Guidance to provide agencies flexibility when deciding where to install supplemental near-side signal faces.

400. In Section 4D.08 (existing Section 4D.15) Mounting Height of Signal Faces, FHWA proposes to change all Standards related to the maximum height for vehicular signal faces from Standard to Guidance. FHWA proposes this change because increasing maximum heights does not impact the safety of road and sidewalk users and therefore agencies should have the flexibility to do so where they deem it advisable to meet site conditions.

401. In Section 4D.09 (existing Section 4D.16) Lateral Offset (Clearance) of Signal Faces, FHWA proposes to change the Standard paragraph to Guidance to provide agencies flexibility when designing signal face placement.

402. In Section 4D.10 (existing Section 4D.32) Temporary and Portable Traffic Control Signals, FHWA proposes to delete Item C in P4 because existing Item D supersedes it, and to provide agencies more flexibility in temporary traffic signal control operations. In concert with this change, FHWA proposes to add a new Option permitting temporary traffic signals to operate in semi-actuated mode instead of being placed in flashing mode.

403. In Section 4E.01 (existing Section 4D.06) Signal Indications—Design,

[71] FHWA's Official Ruling No. 4(09)–25(I), November 19, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_25.htm.*

[72] FHWA's Interim Approval IA–19, February 24, 2017, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interim_approval/ia19/index.htm.*

[73] ''Crash Experience Warrant for Traffic Signals,'' NCHRP 07–18, July 5, 2014, can be viewed at the following internet website: *http://www.trb.org/Main/Blurbs/171359.aspx.*

[74] FHWA's Official Ruling No. 4(09)-1(I), February 22, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_001.htm.*

[75] FHWA's Interim Approval IA–16, December 24, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia16/index.htm.*

Illumination, Color, and Shape, FHWA proposes to revise P9 to require that displays meet the minimum requirements of ''Equipment and Materials Standards of the Institute of Transportation Engineers'' for signal optical units that use incandescent lamps within optical assemblies that include lenses. FHWA also proposes to add the requirements of the publications entitled, ''Vehicle Traffic Control Signal Heads: Light Emitting Diode (LED) Circular Signal Supplement'' and ''Vehicle Traffic Control Signal Heads: Light Emitting Diode (LED) Vehicle Arrow Traffic Signal Supplement'' that pertain to the aspects of the signal head design that affect the display of the signal indications shall be met for light emitting diode (LED) traffic signal modules, except during nighttime conditions, which is addressed in the revised paragraph 11. FHWA proposes this change based on Official Ruling No. 4(09)–28(I).[76]

In addition, FHWA proposes to change P11 from Standard to Support and combine with P12 because it contains general information about signal lenses and is not a requirement for traffic control signals.

404. In Section 4E.02 (existing Section 4D.07) Size of Vehicular Signal Indications, FHWA proposes to require all arrow signal indications to be twelve-inch to enhance safety and conspicuity of the arrow legend. FHWA also proposes to modify the existing Option to allow 8-inch circular indications in a flashing beacon based on Official Ruling No. 4(09)–7(I).[77]

FHWA also proposes to add a new Option allowing the use of different sizes of signal indications in the same face or signal head. This option is a variation of P5 of Section 4D.15 in the 2003 MUTCD. Even though this was implied in the 2009 MUTCD, this new Option would provide agencies explicit flexibility to install twelve-inch arrows with eight-inch circular displays if the conditions permit eight-inch circular displays.

405. In Section 4F.01 (existing Section 4D.05), retitled, ''Application of Steady and Flashing Signal Indications during Steady (Stop-and-Go) Operation,'' FHWA proposes to add items E and G to Standard P3 to include provisions for flashing red arrow and flashing yellow arrow signal indications for steady (stop-and-go) mode of operation. FHWA proposes this change to clarify the application of flashing signal indications in steady (stop-and-go) mode based on their addition to the 2009 MUTCD. FHWA also proposes to clarify in Item H that except for under certain circumstances, a steady green arrow signal indication shall be displayed only to allow vehicular movements in the direction indicated, that are not in conflict with other vehicles moving on a green or yellow signal indication, even if the other vehicles are required to yield the right-of-way to the traffic moving on the GREEN ARROW signal indication. FHWA proposes this clarification to reflect Official Change Request 4(09)–75(C).[78]

FHWA proposes to expand existing Option P5 to include conditions where a steady straight-through green arrow may be used to discourage wrong-way turns. FHWA proposes this clarification to reflect Official Change Request 4(09)–75(C).[79]

FHWA also proposes to add a new Standard, prior to existing Standard P13, for signal displays on separate signal faces at pre-signals for left-turn and/or right-turn lanes that extend from the downstream signalized intersection back to and across a grade crossing. FHWA proposes this change to permit agencies to display straight-through green arrow with circular red or circular yellow on the same approach to the pre-signal to improve safety by discouraging road users from inadvertently turning onto railroad or light rail transit (LRT) tracks.

406. In Section 4F.02 (existing Section 4D.17) Signal Indications for Left-Turn Movements—General, FHWA proposes to change P1 from Standard to Support because the paragraph provides information regarding the applicability of signal indications for U-turns to the left and is more appropriate as a Support statement.

FHWA also proposes to revise Standard P5 to prohibit explicitly the simultaneous display of a protected left-turn movement with opposing right-turn green arrow or yellow arrow signal indication unless there are separate departure lanes available and there are pavement markings or a channelizing island clearly indicating which departure lane to use. This prohibition has been implicit in the description of what constitutes conflicting movements elsewhere in Part 4, but FHWA proposes this change to be specific about conflicting movements between left-turns and opposing right-turns.

In addition, FHWA proposes to modify Standard P6 to clarify which signal displays are prohibited when a combined left-turn/through lane exists on an approach.

FHWA proposes similar changes in Section 4F.09 (existing Section 4D.21) for right-turn movements.

407. In new ''Section 4F.04 Signal Indications for Permissive Only Mode Left-Turn Movements in a Separate Signal Face,'' new ''Section 4F.06 Signal Indications for Protected Only Mode Left-Turn Movements in a Separate Signal Face,'' new ''Section 4F.08 Signal Indications for Protected/Permissive Mode Left-Turn Movements in a Separate Signal Face,'' new ''Section 4F.11 Signal Indications for Permissive Only Mode Right-Turn Movements in a Separate Signal Face,'' new ''Section 4F.13 Signal Indications for Protected Only Mode Right-Turn Movements in a Separate Signal Face,'' and new ''Section 4F.15 Signal Indications for Protected/Permissive Mode Right-Turn Movements in a Separate Signal Face,'' FHWA proposes to add a new Standard in each section prohibiting the use of a separate turn signal face on an approach that does not include an exclusive turn lane. FHWA proposes this change because if an exclusive lane does not exist, then a separate turn signal face should not be provided because both the turning and through vehicles share the same lane and a separate turn signal face can be confusing to road users in this situation.

408. In new ''Section 4F.06 Signal Indications for Protected Only Mode Left-Turn Movements in a Separate Signal Face'' which consists of P3 of existing Section 4D.19, FHWA proposes to delete the reference to signal instruction sign and requirement for the LEFT ON GREEN ARROW ONLY (R10–5) sign. FHWA proposes this change to remove the undefined term ''signal instruction sign'' and to provide additional flexibility for the use of traffic signal signs for separate left-turn signal faces operating in a protected only mode.

FHWA proposes a similar revision to new ''Section 4F.13 Signal Indications for Protected Only Mode Right-Turn Movements in a Separate Signal Face'' which consists of P3 of existing Section 4D.23 to delete the reference to signal instruction sign and requirement for the RIGHT ON GREEN ARROW ONLY (R10–5a) sign.

409. In new ''Section 4F.08 Signal Indications for Protected/Permissive Mode Left-Turn Movements in a

[76] FHWA's Official Ruling No. 4(09)–28(I), January 25, 2013, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/4_09_28.htm.*

[77] FHWA's Official Ruling No. 4(09)–7(I), February 8, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_7.htm.*

[78] An inventory of FHWA's Official Rulings can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/orsearch.asp.*

[79] *Ibid.*

Separate Signal Face'' which consists of P3–P6 of existing Section 4D.20, FHWA proposes to modify the Standard (P1 in existing Section 4D.20) to allow the display of a steady left-turn red arrow immediately following the steady left-turn yellow arrow signal indication to provide a red clearance interval, enabling the opposing traffic to start up before releasing the permissive left-turn movement.

410. In Section 4F.09 (existing Section 4D.21), Signal Indications for Right-Turn Movements—General, FHWA proposes to delete P6 to allow, when needed, a yellow change interval for the right-turn movement when the status of the right-turn operation is changing from permissive to protected within any given signal sequence. FHWA proposes this change because this yellow change interval is frequently needed when a right-turn overlap is the next phase in order to allow opposing permissive left-turn traffic to clear the intersection.

411. In new ''Section 4F.15 Signal Indications for Protected/Permissive Mode Right-Turn Movements in a Separate Signal Face,'' which is comprised of existing P2–P6 of existing Section 4D.24, FHWA proposes to allow the display of a steady right-turn red arrow signal indication immediately following the steady right-turn yellow arrow signal indication to provide a red clearance interval, enabling the opposing traffic to start up before releasing the permissive right-turn movement.

FHWA also proposes to add a new requirement to display a steady right-turn yellow arrow and if needed, steady right-turn red arrow following the flashing right-turn yellow arrow for permissive right-turn movements changing to protected right-turn movements when there is an opposing permissive left-turn movement that is being terminated simultaneously. FHWA proposes this change because a yellow change interval and red clearance interval might be needed during a right-turn overlap to allow opposing permissive left-turn traffic to clear the intersection.

412. In Section 4F.16 (existing Section 4D.25), retitled, ''Signal Indications for Approaches with No Through Movement,'' FHWA proposes to expand information regarding signal displays in situations where all traffic on an approach must turn onto the intersecting roadway. Existing Section 4D.25 does not address situations for approaches where there is no through movement and there is not a shared left-turn/right-turn lane or the lanes operate with variable lane-use regulations.

FHWA also proposes to add an Option to allow the continuous display of a steady circular red signal indication during time when the traffic control signal is being operated in steady (stop-and-go) mode. FHWA proposes to add a new Standard prohibiting the display of circular green and circular yellow signal indications to an approach with no through movement and an approach speed 35 mph or greater, to an approach where the one-way roadway that opposes the approach is an exit ramp from a freeway or expressway, or to an approach where the one-way roadway that opposes the approach has a speed limit of 35 mph or greater. FHWA proposes the new Option and Standards to improve safety by minimizing the potential for road users driving straight through in the wrong direction onto a one-way roadway or exit ramp.

413. In Section 4F.17 (existing Section 4D.26) Yellow Change and Red Clearance Intervals, FHWA proposes to change P2 from Standard to Support because the paragraph describes the function of a yellow change interval, rather than specific requirements.

FHWA also proposes to revise Support P7 to reference ''Guidelines for Determining Traffic Signal Change and Clearance Intervals: A Recommended Practice of the Institute of Transportation Engineers,'' which contains the current practices for determining the duration of yellow change and red clearance intervals. In addition, FHWA proposes to revise Guidance P14 to recommend the maximum duration of yellow change interval for through movements should be 6 seconds and for turning movements should be 7 seconds. As part of this change, FHWA proposes to delete the second sentence of Guidance P14 and Guidance P15. FHWA proposes these changes to reflect new guidance in the new ITE publication.

414. In new ''Section 4F.19 Preemption Control of Traffic Control Signals'' consisting of paragraphs from existing Section 4D.27, FHWA proposes to revise the Standard regarding preemption control transitions to permit the shortening or omission of any pedestrian change interval only when the traffic control signal is being preempted because a boat is approaching a movable bridge or because rail traffic is approaching a grade crossing. FHWA proposes this change to improve pedestrian safety. The existing MUTCD allows the shortening or omission of the pedestrian change interval regardless of the reason. Unlike boats and trains, emergency vehicles and buses generally have the ability to slow, stop, or alter their course if necessary to avoid a collision.

FHWA also proposes to add a new Option permitting the display of a distinctive indication to inform law enforcement personnel who are escorting traffic that the traffic control signal has changed because it has been preempted. FHWA proposes this change based on an NTSB recommendation from the results of their investigation into the causes of the fatal truck/train crash that occurred in Midland, Texas, when law enforcement officers were escorting a parade.[80]

In addition, FHWA proposes to modify P11 to recommend that backup power supply for traffic control signals with railroad preemption or coordinated with flashing-light signal systems should provide a minimum operating period sufficient to allow the implementation of alternative traffic control during a power outage. FHWA proposes this change to provide agencies with more guidance on the duration for backup power supplies.

415. In Section 4G.02 (existing 4D.29) Flashing Operation—Transition Into Flash Mode, FHWA proposes to change P1 from Standard to Option because the language does not provide a requirement and is more appropriate as an Option.

416. In Section 4G.04 (existing Section 4D.31) Flashing Operation—Transition Out of Flashing Mode, FHWA proposes to add a new Guidance paragraph providing two recommended display sequences for transitioning out of yellow-red flashing mode where there is a common major-street green interval. FHWA also proposes to revise the existing recommendation for display sequences for transitioning out of yellow-red flashing mode where there is not a common major-street green interval to provide a steady yellow signal indication followed by a steady red clearance interval on the major traffic movement on the major street. FHWA proposes these changes for safety and consistency in signal operations.

417. FHWA proposes to add a new Chapter, numbered and titled, Chapter 4H Bicycle Signals, that includes provisions for the application, design, and operation of bicycle signals. This chapter contains twelve sections and provisions related to the use, warrants, application, size, placement, mounting height, intensity and light distribution, and yellow change and red clearance

[80] ''Highway–Railroad Grade Crossing Collision, Midland, Texas, Accident Report'' NTSB/HAR–13/02, November 15, 2012, can be viewed at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR1302.pdf.*

intervals for Bicycle Signal Faces. These sections and provisions are generally consistent with provisions for traffic control signals. A bicycle signal face consists of RED BICYCLE, YELLOW BICYCLE, and GREEN BICYCLE symbol signal indications that controls bicycle movements from a designated bicycle lane or from a separate facility, such as a shared use path. The proposed provisions are based on the Interim Approval 16 [81] and multiple experimentations across the Country. One notable change from IA–16 is the removal of the green arrow signal indication requirement when there are conflicts with motor vehicles moving concurrently from an adjacent lane. FHWA proposes this change to provide agencies with an option to control bikeways or bicycle lanes at signalized intersections.

418. In existing Section 4E.03 Application of Pedestrian Signal Heads, FHWA proposes to delete the section and relocate P1 and P3 to Section 4D.02. FHWA proposes to delete P2 in concert with the proposed new Guidance in Section 4D.02 that provides additional flexibility to use pedestrian signals.

419. In Section 4I.01 (existing Section 4E.01) Pedestrian Signal Heads, FHWA proposes to modify P2 to align better with the recommendation for an engineering study with specific factors for consideration as outlined in Section 4K.01.

420. In Section 4I.02 (existing Section 4E.04) Size, Design, and Illumination of Pedestrian Signal Head Indications, FHWA proposes to revise P3 and add new Standard and Guidance paragraphs to provide more accurate references to the ITE standards for pedestrian signal heads.

FHWA also proposes to change P5 from Standard to Guidance. FHWA proposes this change for clarification and because the Walking Person and Upraised Hand symbols could be slightly visible to pedestrians at the far end of a crosswalk when not illuminated, due to sun phantom and other visual phenomena.

421. In Section 4I.03 (existing Section 4E.05) Location and Height of Pedestrian Signal Heads, FHWA proposes to change Standard P2 to Guidance to provide agencies with flexibility in the location of pedestrians signal heads with respect to vehicular signal heads when mounted on the same support.

422. In Section 4I.04 (existing Section 4E.07) Countdown Pedestrian Signals, FHWA proposes to clarify Standard P6 that countdown displays shall not be used during the red clearance interval of a concurrent vehicular phase that is ending simultaneously with or after the end of the pedestrian phase because countdown displays sometimes overlap across more than one vehicular phase and are used during the red clearance interval of the first overlapped phase.

423. In Section 4I.05 (existing Section 4E.08) Pedestrian Detectors, FHWA proposes adding an Option to address the need for ''touch-free'' pedestrian push buttons.

FHWA also proposes in Guidance P4 to clarify ''easy activation'' of pedestrian push buttons as no more than 5 pounds of force to activate to reflect accessibility requirements contained in the Americans with Disabilities Act Accessibility Guidelines (ADAAG), 309.4 Operable Parts. FHWA also proposes several additional criteria for pushbutton locations to provide practitioners with additional guidance related to the placement of pedestrian push buttons in relation to curb ramps, crosswalks, shoulders, and the edge of pavement, as well as recommending a minimum 4-foot continuous clear width for a pedestrian access route. These proposed changes reflect Official Change Request 4(09)–77(C).[82]

FHWA also proposes to delete P17 since this is a repeat of P23 in existing 4E.11.

424. In Section 4I.06 (existing Section 4E.06) Pedestrian Intervals and Signal Phases, FHWA proposes to add a new Standard requiring the display of a flashing red signal indication when the pedestrian signal heads at a pedestrian hybrid beacon are displaying a flashing Upraised Hand signal indication. FHWA proposes this change to be consistent with the specified operation of pedestrian hybrid beacons in new Section 4J.03 (existing Section 4F.03).

FHWA also proposes to revise existing P4 to reduce the minimum buffer interval from 3 seconds to 2 seconds. FHWA proposes this change based on the results of an official experiment that was performed by the Delaware DOT.[83] The experiment concluded there was no statistically significant difference from a safety perspective when the minimum buffer interval was reduced from 3 seconds to 2 seconds. FHWA proposes this change to provide additional flexibility to agencies in optimizing the timing of traffic signals.

In addition, FHWA proposes to revise existing P7 to recommend calculating pedestrian clearance time based on crossing distance measured from the edge of the pavement and not from the shoulder or edge of the traveled way. FHWA proposes this change because pedestrians who are waiting for a walk indication typically do not feel safe waiting on a paved shoulder and instead wait at the edge of the pavement.

Lastly, FHWA proposes to add a Standard requiring the minimum required time for the Walk interval be displayed in addition to the time provided for the leading pedestrian interval at locations where leading pedestrian intervals are being utilized without accessible pedestrian signals. FHWA proposes this change to align with accessible pedestrian signal guidance throughout Part 4.

425. In Section 4J.01 (existing Section 4F.01) Application of Pedestrian Hybrid Beacons, FHWA proposes to add a new Option to allow the reduction of the signal warrant criteria for pedestrian volume crossing the major street by as much as 50 percent if the 15th-percentile crossing speed of pedestrians is less than 3.5 feet per second. FHWA proposes this change for consistency with traffic control signal Warrant 4, Pedestrian Volume.

FHWA also proposes to add an Option to allow the separate application of the major-street traffic volumes criteria in each direction when there is a divided street having a median of sufficient width for pedestrians to wait in accordance with Official Ruling No. 4(09)–25(I) [84] and for consistency with the proposed change in Section 4C.05.

426. In Section 4J.02 (existing Section 4F.02) Design of Pedestrian Hybrid Beacons, FHWA proposes to add Item E in Standard P1 requiring a Stop sign for the minor-street approach when a pedestrian hybrid beacon is installed at or immediately adjacent to an intersection. FHWA also proposes to delete existing items A and C of Guidance P4 regarding placement of pedestrian hybrid beacons with respect to side streets and driveways and the installation of signs and pavement markings. FHWA proposes these changes based on an FHWA evaluation

[81] FHWA's Interim Approval IA–16, December 24, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia16/index.htm.*

[82] An inventory of FHWA's Official Rulings can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/orsearch.asp.*

[83] ''MUTCD Experimentation with Countdown Pedestrian Signals and Change Intervals,'' Delaware Center for Transportation, University of Delaware, October 2011, can be viewed at the following internet website: *http://sites.udel.edu/dct/files/2013/10/Rpt.-211-Pedestrian-Signals-2d65hei.pdf.*

[84] FHWA's Official Ruling No. 4(09)-25(I), November 19, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_25.htm.*

study of field implementations [85] of pedestrian hybrid beacons installed at or near intersections, which found that there were no significant safety or operational problems with such locations.

FHWA proposes to add a Guidance statement recommending accessible pedestrian signals be installed in conjunction with a pedestrian hybrid beacon in response to Official Change Request 4(09)–42(C).

FHWA also proposes to change the first sentence of Standard P8 to an Option, allowing the CROSSWALK STOP ON RED or STOP ON RED–PROCEED ON FLASHING RED WHEN CLEAR signs to be installed facing each major street approach to provide agencies flexibility on where to locate these signs. FHWA proposes these changes based on the field experience of agencies that have extensively used pedestrian hybrid beacons.

The 2017 Traffic Control Devices Pooled Fund Study—''Comprehension and Legibility of Selected Symbol Signs Phase IV'' [86] evaluated the comprehension and legibility of various alternatives for signing at midblock hybrid beacon pedestrian crossings. The results indicated that no significant differences were found between the alternatives; however, they did highlight the need for a sign, at least initially, while drivers are learning what actions to take based on the flashing beacon. As a result, FHWA proposes to add a word message sign for jurisdictions that determine the operational need at pedestrian hybrid beacons.

FHWA also proposes a new Standard prohibiting the use of bicycle signal faces at a pedestrian hybrid beacon. FHWA proposes this because the speed at which bicyclists are able to enter and traverse the crosswalk would make it unsafe to allow a green or yellow bicycle symbol signal indication to be shown at the same time that a flashing red signal indication is shown to motorists. If the motorists are shown a steady red signal indication for the entire length of time that the bicycle signal face is showing a green or yellow bicycle symbol signal indication and a red clearance interval, the hybrid beacon would essentially be functioning as a traffic control signal, and not as a pedestrian hybrid beacon.

427. In Section 4J.03 (existing Section 4F.03) Operation of Pedestrian Hybrid Beacons, FHWA proposes to add a new Guidance paragraph recommending that pedestrian hybrid beacons operated as part of a coordinated signal system should not have a variable flashing yellow interval duration on a cycle-by-cycle basis. FHWA also proposes new Guidance that the pedestrian hybrid beacon should remain in the dark condition after a pedestrian actuation has been received until the point in the background cycle when the flashing yellow interval needs to begin to maintain the system coordination. FHWA proposes this change in accordance with Official Ruling No. 4(09)–32(I).[87]

Further, FHWA proposes to add a new Option allowing the pedestrian hybrid beacon to remain in dark condition after a pedestrian actuation until the minimum dark time has been provided, if the minimum dark time has been set on the controller.

FHWA also proposes to add a new Option allowing the use of a steady red clearance interval after the steady yellow change interval. FHWA also proposes to add an Option allowing the alternating flashing CIRCULAR RED signal indications to continue for a short period after the pedestrian change interval has terminated to provide a buffer interval for pedestrians. FHWA proposes these two new Options to increase safety and in accordance with Official Ruling No. 4(09)–14(I).[88]

In addition, FHWA proposes to add an Option to allow a pedestrian hybrid beacon in close proximity to an active grade crossing to be preempted.

Lastly, FHWA proposes to add a Standard requiring a pedestrian hybrid beacon to flash circular yellow signal indications to each major street approach and requiring the pedestrian signal heads to revert to the dark condition when placed into a flashing mode by a conflict monitor or manual switch. The proper signal and pedestrian displays for pedestrian hybrid beacons placed into flashing mode are not addressed in the current MUTCD and this new standard is intended to provide uniformity and consistency for road users.

428. FHWA proposes to change existing Option P9 to Guidance and revise the text to recommend pedestrian push buttons be used to activate the accessible pedestrian signals at locations where it is not necessary for pedestrians to push a push button detector to receive a WALKING PERSON signal indication, and to provide information in non-visual formats. FHWA proposes this revision to align with accessible pedestrian signal guidance throughout Part 4.

429. In Section 4K.03 (existing Section 4E.11), retitled, ''Walk Indications,'' FHWA proposes to revise Standard P7 to clarify the existing requirements for a percussive tone for the audible walk indications. The only exception is for locations with two accessible pedestrian signals on the same corner, or on a median, that are associated with different phases and are located less than 10 feet apart, in which case a speech message is required for the audible walk indication. FHWA proposes this change in accordance with Official Ruling No. 4(09)–3(I).[89]

FHWA proposes to delete the second sentence in Support P14 allowing the use of transmitted speech messages, because there is no assurance that all impacted pedestrians would have a transmitter.

FHWA proposes to remove the second sentence of Standard P17 limiting the use of speech walk messages to specific locations. FHWA proposes this revision to avoid redundancy, since this is addressed in greater detail, in P8.

FHWA also proposes to change P17 through P20 from Standard to Guidance to provide agencies flexibility in developing speech walk messages.

FHWA also proposes a new Standard requiring accessible pedestrian signal speech messages in a language other than English to follow the message first stated in English. FHWA proposes this change to establish consistency in the order of such messages when an optional secondary message in a language other than English is used, thereby meeting the expectancy of pedestrians.

430. In Section 4K.04 (existing Section 4E.12), retitled, ''Vibrotactile Arrows and Locator Tones,'' FHWA proposes to revise P1 and P2 to clarify the requirements for vibrotactile arrows and locator tones to improve safety for pedestrians with visual disabilities.

FHWA also proposes a new Option to allow the pushbutton locator tone to default to deactivated mode during periods when the steady UPRAISED HAND is displayed for the associated

[85] ''Safety Effectiveness of the HAWK Pedestrian Crossing Treatment,'' FHWA June 2010, can be viewed at the following internet website: *http://www.fhwa.dot.gov/publications/research/safety/10042/10042.pdf.*

[86] 2017 Traffic Control Devices Pooled Fund Study—''Comprehension and Legibility of Selected Symbol Signs Phase IV'' can be found at the following internet website: *https://pooledfund.org/Document/Download/7559.*

[87] FHWA's Official Ruling No. 4(09)-32(I), March 21, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_32.htm.*

[88] FHWA's Official Ruling No. 4(09)–14(I), August 8, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_14.htm.*

[89] FHWA's Official Ruling No. 4(09)–3(I), July 30, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_3.htm.*

crosswalk if a passive pedestrian detection system is implemented that activates the locator tone when a pedestrian is present within a 12-foot radius from the push button location, in accordance with Official Ruling No. 4(09)–26(I).[90]

In addition, FHWA proposes to change the second portion of P6 from Standard to Guidance to recommend, rather than require, that pushbutton locator tones to be audible 6 to 12 feet from the pushbutton, or to the building line, whichever is less. FHWA proposes this change to provide agencies additional flexibility in locating pushbutton locator tones and pushbuttons.

431. In Section 4K.05 (existing Section 4E.13), retitled, ''Extended Push Button Press Features,'' FHWA proposes to change P7 from Option to Guidance to recommend that audible beaconing be initiated by an extended pushbutton press. FHWA makes this change to provide more consistent applications of audible beaconing.

FHWA also proposes to add a value of 100 dBA for the maximum volume of the pushbutton locator tone during the pedestrian change interval and to require that the loudspeaker be mounted at the far end of the crosswalk at a height of 7 to 10 feet above the pavement. FHWA proposes this change to be consistent with existing provisions for accessible pedestrian signals in Section 4E.11, which are based on ''NCHRP 3–62 Accessible Pedestrian Signals: A Guide to Best Practices.'' [91]

Further, FHWA proposes to add a new Guidance paragraph recommending that the audible beaconing loudspeaker at the far end of the crosswalk should be within the width of the crosswalk.

In addition, FHWA proposes to add an Option to permit the sound level of the accessible pedestrian signal walk indication and subsequent pushbutton locator tone to be increased by an extended pushbutton press.

FHWA proposes these changes to improve accessible pedestrian signals for pedestrians with vision disabilities.

432. FHWA proposes to add a new Chapter numbered and titled, ''Chapter 4L Rectangular Rapid-Flashing Beacons'' (RRFBs) that includes three new sections and provisions for the application, design, and operation of rectangular rapid flashing beacons used to supplement pedestrian warning signs. RRFBs consist of two rapidly-flashed rectangular-shaped yellow indications, each with an LED-array based pulsing light source. The proposed provisions are based on the Interim Approval 21,[92] a research study [93] performed on the effectiveness of various flash patterns, and FHWA official interpretations [94] and experimentations. One notable revision from the IA–22 is a new Standard requiring the design of the RRFBs to conform to the requirements for post-mounted or overhead placement described in paragraph 3 of Section 4L.02 if used at intersections. RRFBs have been shown to achieve high rates of compliance at a low relative cost in comparison to other more restrictive devices that provide comparable results, and they have been shown to provide an enhanced level of pedestrian safety at uncontrolled crosswalks that has been previously unattainable without costly and delay-producing full traffic signalization.

FHWA proposes to add a Guidance statement in Section 4L.02 to recommend the use of audible information devices with RRFBs to assist pedestrians with vision disabilities. FHWA proposes this revision to provide additional assistance due to the lack of audible traffic cues.

433. In Section 4M.03 (existing Section 4G.03) Operation of Emergency-Vehicle Traffic Control Signals, FHWA proposes to change P3 and P4 from Standard to Guidance to provide agencies additional flexibility in the operation of emergency-vehicle traffic control signals and warning beacons.

434. In new ''Section 4N.03 Operation of Emergency-Vehicle Hybrid Beacons,'' consisting of paragraphs from existing Section 4G.04, FHWA proposes to add a Standard requiring the beacon faces to display flashing yellow signal indications to each approach on the major street if placed into flashing mode by a conflict monitor or manual switch. FHWA proposes this change for consistency with requirements for traffic control signals.

In addition, FHWA proposes to add an Option to allow an emergency-vehicle hybrid beacon in close proximity to an active grade crossing to be preempted.

435. In Section 4P.02 (existing Section 4I.02) Design of Freeway Entrance Ramp Control Signals, FHWA proposes to reorder the paragraphs and revise existing P3 to clarify that a minimum of two signal faces shall be provided on ramps that have one controlled lane as well as ramps that have more than one controlled lane and the ramp control signals are operated such that green signal indications are always displayed simultaneously to all of the controlled lanes on the ramp.

For locations where there is more than one lane on an entrance ramp and the ramp control signals are not operated such that the green signal indications are always displayed simultaneously, FHWA proposes to split the requirements between two-lane entrance ramps and entrance ramps with three or more lanes. For two-lane entrance ramps that are separately controlled, at least two ramp control signals shall be provided for each lane. For three or more entrance ramp lanes that are separately controlled, one ramp control signal shall be provided over the approximate center of each lane. FHWA proposes these changes in accordance with Official Ruling No. 4(09)–6(I).[95]

FHWA also proposes a new Option to expand the existing exception to the requirement of 8-foot minimum lateral separation of signal faces for one-lane

[90] FHWA's Official Ruling No. 4(09)–26(I), January 25, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_26.htm.*

[91] NCHRP Web-Only Document 117A can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w117a.pdf.*

[92] FHWA's Interim Approval IA–21, March 20, 2018, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interim_approval/ia21/index.htm.*

[93] ''Driver-Yielding Results for Three Rectangular Rapid-Flash Patterns—Overview,'' TTI, June 18, 2014, can be viewed at the following internet website: *http://tti.tamu.edu/2014/06/18/new-rapid-flash-beacon/.* ''Driver-Yielding Results for Three Rectangular Rapid-Flash Patterns—Executive Summary,'' TTI, June 17, 2014, can be viewed at the following internet website: *https://static.tti.tamu.edu/tti.tamu.edu/documents/TTI-2014-5.pdf.*

[94] FHWA's Official Ruling No. 4–376 (I), December 9, 2009, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_376.htm.* FHWA's Official Ruling No. 4(09)-5 (I), August 12, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_5.htm.* FHWA's Official Ruling No. 4(09)-17 (I), January 9, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_17.htm.* FHWA's Official Ruling No. 4(09)-21 (I), June 13, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_21.htm.* FHWA's Official Ruling No. 4(09)-22 (I), August 8, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_22.htm.* FHWA's Official Ruling No. 4(09)-24 (I), September 27, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_24.htm.* FHWA's Official Ruling No. 4(09)-37 (I), October 9, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_37.htm.* FHWA's Official Ruling No. 4(09)-38 (I), October 22, 2013, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_38.htm.* FHWA's Official Ruling No. 4(09)-41 (I), July 25, 2014, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_41.htm.*

[95] FHWA's Official Ruling No. 4(09)–6(I), January 5, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_6.htm.*

entrance ramps to apply to entrance ramps with two or more controlled lanes. FHWA proposes this change for consistency with single-lane ramps.

Further, FHWA proposes to change P6 from Standard to Guidance to provide agencies additional flexibility in the location and design of ramp control signals.

436. In Section 4P.03 (existing 4I.03) Operation of Freeway Entrance Ramp Control Signals, FHWA proposes to revise Standard P3 to prohibit the use of flashing light emitting diode (LED) units within the legend or border of signs to inform road users that ramp control signal is in operation. FHWA also proposes similar revisions to Section 4S.03 (existing Section 4L.03) Warning Beacon and Section 4S.04 (existing Section 4L.04) Speed Limit Sign Beacon to prohibit the use of flashing LED units within the legend or border of signs to inform road users that a regulation is in effect or that a condition is present. FHWA believes that warning beacons should be used to inform road users that a regulation is in effect and that flashing LED lights within the border or legend of the sign should only provide added conspicuity to sign legends.

437. In Section 4Q.02 (existing Section 4J.02) Design and Location of Movable Bridge Signals and Gates, FHWA proposes to change P9, the last sentence of P13, P16, and P20 from Standard to Guidance and change P12 from Standard to Support to provide agencies with more flexibility in the design of movable bridge signals, gates, and signs.

438. In Section 4S.01 (existing Section 4L.01) General Design and Operation of Flashing Beacons, FHWA proposes to revise Standard P4 to discontinue the existing allowance of a beacon within the border of a sign for School Speed Limit Sign Beacons. FHWA proposes this change because under certain light and weather conditions, the flashing beacon causes irradiation that can obscure the sign message if the beacon is within the sign or too close to the sign legend. This proposal is consistent with research demonstrating the phenomenon of irradiation or disability glare.[96] FHWA also proposes a corresponding revision to Section 4S.04 (existing Section 4L.04) Speed Limit Sign Beacon.

FHWA also proposes to add Interchange Exit Direction signs with advisory speed panels as an exception to the Standard prohibiting flashing beacons within the border of the sign. FHWA proposes this revision to clarify the existing practice and for consistency with Figure 2E–27.

FHWA also proposes to add a new Standard establishing eight-inch and twelve-inch as the two nominal diameter sizes for flashing beacon signal indications in accordance with Official Ruling No. 4(09)–7(I).[97]

439. In Section 4S.02 (existing Section 4L.02) Intersection Control Beacon, FHWA proposes to add a new Standard requiring twelve-inch signal indications for Intersection Control Beacons facing approaches where road users view both flashing beacon indications and lane-use control signal indications simultaneously or where the nearest flashing beacon signal face is more than 120 feet beyond the stop line, unless a supplemental near-side flashing beacon signal face is provided. FHWA also proposes a new Guidance recommending twelve-inch signal indications for Intersection Control Beacons facing approaches where the speed is 40 mph or higher or where post-mounted flashing beacon signal faces are used. FHWA proposes these changes to increase the signal indication visibility for the road users and for consistency with provisions for traffic control signals.

440. In Section 4S.03 (existing Section 4L.03) Warning Beacon, FHWA proposes to delete P5 requiring a minimum of 15 feet and a maximum of 19 feet clearance above the pavement for warning beacons suspended over the roadway. FHWA proposes this change because P2 in new Section 4S.01 adequately addresses clearances and in accordance with Official Ruling No. 4(09)–11(I).[98]

FHWA also proposes to modify P11 to specify that the BE PREPARED TO STOP (W3–4) sign and a WHEN FLASHING (W16–13P) plaque is the traffic signal warning sign assembly that may be used with the Warning Beacon interconnected with a traffic signal controller.

FHWA also proposes to add a Guidance statement to recommend the use of audible information devices with pedestrian-actuated Warning Beacons to assist pedestrians with visual disabilities. FHWA proposes this revision to provide additional assistance due to the potential lack of audible traffic cues.

FHWA proposes adding a new Standard prohibiting the use of vibrotactile and percussive indications in conjunction with audible information devices at pedestrian-actuated Warning Beacons at a pedestrian crossing. FHWA also proposes a new Guidance recommending that, if used, the audible message should be a speech message that says, ''Yellow lights are flashing'' and should be spoken twice. FHWA proposes these changes because the vibrotactile and percussive indications are reserved for the Walk indication.

441. In Section 4S.04 (existing Section 4L.04) Speed Limit Sign Beacon, FHWA proposes to delete the second sentence of P2 to provide agencies more flexibility in arranging two or more indications.

FHWA also proposes to modify P3 to expand the provision beyond two signal indications to address situations where four signal indications are used.

442. In Section 4S.05 (existing Section 4L.05) Stop Beacon, FHWA proposes to change P3 from Standard to Guidance to provide agencies flexibility in designing and installing the Stop Beacon with the Stop, Do Not Enter, and Wrong Way signs.

443. In Section 4T.01 (existing Section 4M.01) Application of Lane-Use Control Signals, FHWA proposes to add a new Option allowing the use of a USE LANE(S) WITH GREEN ARROW (R10–8) sign in conjunction with lane-use control signals, for consistency with Section 2B.62 (existing Section 2B.53).

444. In Section 4T.03 (existing Section 4M.03) Design of Lane-Use Control Signals, FHWA proposes to change P6 through P10 from Standard to Guidance to provide agencies flexibility in the design of lane-use control signals.

445. In Section 4T.04 (existing Section 4M.04) Operation of Lane-Use Control Signals, FHWA proposes to change the second sentence of P3 from Standard to Guidance to allow agencies flexibility in the duration of the Red X signal indication display.

446. In Section 4U.01 (existing Section 4N.01), retitled, ''Application of In-Roadway Warning Lights,'' FHWA proposes to relocate and change P3 from Standard to Guidance to provide agencies additional flexibility in designing the height above the roadway surface of in-roadway warning lights.

447. In Section 4U.02 (existing Section 4N.02) In-Roadway Warning Lights at Crosswalks, FHWA proposes to add a Guidance statement recommending audible information devices be used with In-Roadway Warning Lights to provide assistance for

[96] Information on the concept of irradiation and disability glade can be viewed at the following internet website: *https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1444-0938.2003.tb03080.x.*

[97] FHWA's Official Ruling No. 4(09)–7(I), February 8, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_09_7.htm.*

[98] FHWA's Official Ruling No. 4(09)–11(I), June 29, 2011, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/4_09_11.htm.*

pedestrians with visual disabilities. FHWA proposes this revision to provide additional assistance due to the potential lack of audible traffic cues.

FHWA also proposes a new Standard prohibiting the use of vibrotactile and percussive indications in conjunction with audible information devices at In-Roadway Warning Lights. FHWA also proposes new Guidance recommending that, if used, the audible message should be a speech message that says, ''Yellow lights are flashing'' and should be spoken twice. FHWA proposes these changes because the vibrotactile and percussive indications are reserved for the Walk indication and pedestrians with vision disabilities could misinterpret the device as an accessible pedestrian signal.

Discussion of Proposed New Part 5 Automated Vehicles

448. As part of the relocation of material related to low-volume roads to other parts within the Manual, FHWA proposes to provide content and retitle Part 5 Automated Vehicles. FHWA proposes all new content for this part. The purpose of this new part is to provide agencies with general considerations for vehicle automation as they assess their infrastructure needs, prepare their roadways for automated vehicle (AV) technologies, and to support the safe deployment of AVs.

449. FHWA proposes a new ''Section 5A.01 Purpose and Scope'' which contains a Support statement with general information about AV technologies, the MUTCD, and the purpose of the new part.

450. In new ''Section 5A.02 Overview of Connected and Automated Vehicles,'' FHWA proposes to include a Support statement describing various types of AV technology and sensors used by AVs.

451. In new ''Section 5A.03 Definition of Terms,'' FHWA proposes to include a Support statement with several definitions for terms used extensively in AV technology. The definitions proposed are summarized from those found in the Society of Automotive Engineers Standard SAE J3016.[99] The proposed terms include: Automated Driving Systems, Advanced Driver Assistance Systems, Automation Levels, Cooperative Automation, Driving Automation Systems (DAS), Dynamic Driving Task, and Operational Design Domain.

452. In new ''Section 5A.04 Traffic Control Device and Use Considerations,'' FHWA proposes a Support statement that describes the challenges related to the interaction between traffic control devices and DAS.

FHWA also proposes to include a Guidance statement recommending agencies adopt maintenance policies or practices that consider both the human vehicle operator and DAS technology needs, and to use engineering judgment to determine traffic control device selection and placement with similar consideration.

FHWA also proposes Support and Guidance statements regarding the fundamental principles and considerations to be applied in evaluating traffic control devices and other maintenance to support of AV technologies during maintenance and infrastructure improvements.

453. FHWA proposes a new chapter titled, ''Chapter 5B Provisions for Traffic Control Devices'' with sections regarding signs, markings, traffic signals, and temporary traffic control, as well as provisions for traffic control at railroad and light rail transit grade crossings, and traffic control for bicycle facilities.

454. In new ''Section 5B.01 Signs,'' FHWA proposes to include Support and Guidance statements regarding signs. In the Guidance statement, FHWA recommends that signs be clearly associated to the specific lane/road to which they apply, such as parallel roads with different speed limits and that information spreading practices be employed to minimize informational load. FHWA also proposes that standard sign designs be retained as much as possible. Finally, FHWA proposes that the illuminated portion of electronic signs should have a standard refresh/flicker rate, greater than 200 Hz. FHWA proposes this language to accommodate machine vision technology, while also helping human drivers.

455. In new ''Section 5B.02 Markings,'' FHWA proposes to include Support and Guidance statements with a list of considerations that should be used to accommodate machine vision used to support the automation of vehicles and benefit the performance of the human vehicle operator. Most of these considerations are addressed in more detail in Part 3 and references are provided to the primary Sections. These considerations include uniform line widths, the use of dotted edge line extensions along all entrance and exit ramps, along all auxiliary lanes, and along all tapers where a deceleration or auxiliary lane is added, use of chevron markings in exit gore areas, continuous markings in work zones and in all lane transitions, and minimum dimensions for dashed lines. FHWA also proposes to recommend that raised pavement markers not be used as a substitute for markings and that decorative elements in crosswalks be avoided to minimize any potential confusion for automated systems.

456. In new ''Section 5B.03 Highway Traffic Signals,'' FHWA proposes to include a Guidance statement with a list of considerations that should be used to accommodate machine vision used to support the automation of vehicles and benefit the performance of the human vehicle operator. The list includes consistency along a corridor of traffic signal design and placement with respect to approach lanes, and consistent LED refresh rates greater than 200 Hz.

In concert with this change, FHWA proposes a Support statement describing the challenges in achieving corridor-based consistency necessary for machine vision. Information is provided on the benefits of using vehicle-to-infrastructure (V2I) technology for traffic signal systems to address inconsistencies in a corridor.

457. In new ''Section 5B.04 Temporary Traffic Control,'' FHWA proposes Guidance and Standard statements regarding the use of signs and pavement markings to accommodate machine vision better and benefit the performance of the human vehicle operator in and through work zones. FHWA proposes that type of signs, spacing, and mounting height should follow the requirements in Part 6 and that the END ROAD WORK sign should be used to establish the end of the work zone.

In the Standard, FHWA proposes existing pavement markings be maintained in all long-term stationary temporary traffic control zones in accordance with other referenced areas of the Manual. FHWA also proposes pavement markings match the alignment of the markings in place at both ends of the Temporary Traffic Control (TTC) zone and that they be placed along the entire length of any paved detour or temporary roadway prior to the detour or roadway being opened to road users. FHWA also proposes pavement markings in the temporary traveled way that are no longer applicable be removed or obliterated as soon as practical. As part of this requirement, FHWA proposes that pavement marking obliteration remove the non-applicable pavement marking material, the obliteration method minimize pavement scarring, and painting over existing pavement markings with black paint or spraying

[99] The Society of Automotive Engineers' Standard SAE J3016 can be viewed at the following internet website: *https://www.sae.org/news/2019/01/sae-updates-j3016-automated-driving-graphic.*

with asphalt shall not be accepted as a substitute for removal or obliteration. FHWA proposes these changes to accommodate machine vision of AVs, which might not have the capabilities to distinguish between markings that appear to conflict with one another in the same way that a human road user can.

Finally, FHWA proposes a Guidance statement to recommend provisions to enhance the visibility of vertical panels, tubes, and other channelizing devices, as well as markings, to accommodate machine vision as well as human vehicle operators.

458. In new ''Section 5B.05 Traffic Control for Railroad and Light Rail Transit Grade Crossings,'' FHWA proposes a Guidance statement recommending that placement of signs and markings be consistent within a corridor at both passive and active highway-rail grade crossings. In addition, FHWA proposes Guidance recommending that V2I communication be employed at a highway-rail grade crossing. Finally, FHWA proposes a Support statement recommending signs and pavement marking associated with railroad crossings and tracks that are no longer active be removed. FHWA proposes this language to accommodate machine vision better and benefit the performance of the human vehicle operator.

459. In new ''Section 5B.06 Traffic Control for Bicycle Facilities,'' FHWA proposes a Guidance statement recommending that bicycle facilities be segregated from other vehicle traffic using physical barriers where practicable and that road markings are needed to denote the end of a bike lane that is merged with traffic. FHWA proposes this language to accommodate machine vision better and benefit the performance of the human vehicle operator.

460. FHWA proposes to reserve Chapter 5C for potential future provisions.

Discussion of Proposed Amendments to Part 6 Temporary Traffic Control

461. FHWA proposes to reorganize Part 6 by dividing some existing long chapters and sections into several chapters and/or several sections, each having a clearly understandable title, and by moving certain material to new locations within Part 6 to consolidate similar information in one place. In some cases, this involves the proposed creation of new Chapters and Sections that do not exist in the 2009 MUTCD. FHWA believes this proposed reorganization would create a more logical flow of information and make it easier for users to find the content they need. In addition, FHWA proposes to delete text from various sections where such material duplicates or is very similar to existing text in other sections within Part 6 or elsewhere in the MUTCD. These reorganizations and elimination of redundancies are editorial in nature and do not significantly change the technical content or meaning, except as otherwise discussed below.

462. Throughout Part 6, FHWA proposes to make various editorial revisions to eliminate the use of unacceptably vague and undefined terms, such as ''reasonably safe,'' replacing such phrases with more appropriate language.

463. FHWA is proposing to revise several Guidance statements related to sidewalk closure during construction and accessible pedestrian access. Under Title II of the Americans with Disabilities Act (ADA), all State and local governments are required to take appropriate steps to ensure that their communications with people with disabilities are as effective as communications with others. [28 CFR 35.160(a)]. Effective communication means that whatever information is conveyed by or on behalf of a public entity must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. The ADA requires public entities to furnish auxiliary aids and services—which include the acquisition or modification of equipment or devices—where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. [28 CFR 35.160(b)(1)]. The provision of pedestrian facilities in the public right-of-way is generally recognized as a service provided by the public entity that owns such facilities. *See, e.g., Barden* v. *City of Sacramento,* 292 F.3d 1073 (9th Cir. 2002). When sidewalks are closed temporarily due to construction, it is important for the closure to be communicated to pedestrians in a manner that is accessible to pedestrians with vision loss. FHWA proposes to strengthen the language in Part 6 to address this need.

Under Title II of the ADA, all State and local governments must operate services, programs, and activities, including pedestrian facilities in public street rights-of-way, such that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. The ADA requires that a public entity's newly constructed facilities be made accessible to and usable by individuals with disabilities to the extent that it is not structurally impracticable to do so. The ADA also requires that, when an existing facility is altered, the altered facility be made accessible and usable by individuals with disabilities to the maximum extent feasible. Section 504 of the Rehabilitation Act of 1973, generally referred to as Section 504, includes similar requirements for public entities that receive Federal financial assistance. FHWA proposes to eliminate text that refers to a level of usage by pedestrians with disabilities as a basis for taking certain accessibility-related actions because the need to comply with the ADA does not depend on the frequency with which the facility is used by pedestrians with disabilities. FHWA also proposes to eliminate text suggesting that the accommodation of pedestrians with disabilities is sometimes unnecessary.

464. In conjunction with the elimination of existing Part 5 Low-Volume Rural Roads, FHWA proposes to add a new Support paragraph in Section 6A.01 General regarding temporary traffic controls on low-volume rural roads. FHWA also proposes to change the last two sentences of existing P10 from Standard to Guidance, to make this information regarding statutory authority to be consistent with similar information in Part 1.

465. In Section 6A.02 (existing Section 6B.01) Fundamental Principles of Temporary Traffic Control, FHWA proposes to add information on the spacing and number of signs in the advance warning area in order to address excessive queue lengths based on the findings of NTSB/HAR–15/02 Multivehicle Work Zone Crash I–95 Cranbury, New Jersey.[100] FHWA proposes to clarify the language in the Guidance statement of paragraph 7 parts 3A and 3B pertaining to pedestrian accessibility in accordance with 28 CFR 35.160(a)(1), which requires a public entity to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

466. FHWA proposes to divide existing Section 6F.01 Types of TTC Devices into two new sections, 6A.03 ''TTC Devices'' and 6A.04 ''Crashworthiness of TTC Devices.'' FHWA proposes to revise the Standard

[100] ''Multivehicle Work Zone Crash on Interstate 95, Cranbury, New Jersey, June 7, 2014,'' NTSB/HAR–15/02, can be viewed at the following internet website: *https://ntsb.gov/investigations/AccidentReports/Pages/har1502.aspx.*

paragraph in new Section 6A.03 defining ''traffic control devices'' and the Support paragraph in Section 6A.04 regarding crashworthiness to be consistent with the revised definitions proposed for these terms in Part 1.

467. In Section 6B.01 (existing Section 6C.01) Temporary Traffic Control Plans, FHWA proposes to add a Guidance statement recommending the development of a TTC plan for any activity, either planned or unplanned, that will affect road users, because TTC plans for such activities are an important element of roadway safety. In addition, FHWA proposes to delete the last three sentences of the Guidance paragraph about pedestrians with disabilities because this information is covered elsewhere in Part 6.

468. In Section 6B.04 (existing Section 6C.04) Advance Warning Area, FHWA proposes to change the second sentence in P4 from Guidance to Option to clarify the intent of the language. FHWA proposes this change to provide flexibility for cases such as low-speed residential streets.

469. In Section 6B.05 (existing Section 6C.05) Transition Area, FHWA proposes to clarify the intent of the Standard Statement by adding that signs, arrow boards, and/or channelizing devices are the appropriate devices for directing road users from the normal path to a new path, except in the case of short-term mobile operations.

470. In Section 6B.08 (existing Section 6C.08) Tapers, FHWA proposes to delete the first sentence of Guidance P15, because the use of flaggers or temporary traffic control signals is covered elsewhere.

471. In Section 6C.02 (existing Section 6D.01) Pedestrian Considerations, FHWA proposes to edit and change existing P3 from Standard to Guidance because advance notification of a sidewalk closing is not always possible, especially in emergencies, therefore it is not appropriate to require advance notification. FHWA also proposes to delete the second sentence of existing P4 regarding adequate pedestrian access in TTC zones to eliminate repetition with Section 6B.03 (existing Section 6C.03). In addition, FHWA proposes to add an Option statement about accommodating pedestrians if a short-term work zone is attended by project personnel, in order to provide more flexibility while maintaining pedestrian safety and convenience. FHWA also proposes to add a Guidance statement to recommend designing TTC zones to minimize conflicts between vehicular and pedestrian movements due to the likelihood of high pedestrian presence in roadways open to public travel to enhance pedestrian safety. FHWA further proposes to delete the existing second sentence of P22 about the upstream leading ends of temporary traffic barrier because this information is adequately covered in Section 6M.02 (existing Section 6F.85).

472. In Section 6C.03 (existing Section 6D.02) Accessibility Consideration, FHWA proposes to eliminate the first portion of the second sentence in existing paragraph 3 that refers to a level of usage by pedestrians with disabilities as a basis for taking certain accessibility-related actions because the need to comply with the Americans with Disabilities Act does not depend on the frequency with which the facility is used by pedestrians with disabilities.

473. In Section 6C.05 (existing Section 6E.02) High-Visibility Safety Apparel, FHWA proposes to update the text to reflect the latest ANSI Standard 107 dated 2015, per Official Ruling Nos. 6(09)–2(I),[101] 6(09)–4(I),[102] 6(09)–12(I),[103] and 6(09)–37(I),[104] and in concert with these changes proposes to delete repetitive information covered by the ANSI standard.

474. In Section 6D.02 STOP/SLOW Paddle for Hand-Signaling, FHWA proposes to delete the second, third, and fourth sentences of the Standard regarding the design details of this device, because those details are standardized and must comply with the existing provisions of Chapter 2A. FHWA also proposes to add an Option to allow the use of a STOP/STOP or SLOW/SLOW paddle in certain situations where appropriate, to provide additional flexibility.

475. In proposed Section 6D.03 Flag for Hand-Signaling, FHWA proposes to incorporate information about the color of flags to allow an alternate color of fluorescent orange-red based on Official Ruling No. 6(09)–1(I) [105] to provide flexibility during emergency situations.

476. In Section 6D.05 (existing Section 6E.07) Flagger Procedures, FHWA proposes to revise P2 to reflect Official Ruling No. 6(09)–16(I) [106] related to the use of hand movements alone by uniformed law enforcement officers to control road users approaching a TTC zone. FHWA also proposes further revisions to P2 that are intended to allow hand movements alone by uniformed law enforcement officers when directing traffic at special events. FHWA proposes to add an Option to allow the use of a STOP/STOP or SLOW/SLOW paddle in certain situations where appropriate, consistent with a similar proposed Option in Section 6D.02.

477. In Section 6D.06 (existing Section 6E.08) Flagger Stations, FHWA proposes to change P1 from Standard to Guidance, since the required flagger station location may not achievable in some geometric conditions and signing would have to be relied upon.

478. In Section 6E.04 (existing Section 6C.13) Pilot Car Method, FHWA proposes to revise the Standard statement to allow mounting of the sign on top of the pilot vehicle as well as on the rear, and to clarify that pilot car operations shall be coordinated with flagging or other control methods, as this is necessary for safety. FHWA also proposes to add a new Standard to require a flagger to operate an Automated Flagger Assistance Device (AFAD) in pilot car operations based on Official Ruling No. 6(09)–15(I) [107] to clarify that an AFAD is not a temporary traffic control signal and should not be operated in an automatic manner.

479. In conjunction with the elimination of existing Part 5 Low-Volume Rural Roads, FHWA proposes to revise P9 of Section 6F.01 (existing Section 6F.02) General Characteristics of TTC Zone Signs, to integrate information about low-volume rural roads and to reduce the speed below which minimum sign sizes can be used from 35 mph to 30 mph. FHWA proposes to change P10 of this Section from Standard to Guidance because there may be cases where it is necessary to deviate from standard sign sizes in increments other than in 6-inches. FHWA proposes to remove the requirement in P14 for sign material to have a smooth, sealed outer surface,

[101] FHWA's Official Ruling No. 6(09)–2(I), April 1, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_002.htm.*

[102] FHWA's Official Ruling No. 6(09)–4(I), May 10, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_004.htm.*

[103] FHWA's Official Ruling No. 6(09)–12(I), February 1, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_12.htm.*

[104] FHWA's Official Ruling No. 6(09)–37(I), June 1, 2016, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_37.htm.*

[105] FHWA's Official Ruling No. 6(09)–1(I), March 10, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_001.htm.*

[106] FHWA's Official Ruling No. 6(09)–16(I), September 20, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_16.htm.*

[107] FHWA's Official Ruling No. 6(09)–15(I), September 19, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_15.htm.*

since such requirement is not appropriate for the MUTCD.

480. In Section 6F.02 (existing Section 6F.03) Sign Placement, FHWA proposes to remove the support statement of existing paragraph 18 because NCHRP Report 350 is no longer a valid method of determining crashworthiness.

481. In Section 6G.07 (existing Section 6F.11) STAY IN LANE Signs (R4–9, R4–9a), FHWA proposes the STAY IN LANE TO MERGE POINT (R4–9a) sign to support the Late Merge option in Section 6N.19.

482. In Section 6G.10 (existing Section 6F.14) SIDEWALK CLOSED Signs (R9–9, R9–10, R9–11, R9–11a), FHWA proposes to delete the last sentence in the support statement of existing paragraph 6 because it contradicts the Standard in 6C.03 Accessibility Considerations.

483. FHWA proposes to add a new Section 6G.11 Turn Off 2-Way Radio and Cellphone (R22–2) Sign and relocate the information about this sign (which is currently numbered W22–2) from existing Section 6F.42 to this new section, because the sign conveys a regulatory message rather than a warning message.

484. In Section 6H.01 (existing Section 6F.16) Warning Sign Function, Design, and Application, FHWA proposes to change the last phrase of existing P2 (new P3) regarding fluorescent yellow-green backgrounds from Standard to Option to be consistent with Part 2.

485. In Section 6H.03 (existing Section 6F.18) ROAD (STREET) WORK Sign (W20–1), FHWA proposes to change P3 from Standard to Option because the primary legend is specified in the ''Standard Highway Signs'' publication, and the allowable alternate legends are covered by the new Option.

486. In Section 6H.04 (existing Section 6F.19) DETOUR Sign (W20–2), FHWA proposes to change P2 from Standard to Option because the primary legend is specified in the ''Standard Highway Signs'' publication, and the allowable alternate legends are covered by the new Option.

487. In Section 6H.05 (existing Section 6F.20) ROAD (STREET) CLOSED Sign (W20–3), FHWA proposes to change P2 from Standard to Option because the primary legend is specified in the ''Standard Highway Signs'' publication, and the allowable alternate legends are covered by the new Option.

488. In Section 6H.06 (existing Section 6F.21) ONE LANE ROAD Sign (W20–4), FHWA proposes to change the second sentence of P2 from Standard to Option because the primary legend is specified in the ''Standard Highway Signs'' publication, and the allowable alternate legends are covered by the new Option.

489. In Section 6H.07, retitled, (existing Section 6F.22) ''Lane(s) Closed Signs (W20–5, W20–5a, and W9–3),'' FHWA proposes to change part of P2 from Standard to Option because the allowable alternate legends are covered by the new Option. FHWA also proposes to combine existing Section 6F.23 The CENTER LANE CLOSED AHEAD (W9–3) sign into this section since Section 6H.07 includes all the other lane closure signs.

490. In Section 6H.08 (existing Section 6F.24) Lane Ends (W4–2, W9–2a) signs, FHWA proposes the Merge Here Take Turns (W9–2a) sign to identify the merge point and to take turns merging during Late Merge applications.

491. In Section 6H.24 (existing Section 6F.39) UTILITY WORK Sign (W21–7), FHWA proposes to change P3 from Standard to Option because the primary legend is specified in the ''Standard Highway Signs'' publication, and the allowable alternate legends are covered by the new Option.

492. In Section 6H.25 (existing Section 6F.40) Signs for Blasting Areas, FHWA proposes to consolidate existing Sections 6F.40 thru 6F.43 since they all relate to signs in blasting areas. FHWA also proposes to revise P2 to reflect the change of the W22–2 sign to a regulatory sign because the sign is requiring an action and not warning about a hazard.

493. In Section 6J.01 (existing Section 6F.77) Pavement Markings in TTC Zones, FHWA proposes to change the first two sentences of P4 from Standard to Guidance, because ''as soon as practical'' is not defined and obliteration of pavement markings cannot always be complete and without significant scarring.

494. In Section 6J.03 (existing Section 6F.79) Temporary Raised Pavement Markers, FHWA proposes to revise the required spacing for temporary raised pavement markers in P3 and P4 to simplify layout in the field by providing specific distances rather than equations.

495. In Section 6K.01 (existing Section 6F.63) Channelizing Devices—General, FHWA proposes to add P10 and revise P12 to reflect changes associated with Official Ruling No. 6(09)–11(I).[108] Also, FHWA proposes to change existing P18 from a Standard to a Guidance statement because ''significant amount'' is not defined.

496. FHWA proposes to create a new section numbered and titled, ''Section 6K.02 Pedestrian Channeling Devices'' that contains information relocated from existing Section 6F.63 plus new Standard, Guidance, Option, and Support information specific to pedestrian channelizing devices. Within this new section, FHWA proposes to add a new figure, Figure 6K–2, illustrating an example of a pedestrian channelizing device, including hand-trailing for visually-disabled pedestrians.

497. In Section 6K.07 (existing Section 6F.68) Type 1, 2, or 3 Barricades, FHWA proposes to change the second sentence of P22 from Standard to Guidance, because ''adequate'' is not defined and cannot be achieved in all geometric conditions.

498. FHWA proposes to revise Section 6K.11 (existing Section 6F.72) Temporary Lane Separators, to reflect the intended use of these devices more accurately. FHWA proposes to revise the two Standard statements and to add a new Guidance statement to clarify the design if these devices and to indicate that temporary lane separators should not be used to shield obstacles or provide positive protection for workers for pedestrians. FHWA also proposes to revise P5 to reflect the intentional movement of temporary lane separators in a TTC zone per Official Ruling No. 6(09)–14(I).[109]

499. FHWA proposes to revise Section 6L.01 (existing Section 6F.84) Temporary Traffic Control Signals to conform to proposed changes in Section 4K.01.

500. In Section 6L.03 (existing Section 6E.05) STOP/SLOW Automated Flagger Assistance Devices, FHWA proposes to add an Option for use of a new WAIT ON STOP–GO ON SLOW sign combining the messages of the two existing signs, to provide additional flexibility.

501. In Section 6L.05 (existing Section 6F.60) Portable Changeable Message Signs, FHWA proposes to revise P19 regarding the use of portable changeable message signs to simulate an Arrow Board display, per Official Ruling No. 6(09)–18(I).[110]

502. In Section 6L.07 (existing Section 6F.83), retitled, ''Flashing Beacons and

[108] FHWA's Official Ruling No. 6(09)–11(I), January 3, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_11.htm.*

[109] FHWA's Official Ruling No. 6(09)–14(I), August 8, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_014.htm.*

[110] FHWA's Official Ruling No. 6(09)–18(I), December 4, 2012, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_18.htm.*

Warning Lights,'' FHWA proposes to relocate a portion of Standard P11 from existing Section 6F.63 pertaining to the use of flashing warning lights in order to place this information in the appropriate section. FHWA also proposes to revise existing P9 to clarify that the only allowable use of a series of sequential flashing warning lights is on channelized devices that form a merging taper.

503. FHWA proposes to add a new Section 6M.01 General, consisting of a Support statement to introduce the proposed new Chapter 6M, in which is grouped the existing information concerning TTC zone design features and devices that are not traffic control devices.

504. In Section 6M.02 (existing Section 6F.85) Positive Protection and Temporary Traffic Barriers, FHWA proposes to change P4 from Guidance to Standard to improve worker safety within the work zone.

FHWA also proposes to revise existing P8 and delete P9 and P10 to broaden the description of movable barriers.

505. In Section 6M.04 (existing Section 6F.74) Detectable Edging for Pedestrians, FHWA proposes to eliminate the first portion of the first sentence in P2 that refers to a level of usage by pedestrians with disabilities as a basis for taking certain accessibility-related actions because the need to comply with the Americans with Disabilities Act does not depend on the frequency with which the facility is used by pedestrians with disabilities and to correct the edging distance in the second sentence of existing P2 from 6 inches to 8 inches to be consistent with new Section 6K.02

506. In Section 6M.05 (existing Section 6F.86) Crash Cushions, FHWA proposes to delete the last existing Guidance paragraph about use of these devices in accordance with manufacturer's specifications and instead insert this into P5 as part of the Standard statement, to consolidate information about design and use.

507. FHWA proposes to delete existing Section 6F.81 Lighting Devices, because such devices are not defined. As part of this change, FHWA proposes to relocate two of the existing paragraphs to Sections 6L.07 and 6N.01.510.

508. In Section 6M.08 (existing Section 6F.82) retitled, ''Lighting for Night Work,'' FHWA proposes to change existing P4 from a Standard to a Guidance statement to reflect the intent to minimize glare caused by floodlighting. FHWA proposes to add two new sentences to existing P5 to recommend that lighting should be sufficient so as to identify a worker clearly as a person and care should be taken to minimize the potential for shadows to conceal workers within the work area.

509. In Section 6N.01 (existing Section 6G.02) Work Duration, FHWA proposes to change P2 from Standard to Guidance to allow flexibility in the definition of the five categories of work duration at a location.

FHWA also proposes to add a new Support to describe the rolling roadblock method for temporary traffic control based on findings from the NTSB H–17–2 Bus Crash-US 101 San Jose, California.[111]

510. In Section 6N.04 (existing Section 6G.05) Work Affecting Pedestrian and Bicycle Facilities, FHWA proposes to add new Guidance, Support, and Standard statements, to provide additional information for accommodating bicycles through TTC zones.

511. In Section 6N.05 (existing Section 6G.06) Work Outside of the Shoulder, FHWA proposes to revise from Option to Guidance a sentence about the use of a SHOULDER WORK sign if work vehicles are on the shoulder, for enhanced safety.

512. In Section 6N.13 (existing Section 6G.14) Work Within the Traveled Way of a Freeway or Expressway, FHWA proposes to add a new Support on the spacing and number of since in the advance warning area due to excessive queue lengths based on the findings of NTSB/HAR–15/02 Multivehicle Work Zone Crash I–95 Cranbury, New Jersey.

513. In Section 6N.14 (existing Section 6G.15) Two-Lane, Two-Way Traffic on One Roadway of a Normally Divided Highway, FHWA proposes to revise P2 to clarify that Opposing Lane Traffic Divider (W6–4) signs on flexible supports are one of the types of devices that can be used to separate opposing vehicular traffic.

514. FHWA proposes to add Section 6N.19 Late Merge to provide Guidance and Option statements to provide consistency when utilizing the Late Merge concept with lane closures.

515. In Section 6O.01 (existing Section 6I.01) General, FHWA proposes to include an explanation to incorporate estimated time durations in the planning and training initial incident estimate. FHWA also proposes to revise P8 to include an explanation of safe positioning of emergency vehicles arriving at an incident. This information is currently included in Part 1 in the definition of the term ''safe-positioned'' but, as noted previously, the definition is being deleted since the term is only used in Section 6O.01.

516. In Section 6P.01 (existing Section 6H.01) Typical Applications, FHWA proposes to add eight new Typical Application figures along with notes to accompany them. New Figures 6P–47 through 6P–51 illustrate and describe five different situations involving work impacting bicycle facilities, to supplement proposed new text information in Section 6N.04 (existing Section 6G.05). New Figures 6P–52 through 6P–54 illustrate and describe procedures for work at a roundabout. In addition, FHWA proposes to revise the existing drawings and/or notes for the following existing figures in Chapter 6P (existing Chapter 6H):

a. Notes for Figure 6P–3 (existing Figure 6H–3) Work on Shoulders: FHWA proposes to add a new Option note regarding the use of positive protection devices.

b. Notes for Figure 6P–4 (existing Figure 6H–4) Short Duration or Mobile Operation on a Shoulder: FHWA proposes to add a new option note regarding the use of positive protection devices.

c. Notes for Figure 6P–6 (existing Figure 6H–6) Shoulder Work with Minor Encroachment: FHWA proposes to add a new Option note regarding the use of positive protection devices.

d. Notes for Figure 6P–7 (existing Figure 6H–7) Road Closure with a Diversion: FHWA proposes to revise existing note 10 from Option to Guidance, to recommend rather than merely allow the use of delineators along the diversion.

e. Notes for Figure 6P–10 (existing Figure 6H–10) Lane Closure on a Two-Lane Road Using Flaggers: FHWA proposes to add a new Option note regarding the use of positive protection devices.

f. Notes for Figure 6P–11 (existing Figure 6H–11) Lane Closure on a Two-Lane Road with Low Traffic Volumes: FHWA proposes to add a new Option note regarding the use of positive protection devices.

g. Notes for Figure 6P–12 (existing Figure 6H–12) Lane Closure on a Two-Lane Road Using Traffic Control Signals: FHWA proposes to revise Standard note 4 by deleting the requirement to use stop lines for intermediate-term closures, to provide additional flexibility. FHWA also

[111] ''Motorcoach Collision with Crash Attenuator in Gore Area US Highway 101, San Jose, CA,'' NTSB Recommendation H–17–002 can be viewed at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-17-002.*

proposes to add a new Option note regarding the use of positive protection devices.

h. Notes for Figure 6P–13 (existing Figure 6H–13) Temporary Road Closure: FHWA proposes to add a new Option note regarding the use of positive protection devices.

i. Notes for Figure 6P–14 (existing Figure 6H–14) Haul Road Crossing: FHWA proposes to revise Standard note 7a for completeness and clarity, and to add new Standard note 7b and Guidance note 11 pertaining to the use of actuated signal operation per Official Ruling No. 6(09)–7(I).[112]

j. Notes for Figure 6P–15 (existing Figure 6H–15) Work in the Center of a Road with Low Traffic Volumes: FHWA proposes to add a new Option note regarding the use of positive protection devices.

k. Notes for Figure 6P–17 (existing Figure 6H–17) Mobile Operations on a Two-Lane Road: FHWA proposes to add a new Option note regarding the use of positive protection devices.

l. Notes for Figure 6P–18 (existing Figure 6H–18) Lane Closure on a Minor Street: FHWA proposes to add a new Option note regarding the use of positive protection devices.

m. Notes for Figure 6P–21 (existing Figure 6H–21) Lane Closure on the Near Side of an Intersection: FHWA proposes to add a new Option note regarding the use of positive protection devices.

n. Figure 6P–22 (existing Figure 6H–22) Right-Hand Lane Closure on the Far Side of an Intersection: FHWA proposes to revise the drawing in this figure to correspond with proposed changes in the notes for the figure as follows. In Option note 2, FHWA proposes to relocate the third sentence to Support for consistency with the notes for other similar figures. FHWA also proposes to add a new Option note regarding the use of continuous channelizers and a new Option note regarding the use of positive protection devices.

o. Notes for Figure 6P–23 (existing Figure 6H–23) Left-Hand Lane Closure on the Far Side of an Intersection: FHWA proposes to add a new Option note regarding the use of positive protection devices.

p. Figure 6P–24 (existing Figure 6H–24) Half Road Closure on the Far Side of an Intersection: FHWA proposes to revise the drawing in this figure to remove the optional temporary markings and also to correspond with the proposed addition of a new Option note regarding the use of continuous channelizers and a new Option note regarding the use of positive protection devices.

q. Figure 6P–25 (existing Figure 6H–25) Multiple Lane Closures at an Intersection: FHWA proposes to revise the drawing in this figure to correspond with proposed changes in the notes for the figure as follows. FHWA proposes to delete Guidance note 1 regarding placement of a LEFT LANE MUST TURN LEFT sign. FHWA also proposes to add a new Option note regarding the use of positive protection devices.

r. Notes for Figure 6P–27 (existing Figure 6H–27) Closure at the Side of an Intersection: FHWA proposes to add a new Option note regarding the use of positive protection devices.

s. Figure 6P–28 (existing Figure 6H–28) Sidewalk Detour or Diversion: FHWA proposes to revise the drawing in this figure to correspond with the proposed changes in the notes for the figure as follows, to correspond with text changes in new Section 6N.04 (existing Section 6G.05). FHWA proposes to delete existing Standard note 1 and replace it with five new Standard notes. In addition, FHWA proposes to delete existing Guidance note 2 and replace it with two new Guidance notes, and to add one new Option note. FHWA also proposes to change the existing Guidance note 3 to a Standard in order to comply with 28 CFR 35.160(a)(1). These proposed changes are to correct discrepancies between the figure for Sidewalk Diversion and other sections in Part 6.

t. Figure 6P–29 (existing Figure 6H–29) Crosswalk Closures and Pedestrian Detours: FHWA proposes to add two new Standard statements and move the existing Guidance statement 3 to a Standard in order to comply with 28 CFR 35.160(a)(1).

u. Notes for Figure 6P–30 (existing Figure 6H–30) Interior Lane Closure on a Multi-Lane Street: FHWA proposes to add a new Option note regarding the use of positive protection devices.

v. Notes for Figure 6P–31 (existing Figure 6H–31) Lane Closure on a Street with Uneven Directional Volumes: FHWA proposes to add a new Option note regarding the use of positive protection devices.

w. Notes for Figure 6P–32 (existing Figure 6H–32) Half Road Closure on a Multi-Lane, High-Speed Highway: FHWA proposes to add a new Option note regarding the use of positive protection devices.

x. Notes for Figure 6P–33 (existing Figure 6H–33) Stationary Lane Closure on a Divided Highway: FHWA proposes to add a new Option note regarding the use of positive protection devices.

y. Notes for Figure 6P–35 (existing Figure 6H–35) Mobile Operation on a Multi-Lane Road: FHWA proposes to add a new Option note regarding the use of positive protection devices.

z. Notes for Figure 6P–37 (existing Figure 6H–37) Double Lane Closure on a Freeway: FHWA proposes to add a new Option note regarding the use of positive protection devices.

aa. Notes for Figure 6P–38 (existing Figure 6H–38) Interior Lane Closure on a Freeway: FHWA proposes to delete two Guidance statements regarding visibility of the arrow boards because the statements are not needed and not consistent with the notes of other similar figures. FHWA proposes to add an Option Statement to allow the use of a truck mounted attenuator to improve worker safety. FHWA also proposes to add a new Option note regarding the use of positive protection devices.

bb. Notes for Figure 6P–40 (existing Figure 6H–40) Median Crossover for an Entrance Ramp: FHWA proposes to add a new Option note regarding the use of positive protection devices.

cc. Notes for Figure 6P–41 (existing Figure 6H–41) Median Crossover for an Exit Ramp: FHWA proposes to add a new Option note regarding the use of positive protection devices.

dd. Notes for Figure 6P–42 (existing Figure 6H–42) Work in the Vicinity of an Exit Ramp: FHWA proposes to add a new Option note regarding the use of positive protection devices.

ee. Notes for Figure 6P–43 (existing Figure 6H–43) Partial Exit Ramp Closure: FHWA proposes to add a new Option note regarding the use of positive protection devices.

ff. Notes for Figure 6P–44 (existing Figure 6H–44) Work in the Vicinity of an Entrance Ramp: FHWA proposes to add a new Option note regarding the use of positive protection devices.

gg. Notes for Figure 6P–46 (existing Figure 6H–46) Work in the Vicinity of a Grade Crossing: FHWA proposes to add a new Option note regarding the use of positive protection devices.

Discussion of Proposed Amendments to Part 7 Traffic Control for School Areas

517. As part of the reorganization, FHWA proposes to consolidate Chapter 7A into two sections numbered and titled, ''Section 7A.01 Introduction'' and ''Section 7A.02 School Route Plans and School Crossings.'' The two sections consist of provisions from existing Section 7A.01 through Section 7A.04.

518. 520. In Section 7A.01 ''Introduction,'' FHWA proposes to change existing P1 in Section 7A.04

[112] FHWA's Official Ruling No. 6(09)–7(I), June 1, 2011, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/6_09_7.htm.*

from a Standard to Support because the general information in this paragraph describing the scope of Part 7 is more appropriate as a Support statement.

FHWA also proposes to delete existing Support P2–4 and the first sentence of P5 that contain references to other sections, chapters, and parts in the Manual, because this text is unnecessary. The MUTCD users are accustomed to knowing that other areas of the Manual should be consulted when working in Part 7, because school areas include signs, pavement markings, and traffic signals. FHWA retains the reference to the School Crossing signal warrant, because it is specific to school areas.

519. FHWA proposes to delete existing Section 7A.03 School Crossing Criteria. FHWA proposes to delete Support P1, because the information is not needed in the MUTCD, and relocate P2 to Section 7D.01 in order to place information about gaps in traffic with similar information in new Section 7D.01 (existing Section 7D.03).

520. FHWA proposes to consolidate and combine information from existing Sections 7B.01 through 7B.07 into one section numbered and titled, ''Section 7B.01 Design of School Signs.'' FHWA proposes to delete Standards and Guidance that are covered in Section 2A.11 as the information is redundant.

521. FHWA also proposes to create a new section numbered and titled, ''Section 7B.02 School Area Signs and Plaques'' using information from existing Sections 7B.08 through Section 7B.10.

FHWA proposes to change Standard P1 in existing Section 7B.10 to Guidance because many States have higher fines by statute in school zones, work zones, and other locations. Retaining this as a Standard may have an unintended consequence of placing a financial burden on States and municipalities to sign for every location where there are increased fines; therefore, FHWA believes that the use of engineering judgment is more appropriate.

FHWA also proposes to add new Guidance, Standard, and Option paragraphs to clarify the application of Higher Fines Signs and Plaques in school areas based on Official Ruling No. 7(09)–3(I).[113]

522. FHWA proposes to create a new section numbered and titled, ''Section 7B.03 School Crossing Signs'' by combining information from existing Sections 7B.11 and Section 7B.12.

FHWA also proposes to change a portion of Standard P3 in existing Section 7B.12 prohibiting the use of School Crossing assemblies on approaches controlled by a YIELD sign to Guidance. FHWA proposes this change to revert back to the language in the 2003 MUTCD. NCUTCD suggested this change because the language in the 2009 Edition that prohibited the use of School Crossing assemblies on approaches controlled by a STOP or a YIELD sign was too restrictive. An NCUTCD task force working on this issue cited that the School Crossing assembly provides beneficial guidance to road users on approaches where vehicles are not required to stop; therefore, prohibiting their use where YIELD signs are placed could have a negative effect on the safety of school children. In conjunction with this change, FHWA proposes two new Options allowing a School Crossing Assembly on Yield approaches to roundabouts and channelized right turn lanes controlled by a Yield sign. Also, FHWA proposes to allow a Yield Here To (Stop Here For) Pedestrians (R1–5a or R1–5c) sign in advance of a marked crosswalk on a multi-lane approach in a school zone in accordance with the provisions in Section 2B.20.

FHWA proposes to change existing Options P4, P5, P6, and existing Standard P8 in existing Section 7B.12 to clarify the application of In-Street Pedestrian Crossing (R1–6 or R1–6a) sign, In-Street School Crossing (R1–6b or R1–6c) sign, Overhead Pedestrian Crossing (R1–9 or R1–9a) sign, and 12-inch reduced size in-street School (S1–1) sign may be used at school crossings on approaches that are not controlled by a traffic control signal, a pedestrian hybrid beacon, or emergency vehicle hybrid beacon. FHWA proposes these changes to eliminate any potential confusion whether the various types of beacons are considered unsignalized intersections.

FHWA proposes to modify the name of the In-Street Schoolchildren Crossing sign to In-Street School Crossing sign to be more consistent with other signs that it supplements and more accurately describe the use of the sign.

Lastly, FHWA proposes to add an Option to allow an In-Street Pedestrian Crossing or In-Street School Crossing sign at intersections or midblock crossings with flashing beacons.

523. FHWA proposes to retitle Section 7B.04 (existing Section 7B.13) ''School Bus Stop Signs'' and incorporate information from existing Section 7B.14.

524. FHWA proposed to add a new Section 7B.05 ''School Bus Stop When Flashing Signs.'' In this section FHWA proposes a new sign, ''STOP FOR SCHOOL BUS WHEN RED LIGHTS FLASH'' to remind drivers of the requirement to stop for school buses when the flashing red lights on the school bus are in operation. FHWA proposes this new sign in response to a recommendation from the NCUTCD as many States currently use variations of regulatory word messages for this purpose. The new sign would standardize the message for drivers.

525. FHWA proposes to retitle Section 7B.06 (existing Section 7B.15) ''School Speed Limit Signs and Plaques'' and incorporate information from existing Section 7B.16.

FHWA proposes to change Standard P3 in existing Section 7B.15 to Guidance to allow flexibility on required signing for fines in school zones based on engineering judgment. Many States have higher fines by statute in school zones, work zones, and other locations; therefore, requiring the use of the FINES HIGHER, FINES DOUBLE, or $XX FINE plaques could place an undue burden on States and municipalities to sign for every location where there are increased fines.

Also, FHWA proposes to revise existing Guidance P7 to recommend that the maximum beginning point of a reduced school speed limit zone in advance of school grounds is 500 feet. The recommendation was suggested by the NCUTCD and based on the results of research conducted on Speeds in School Zones.[114]

Lastly, FHWAproposes to add a new Guidance paragraph to clarify that duplicate plaques for fines should be omitted if other traffic violations in addition to exceeding the speed limit are subject to higher fines based on Official Ruling No. 7(09)–3(I).

526. In Section 7D.01 (existing Section 7D.03) ''Qualifications of Adult Crossing Guards,'' FHWA proposes to incorporate the existing Option from existing Section 7D.02.

527. In Section 7D.02 (existing Section 7D.05) ''Operating Procedures for Adult Crossing Guards,'' FHWA proposes to incorporate the existing Standard from existing Section 7D.04.

Also, FHWA proposes to add a Standard requiring that the STOP paddle comply with the provisions for a STOP/SLOW paddle and provide a reference to Section 6D.02 for information. FHWA also adds a reference to STOP paddles in Section 6D.02. Note: this proposed new

[113] FHWA's Official Ruling No. 7(09)–3(I), August 17, 2020, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/reqdetails.asp?id=1150.*

[114] FHWA/TX–09/0–5470–1, ''Speeds in School Zones,'' can be viewed at the following internet website: *http://tti.tamu.edu/documents/0-5470-1.pdf.*

language is intended to state an existing requirement specifically regarding the provisions of the STOP paddle and is not a new requirement.

Lastly, FHWA proposes to delete existing Options P4 and P5 and Standard P6 regarding the flashing lights because it is redundant information that is contained in Section 6E.03.

Discussion of Proposed Amendments to Part 8 Traffic Control for Railroad and Light Rail Transit Grade Crossings

528. In Section 8A.01 Introduction, FHWA proposes a new Support statement that the highway agency or authority with jurisdiction, the regulatory agency with statutory authority, and the railroad company or transit agency jointly perform the engineering study of grade crossings and the traffic control devices that are associated with them. FHWA proposes this new language to encourage coordination and cooperation between the appropriate knowledgeable parties of interest.

FHWA also proposes new Support statements regarding grade crossing warning systems, which complement the existing support statement about traffic control systems at grade crossings.

529. FHWA proposes a new section numbered and titled, ''Section 8A.02 Highway-LRT Grade Crossings,'' which is comprised of existing P8 through 12 of Section 8A.01. FHWA proposes to revise Item B to highlight that LRT has the right-of-way over other road users at grade crossings and intersections in a semi-exclusive alignment, and to revise Item C to highlight that LRT does not have the right-of-way over other road users at grade crossings and intersections in a mixed-use alignment. FHWA proposes this change to provide clarity regarding right-of-way at semi-exclusive and mixed-use alignments.

FHWA also proposes a revised Guidance statement to recommend that if a highway-LRT grade crossing is equipped with a flashing-light signal system and is located within 200 feet of an intersection or midblock controlled by a traffic control signal, a pedestrian hybrid beacon, or an emergency-vehicle hybrid beacon, the highway traffic signal should be provided with preemption. FHWA proposes this change to encourage use of preemption in such locations.

Finally, FHWA proposes a new Option statement allowing the use of traffic signal priority or preemption if determined to be appropriate by a Diagnostic Team when LRT vehicles are operating in a mixed-use alignment. FHWA proposes this change because there might be locations where traffic signal priority or preemption is appropriate.

530. In Section 8A.03 (existing Section 8A.02), retitled, ''Use of Standard Devices, Systems, and Practices at Grade Crossings,'' FHWA proposes new Standard paragraphs to require that the Diagnostic Team shall reach a determination through consensus, documented in an engineering study, on new grade crossing traffic control systems and on proposed changes to an existing grade crossing traffic control system. FHWA proposes this change, consistent with 49 CFR part 222, appendix F, because there are a large number of significant variables to be considered and no single standard system of traffic control devices is universally applicable for all grade crossings.

FHWA also proposes a new Option statement that general maintenance activities or minor operational changes to the grade crossing traffic control system that do not have a negative impact on the overall operation of the traffic control system can be made without a Diagnostic Team. FHWA proposes this change to provide agencies with more flexibility and to reduce the burden on Diagnostic Team members for minor changes.

Lastly, FHWA proposes to add a new Guidance paragraph to recommend that the Diagnostic Team distributes the determination made regarding traffic control system at a grade crossing to the Diagnostic Team members. FHWA proposes this change to encourage documentation of the decisions made regarding traffic control systems at grade crossings.

531. In Section 8A.04 (existing Section 8A.03) Use of Standard Devices, Systems, and Practices at Highway-LRT Grade Crossings, FHWA proposes to delete several Support, Standard, Guidance, and Option paragraphs, because most of this text is now proposed to be incorporated into Sections 8A.02 and 8A.03.

532. FHWA proposes a new section numbered and titled, ''Section 8A.05 Engineering Studies at Grade Crossings'' comprised of P2 through P4 of existing Section 8A.02 and P5 of existing Section 8A.03 as part of the reorganization to group similar information together.

FHWA also proposes a new Guidance statement recommending the factors to be considered in the determining which traffic control devices are appropriate to install at a grade crossing.

533. In Section 8A.06 (existing Section 8A.04) Uniform Provisions, FHWA proposes a new Guidance paragraph regarding raised median islands installed supplemental to an automatic gate to discourage road users from driving around a lowered gate.

FHWA also proposes to add a Guidance statement discouraging the use of two-way center left turn lanes in the immediate vicinity of grade crossings and recommending other treatments. FHWA proposes this change because two-way left turn lanes at grade crossings are problematic, especially when automatic gates are or may be installed. Only extending gates to the center of the two-way left turn lane on both sides of the crossing insufficiently discourages road users in that lane from circumventing the gates and is in conflict with 49 CFR 234.223. This practice is consistent with the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering (MRE),[115] current edition and the AREMA Communication & Signals Manual.[116]

534. FHWA proposes a new section numbered and titled, ''Section 8A.07 Minimum Track Clearance Distance'' to provide Support statements regarding the minimum track clearance distance at a grade crossing. FHWA proposes this new section to describe more fully the applications of Minimum Track Clearance Distance that are too lengthy and complex to be included with the definition in Part 1. All uses of the term within other sections of Part 8 include a cross reference to Section 8A.07 so that readers would know where to go to find out how this term is applied.

535. FHWA proposes a new section numbered and titled, ''Section 8A.08 Adjacent Grade Crossings'' to provide Support and Guidance statements for adjacent grade crossings. FHWA proposes this new section, because it is important to treat closely-spaced grade crossings properly, which sometimes result from separate railroads or a railroad and an LRT alignment operating in parallel corridors. FHWA also includes a reference to Part 3.1.11 of the ''AREMA Communications & Signals Manual'' [117] for more information about adjacent grade crossings that are located within 200 feet of each other.

536. In Section 8A.09 (existing Section 8A.05) Grade Crossing Elimination, FHWA proposes a new

[115] The ''Manual for Railway Engineering'' can be viewed at the following internet website: *https://www.arema.org/AREMA_MBRR/AREMAStore/MRE.aspx.*

[116] The ''Communications & Signals Manual'' can be viewed at the following internet website: *https://www.arema.org/AREMA_MBRR/AREMAStore/Communications_Signals_2019.aspx.*

[117] *Ibid.*

Option statement permitting an engineering study to determine the costs and benefits of eliminating a crossing that appears to be redundant or unnecessary. In concert with this change, FHWA proposes to add Guidance paragraphs recommending the engineering study and subsequent steps for eliminating the grade crossing if it is determined to be appropriate. This replaces the existing Guidance statement about eliminating grade crossings that cannot be justified. FHWA proposes this new material to provide practitioners with information to assist with eliminating grade crossings, which are a potential source of crashes and congestion. FHWA also proposes to delete a Guidance paragraph that seemed to recommend that engineering studies regarding potential grade crossing elimination should be conducted for every grade crossing.

537. In Section 8A.12 (existing Section 8C.12) Grade Crossings Within or In Close Proximity to Circular Intersections, FHWA proposes to change the Standard regarding an engineering study to determine queuing impacts to a Guidance statement to provide agencies with more flexibility in the engineering study and design of grade crossings near circular intersection.

538. FHWA proposes a new section numbered and titled, ''Section 8A.13 Busway Grade Crossings'' to provide Standards, Guidance, Support, and Option statements for busway grade warning and crossing systems. FHWA proposes this new section to provide standardization of traffic control devices for grade crossings of highways with busways.

539. In Section 8A.14 (existing Section 8A.08) Temporary Traffic Control Zones, FHWA proposes a new Guidance paragraph regarding temporary traffic control zones that extend over grade crossings equipped with automatic gates and either one-lane two-way or reversible lane operation is used.

FHWA also proposes to add a new Guidance paragraph recommending the preparation of a traffic control plan when traffic is detoured over an existing grade crossing with passive warning devices. FHWA proposes this change because it is important to analyze traffic safety during detours.

540. In Section 8B.02 Sizes of Grade Crossing Signs, FHWA proposes to clarify that the sizes shown in Table 8B–1 are minimum sizes. FHWA also proposes to change the minimum required size of a Yield sign at multi-lane conventional road grade crossings from 48″× 48″ to 36″× 36.″ FHWA proposes this change to provide clarity regarding the requirements of the sign size and based on Official Ruling No. 8(09)–7(I).[118]

541. In Section 8B.03 Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Plaque (R15–2P) at Active and Passive Grade Crossings, FHWA proposes to upgrade an existing Option to a Standard to require a minimum of one Crossbuck sign on each highway approach to a gated highway-LRT grade crossing on a semi-exclusive alignment. FHWA proposes this change to make sure that road users understand why a gate is present.

FHWA proposes to revise existing Paragraph 5 to require the Number of Tracks plaque below the Crossbuck sign where there are two or more tracks at a grade crossing, regardless of the presence of automatic gates. This revision is necessary because the presence of two or more tracks at a crossing adds complexity for road users and additional risks, such as in situations in which trains occupy both tracks, where the tracks are spaced such that a vehicle could become stuck between the tracks, or where the visibility of the second track is limited. This revision would improve safety by providing uniformity for multitrack crossings that would accommodate the expectancy of the road user.

FHWA also proposes to revise existing Paragraph 7 to reduce the requirement for retroreflective white material on the back of the Crossbuck sign to apply only to passive grade crossings. FHWA proposes this change because active grade crossings have signals or warning lights for traffic control device conspicuity.

FHWA also proposes new Standard paragraphs regarding minimum lateral clearance between the edge of the Crossbuck sign and the face of a vertical curb, edge of traveled way, and/or edge of paved or surfaced shoulder. FHWA proposes this change to be consistent with the dimensions shown in Figure 8B–3 for Crossbuck Assemblies and to be consistent with Paragraphs 6, 7, and 8 of existing Section 8C.01.

FHWA also proposes a new Guidance statement recommending the Crossbuck sign to be at least 12 feet from the center of the nearest track. FHWA proposes this change to formalize the dimensions shown on Figure 8D–2.

FHWA also proposes a new Guidance paragraph recommending the mounting height to the center of Crossbuck signs to be approximately 9 feet and an Option to adjust the height based on local conditions and to accommodate signs below the Crossbuck sign. FHWA proposes this change to clarify the dimension shown on Figure 8B–2.

542. In Section 8B.04 Crossbuck Assemblies with YIELD or STOP Signs at Passive Grade Crossings, FHWA proposes a new Guidance paragraph recommending the use of a STOP sign at the Crossbuck Assembly where a passive grade crossing is located at the stem of a T-intersection with inadequate clear storage area between the tracks and the parallel roadway. FHWA also proposes that if a STOP sign is installed, consideration should also be given to installing a YIELD sign at the highway-highway intersection. FHWA proposes this new text to provide practitioners with additional information for crossings with this geometry.

FHWA also proposes a new Standard paragraph requiring a Yield sign and TO TRAINS (R15–9P) supplemental plaque when Crossbuck Assemblies are used within the limits of a highway-highway intersection controlled by a traffic control signal not interconnected with the grade crossing and not preempted by the approach of rail traffic. FHWA also proposes to prohibit the use of a Stop sign with the Crossbuck Assembly in this situation. FHWA proposes this change for consistency with Section 4A.08 (existing Section 4D.34) regarding the use of stop signs with traffic control signals.

FHWA proposes to revise existing Paragraph 10 regarding YIELD and STOP sign mounting heights on Crossbuck Assemblies to require at least 5 feet in rural areas and at least 7 feet in areas where parking or pedestrian movements are likely to occur. FHWA proposes this change to provide consistency throughout the Manual regarding vertical mounting height.

FHWA also proposes to revise the existing Guidance paragraph regarding a Crossbuck Assembly on a separate support than the Crossbuck sign, to clarify the recommended location of YIELD or STOP sign in relationship to the Crossbuck sign and to clarify the lateral clearances from a curb or edge of traveled way. FHWA proposes this change to provide consistency throughout the Manual regarding lateral offset.

FHWA also proposes to revise the existing Standards regarding the vertical strip of retroreflective white material on a Crossbuck support to clarify that a white retroreflective strip wrapped around a round support satisfies the requirement as long at the round support has an outside diameter of at least 2 inches. FHWA proposes this

[118] FHWA Official Ruling No. 8(09)–7 (I), April 8, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/8_09_7.htm.*

change to provide clarity regarding the requirements of the white retroreflective strip and based on Official Ruling No. 8(09)–1(I).[119]

543. In Section 8B.05 Use of STOP (R1–1) or YIELD (R1–2) Signs without Crossbuck Signs at Highway-LRT Grade Crossings, FHWA proposes to eliminate the Guidance statement regarding LRT speed and replace it with a Guidance statement in Section 8D.04 (Use of Active Traffic control Systems at LRT Grade Crossings) with recommendations for active traffic control systems where LRT operating speeds are less than 25 mph unless an engineering study determines that passive devices would provide adequate control. FHWA proposes this change based on the stopping distance of LRT vehicles at speeds less than 25 mph and consistent with industry practice.

544. In Section 8B.06 Grade Crossing Advance Warning Signs (W10–1 through W10–4), FHWA proposes to modify the Standard statement to remove the requirement at all highway-LRT grade crossing in semi-exclusive alignments and add a condition that the warning signs are not required where Crossbuck signs are not used. FHWA proposes these changes to reduce the number of locations where Grade Crossing Advance Warning Signs are required at highway-LRT grade crossings.

545. In Section 8B.07 (existing Section 8B.09) DO NOT STOP ON TRACKS Sign (R8–8), FHWA proposes a new Guidance paragraph recommending the use of a DO NOT STOP ON TRACKS (R8–8) sign if a traffic control signal is installed within 200 feet downstream from a grade crossing such that highway vehicle queues are likely to extend onto the tracks except where a pre-signal is installed. FHWA proposes this change to improve safety at grade crossings near signalized intersections.

FHWA also proposes to revise existing Paragraph 1 to separate the provision into two paragraphs and to delete the text regarding an engineering study. FHWA proposes this change to provide agencies more latitude in installing the R8–8 sign based on engineering judgment.

546. In Section 8B.08 (existing Section 8B.10) TRACKS OUT OF SERVICE Sign (R8–9), FHWA proposes a new Option statement allowing warning signs such as Low Ground Clearance Crossing (W10–5) and Skewed Crossing (W10–12) to be left in place after tracks are taken out of service to warn road users about physical roadway conditions that are still present. FHWA proposes this change to provide agencies with flexibility to retain signs for a longer period than other traffic control devices at the crossing.

FHWA also proposes two new Standards requiring that Emergency Notification System (I–13) signs be retained at grade crossings that are out of service until the tracks are removed or covered. Emergency Notification System signs provide emergency contact information for the railroad responsible for the crossing. Retaining the existing signs until the tracks are removed would ensure a contact number is available for road users to reach if there is a safety concern or another issue that requires the railroad to be contacted.

547. FHWA proposes new Option and Support statements in Section 8B.16 (existing Section 8B.23) to address warning, selective exclusion, and detour signing for additional vehicle types and combinations that may encounter hang-up situations at low ground clearance crossings. The proposed changes are in response to NTSB recommendation H–18–24.[120]

548. FHWA proposes to relocate existing Section 8.17 LOOK Sign (R15–8) to Section 9B.21 to allow the use of a LOOK sign on a shared-use path or separated bikeway at a grade crossing. FHWA proposes this change because these signs are no longer to be installed to communicate with drivers, as the YIELD or STOP sign on the Crossbuck Assemblies at passive crossings imply that motorists should look for rail traffic. An Option was also added in Section 8E.03 for using LOOK signs for pathways and sidewalks.

549. In Section 8B.20 (existing Section 8B.24) Storage Space Signs (W10–11, W10–11a, W10–11b), FHWA proposes a new Standard paragraph that clarifies that the Storage Space sign shall not be used as a replacement for the Advanced Warning (W10–1) sign and that the signs shall be mounted on separate posts. FHWA proposes this change because it is important that the Advance Warning sign have priority over the Storage Space sign.

550. FHWA proposes a new section numbered and titled, ''Section 8B.23 Next Crossing Plaques (W10–14P and W10–14aP)'' to provide Option statements describing where the NEXT CROSSING (W10–12P) plaque and USE NEXT CROSSING (W10–14aP) plaque may be mounted.

551. FHWA proposes a new section numbered and titled, ''Section 8B.24 ROUGH CROSSING Plaque (W10–15P)'' to provide an Option statement for the installation of the ROUGH CROSSING (W10–15P) plaque.

552. In Section 8B.26 (existing Section 8B.18) Emergency Notification System Sign (I–13), FHWA proposes changing P1 from Guidance to Standard to require installing Emergency Notification signs for all highway-rail grade crossings and all highway-LRT grade crossings on semi-exclusive alignments. FHWA proposes this change to be consistent with regulations promulgated by the FRA.[121]

FHWA also proposes a new Standard paragraph requiring minimum width and height dimensions, as well as number and letter heights for the Emergency Notification sign to be consistent with new requirements promulgated by the Federal Railroad Administration (FRA). FHWA also proposes changing the provision for the sign to be retroreflective from Guidance to a Standard to be consistent with requirements promulgated by the FRA.[122]

FHWA proposes an Option statement allowing the seven-character grade crossing inventory number to be shown on the sign as a black legend on a white rectangular background. FHWA proposes this change to allow additional flexibility.

FHWA also proposes a new Guidance statement recommending Emergency Notification signs be attached to the Crossbuck Assemblies or grade crossing signal masts on the right-hand side of each roadway approach to the grade crossing. FHWA proposes this recommendation to provide uniformity in sign placement.

Finally, FHWA proposes an Option statement to allow Emergency Notification signs to be located on a separate post and permitting additional Emergency Notification signs to be installed at a grade crossing.

553. FHWA proposes relocating the pavement markings sections from Chapter 8B and placing them in a new Chapter 8C to make it easier for the reader to find text in the MUTCD. FHWA proposes a new section numbered and titled, ''Section 8C.01 Purpose and Application'' to provide Support statements to describe the

[119] FHWA Official Ruling No. 8(09)–1(I), March 10, 2010, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/8_09_001.htm.*

[120] ''Collision Between Freight Train and Charter Motorcoach at High-Profile Highway-Railroad Grade Crossing, Biloxi, Mississippi, March 7, 2017,'' NTSB/HAR1801, can be viewed at the following internet website: *https://www.ntsb.gov/investigations/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=H-18-024.*

[121] 49 CFR 234.311.

[122] 49 CFR 234.309.

purpose and application of markings at grade crossings to provide context for the remainder of new Chapter 8C.

554. In Section 8C.02 (existing Section 8B.27) Pavement Markings, FHWA proposes a Standard statement incorporating an existing requirement that pavement markings be placed in each approach lane on all paved approaches to highway-LRT grade crossings where a Crossbuck sign is placed at the grade crossing. FHWA proposes this change in conjunction with making the first three paragraphs of this section applicable only to highway-rail grade crossings. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement.

FHWA also proposes a new Standard statement that if pavement markings are used on a multi-lane approach to a grade crossing, identical markings shall be placed in each approach lane that crosses the tracks. FHWA proposes this change because pavement markings serve an important function to warn road users of the presence of a grade crossing and drivers will always be able to see the full message even when traffic is stopped in adjacent lanes by having the entire symbol placed in their own lane.

FHWA also proposes to delete a portion of P5 recommending that the X symbol and letters at grade crossings to be elongated. FHWA proposes this change because the standard layout for the symbol is already elongated.

Finally, FHWA proposes a new Guidance statement recommending that if supplemental pavement marking symbols are placed between the Grade Crossing Advance Warning sign and the grade crossing, then the downstream transverse line should be at least 50 feet in advance of the stop or yield line at the grade crossing. FHWA proposes this change to provide uniform placement of the supplemental pavement marking symbols and to avoid the appearance that the downstream transverse line is the stop line or that the downstream transverse line and the stop line form a crosswalk.

555. In Section 8C.03 (existing section 8B.28) Stop and Yield Lines, FHWA proposes to modify the last Guidance and Standard statements in this section to clarify the location of stop lines where active traffic control devices are used.

556. FHWA proposes a new section numbered and titled, ''Section 8C.04 Lane-Use Arrow Markings'' to provide a Standard and Guidance on the placement of lane-use arrow markings. FHWA proposes this change to address recent train-auto crashes in which a roadway user made an improper turn and turned onto the railroad tracks rather than at an adjacent intersection immediately beyond the grade crossing. In these crashes, an arrow pavement marking denoting an exclusive lane was located on the roadway between the stop line for the grade crossing and the track area.30. FHWA proposes a new section numbered and titled, ''Section 8C.05 Edge Lines, Lane Lines, Raised Pavement Markers, and Tubular Markers'' to provide Guidance, Option, and Standard statements regarding the use of edge lines, lane lines, raised pavement markers, and tubular markers on an approach to a grade crossing. FHWA proposes this addition to address recent train-auto crashes in which a roadway user made an improper turn and turned onto the railroad tracks rather than at an adjacent intersection immediately beyond the grade crossing. In these crashes, the roadway edge line stopped near the stop line for the grade crossing and did not continue across the track area.

557. In Section 8C.06 (existing Section 8B.29) Dynamic Envelope Markings, FHWA proposes to delete the Support statement describing dynamic envelope markings because the definition is covered in Part 1.

FHWA also proposes to revise the existing Standard statement to allow dynamic envelope markings to be up to 24 inches wide. This change is proposed to provide agencies with more flexibility to improve visibility and to provide easier maintenance of the markings.

FHWA also proposes to add a new Option paragraph allowing white cross-hatching lines to be placed on the highway pavement within the dynamic envelope as a supplement to the 4-inch normal solid white lines and in areas adjacent to the dynamic envelope where vehicles are not intended to stop or stand. FHWA proposes this addition, as well as a figure with examples, to provide agencies with additional options to emphasize the dynamic envelope and discourage vehicles from stopping in the approach to the dynamic envelope.

558. In Section 8D.01 (existing Section 8C.01) Introduction, FHWA proposes to add a Guidance statement recommending that when the automatic gate is in its upright position, no portion of the physical features of flashing-light signals and gates should be closer than 12 feet from the center of the nearest track. FHWA proposes this language to provide adequate vertical clearance in the vicinity of the tracks and to formalize the dimensions shown in Figure 8D–2 (existing Figure 8C–2).

FHWA also proposes to eliminate the Support statement in existing Paragraph 15 regarding LRT typical speeds through semi-exclusive and mixed-use alignment because the statement does not add useful information. In concert with this change, FHWA proposes to relocate existing Paragraph 16 to the beginning of the Section with the other Support statements.

559. In Section 8D.02 (existing Section 8C.02) Flashing-Light Signals, FHWA proposes to add a Guidance statement, and an accompanying Support statement regarding the placement of the Number of Tracks plaque with respect to the flashing-light backgrounds, as well as the Crossbuck sign.

FHWA also proposes adding a Guidance paragraph recommending that if flashing-light signals are used, at least one pair of flashing lights should be provided for each approach lane of the roadway. FHWA proposes this Guidance to provide uniform flashing light signals across the roadway.

FHWA proposes three Guidance paragraphs to provide text that supports the dimensions for placement and mounting shown in Figure 8D–1 (existing Figure 8C–1).

FHWA also proposes Guidance paragraphs recommending that where the storage distance for vehicles approaching a grade crossing is less than a design vehicle length, the Diagnostic Team should consider providing additional flashing-light signals aligned toward the movement turning toward the grade crossing. FHWA also recommends that the Diagnostic Team consider the use of additional flashing-light signals to provide supplemental warning to pedestrians. FHWA proposes these changes to provide additional warning of the grade crossing.

Finally, FHWA proposes to delete the last Standard statement in this section, because the provisions are covered elsewhere.

560. In Section 8D.03 (existing Section 8C.04) Automatic Gates, FHWA proposes a Standard requiring the width of the retroreflective sheeting on the front of the gate arm to be at least 4 inches. FHWA proposes this addition to provide an adequate width of material for visibility.

FHWA also proposes a Standard statement requiring that except for the continuously illuminated light at the tip of the gate, the left-most flashing gate light in each additional pair of lights flashes simultaneously with the left-hand light of the flashing-light signals and the right-most flashing gate light in each additional pair of lights flashes

simultaneously with the right-hand light of the flashing-light signals. FHWA proposes this addition to provide uniformity in flashing patterns between the flashing-light signals and the flashing lights on the gate.

FHWA proposes a Guidance paragraph with recommendations for the location of the tip of the automatic gate arm when it is in the down position relative to the center of the nearest track. FHWA proposes this addition to support the dimensions shown in Figure 8D–2 (existing Figure 8C–2).

Finally, FHWA proposes Guidance paragraphs with recommendations for the length, height, and position of the automatic gate arm. FHWA proposes these additions to support the dimensions shown in Figure 8D–1 (existing Figure 8C–1).

561. FHWA proposes a new section numbered and titled, ''Section 8D.04 Use of Active Traffic Control Systems at LRT Grade Crossings'' that replaces existing Sections 8C.03 and 8C.05.

FHWA also proposes active traffic control system Standards for highway-LRT grade crossings based on the maximum operating speed of the LRT vehicles. Where the maximum LRT operating speed exceeds 40 mph, active traffic control systems with automatic gates would be required. Where the maximum LRT operating speed is greater than 25 mph but is less than 40 mph, active traffic control systems would be required and automatic gates would be optional. FHWA proposes this change based on the safety experience of modern LRT systems and to replace paragraphs that were previously in existing Section 8C.03.

FHWA also proposes a Guidance statement with recommendations for active traffic control systems where LRT operating speeds are less than 25 mph unless an engineering study determines that passive devices would provide adequate control.

FHWA also proposes a Guidance statement with a recommendation not to use a traffic control signal alone at locations that are not intersections and LRT speeds are above 20 mph.

562. In Section 8D.05 (existing Section 8C.06), retitled, ''Exit Gate and Four-Quadrant Gate Systems,'' FHWA proposes to add Support paragraphs to clarify the difference between Exit Gate systems and Four-Quadrant Systems.

FHWA also proposes a Standard statement to require the queue clearance time be long enough to permit the exit gate arm to lower after a design vehicle of maximum length is clear of the minimum track clearance distance where a Four-Quadrant Gate system is present. This proposed Standard is necessary to ensure that vehicles can clear the tracks safely without becoming entrapped between the gates on the tracks while a train is approaching.

In addition, FHWA proposes to add a Guidance statement recommending that exit gates be independently controlled for each direction of roadway traffic. FHWA proposes these additions to provide consistency with industry practice.

Lastly, FHWA proposes to delete existing Paragraph 17 because this recommendation resulted in exit gates being located significantly further from the grade crossing than the entrance gates.

563. FHWA proposes a new section numbered and titled, ''Section 8D.07 Another Train Coming'' to provide Guidance and Support for a new traffic control device to provide warning of another train approaching a grade crossing. FHWA proposes this addition to provide practitioners with information for uniform application.

564. In Section 8D.09 (containing portions of existing Section 8C.09), retitled, ''Use of Traffic Control Signals at Grade Crossings,'' FHWA proposes an edit to the Option that allows traffic control signals be used instead of flashing-light signals to control road users at industrial highway-rail grade crossings and other places where the maximum speed of trains is 10 mph or less. FHWA proposes this change to include a specific train speed to improve clarity and to be consistent with FRA track classifications.

565. FHWA proposes a new section numbered and titled, ''Section 8D.10 Preemption of Highway Traffic Signals at or Near Grade Crossings.'' Several of the paragraphs in the proposed new section are from existing Section 8C.09.

FHWA also proposes new Standards, Guidance, Options, and Support statements regarding traffic signal preemption at grade crossings. FHWA proposes this new material to provide consistency with the changes in the industry resulting from the investigation into the causes of the fatal train/school bus crash in Fox River Grove, Illinois.[123]

FHWA proposes new Support statements about the systems that are involved in preemption. FHWA proposes the change to provide agencies with additional background information about preemption.

FHWA also proposes changes to Guidance to include additional measures for situations where the traffic signal is located farther than 200 feet from the grade crossing. FHWA proposes the change to provide additional information to agencies to improve safety at grade crossing that do not have preemption.

FHWA also proposes new Guidance paragraphs to provide additional recommendations for the use of active grade crossing warning systems near traffic signals, the use of automatic gates at traffic signals with preemption, and the annual inspection of the preemption operation. FHWA proposes the changes to reflect industry practices resulting from investigation of train/vehicle crashes.

FHWA proposes a new Standard paragraph that requires preemption where traffic signal faces are located within 50 feet of a grade crossing that has flashing-light signals. FHWA proposes this change to avoid display of traffic signal indications that conflict with the flashing-light signal system.

FHWA also proposes new Support and Option statements to provide additional information about double-break and supervised circuits. FHWA proposes this change to provide practitioners with information to make the preemption fail-safe.

FHWA also proposes new Guidance statements to provide recommendations for locations with track detection circuits at passive grade crossings and left turn movements at a preempted traffic signal downstream from a grade crossing. FHWA proposes the changes to provide agencies with recommendations for situations that are not addressed in the existing MUTCD.

FHWA also proposes new Guidance and Support statements to describe the considerations and recommendations for application of simultaneous and advance preemption. FHWA proposes these changes to provide practitioners with more information to improve consistency in the application of preemption.

FHWA also proposes new Standard statements regarding the end of the track clearance interval. FHWA proposes these changes to prohibit the track clearance interval from being terminated too early in situations when there is variability in train approach times.

FHWA also proposes a new Guidance statement recommending the use of advanced preemption with exit gates. FHWA proposes this change because additional preemption time is needed for the safe operation of the exit gate system.

[123] ''Highway/Railroad Accident Report Collision of Northeast Illinois Regional Commuter Railroad Corporation (METRA) Train and Transportation Joint Agreement School District 47/155 School Bus at Railroad/Highway Grade Crossing in Fox River Grove, Illinois on October 25, 1995'' NTSB/HAR–96/02, can be viewed at the following internet website: *https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR9602.pdf.*

FHWA also proposes new Guidance statements recommending the ability of traffic signal equipment to restart or reservice preemption requests. FHWA proposes this change to provide consistent preemption operation where train movements may stop or start on the approach to the grade crossing.

FHWA also proposes a new Standard statement to prohibit the flashing mode of a traffic signal from beginning until rail traffic has entered the grade crossing. FHWA proposes this change to prevent road user confusion that could result in stopping on the tracks.

Finally, FHWA proposes a new Standard paragraph to require evaluation of the priority of preemption calls when both boats and trains operate at a grade crossing. FHWA proposes this change to require agencies to resolve competing preemption requests.

566. In Section 8D.11 (existing Section 8B.08), retitled, ''Movements Prohibited During Preemption,'' FHWA proposes new Guidance and Option statements that prohibit movements towards a grade crossing using traffic signal indications and blank-out signs. FHWA proposes this change to provide more detailed recommendations and information to agencies for the prohibition of permissive-only turn movements, protected-only turn movements and straight-through movements towards a grade crossing.

FHWA also proposes new Guidance statements for the recommended use of LRT-activated blank-out signs. FHWA proposes this change to improve consistency in the application of the signs.

Finally, FHWA proposes a revised Standard that requires blank-out signs used in preemption be activated only when the preemption is active. FHWA proposes this change to improve the consistent operation of the signs.

567. FHWA proposes a new section numbered and titled, ''Section 8D.12 Pre-Signals at or Near Grade Crossings.'' Several of the paragraphs in this proposed new section are from existing Section 8C.09.

FHWA proposes revised and new Standards that require red signal indications to be displayed during preemption. FHWA proposes the change to prevent conflicting indications between the pre-signal and the grade crossing flashing-light signal system.

FHWA also proposes a new Guidance paragraph to recommend measures at downstream traffic signals. FHWA proposes this change to reduce vehicles queuing from a downstream signal through a grade crossing.

FHWA also proposes revised and new Options for the green interval. FHWA proposes this change to provide agencies with additional information and flexibility in the operation of a pre-signal.

FHWA also proposes a new Standard statement to define the calculation of the queue clearance time. FHWA proposes the change to improve safety of road users by ensuring the queue clearance time is long enough to clear vehicles out of the grade crossing after the pre-signal indications turn red.

FHWA also proposes new Guidance paragraphs to provide recommendations for indications over turn lanes that extend from a downstream intersection through a pre-signal. FHWA proposes the change to avoid road user confusion between indications at a pre-signal and a downstream traffic signal and based on Official Ruling No. 8(09)–19(I).[124]

FHWA also proposes new Standards and Support paragraphs that require agencies to use specific indications at a pre-signal. FHWA proposes the change to improve safety by discouraging road users from inadvertently turning onto railroad or LRT tracks.

Finally, FHWA proposes new Option statements for the location of pre-signal indications and additional signing. FHWA proposes the changes to provide agencies with flexibility to install indications where they will be most visible and effective.

568. FHWA proposes a new section numbered and titled, ''Section 8D.13 Queue Cutter Signals at or Near Grade Crossings'' for the placement and implementation of queue cutter signals near grade crossings.

FHWA proposes new Support and Option statements to provide information about the application, and operation of queue cutter signals. FHWA proposes the change to allow agencies explicitly to install queue cutter signals which are not addressed in the existing MUTCD.

FHWA also proposes a new Standard paragraph that requires agencies to use specific indications at a queue cutter signal. FHWA proposes the change to improve safety by discouraging road users from inadvertently turning onto railroad or LRT tracks.

FHWA also proposes new Options for the locations of queue cutter indications. FHWA proposes the changes to provide agencies with flexibility to install indications where they will be most visible and effective.

FHWA also proposes new Guidance and Options for signing associated with the queue cutter. FHWA proposes the changes to provide agencies with flexibility to install signing that discourages road users from stopping in the grade crossing.

FHWA also proposes new Guidance and Options for the operation of queue cutter signals. FHWA proposes the change to provide recommendations for the safe and effective operation of the signal.

FHWA also proposes new Standards that require interconnection and preemption of a queue cutter signal. FHWA proposes the change to require uniform application and to prevent conflicting or confusing displays by the queue cutter signal and flashing-light signal system.

FHWA also proposes new Guidance and Support paragraphs to provide recommendations and information for indications over turn lanes that extend from a downstream intersection through a queue cutter. FHWA proposes the change to avoid road user confusion between indications at a pre-signal and a downstream traffic signal.

FHWA also proposes new Standards and Support statements to require additional measures for situations where a turn lane from a downstream intersection is controlled separately from through movements at a queue cutter signal. FHWA proposes the change to avoid road user confusion when different indications are displayed in adjacent lanes at a queue cutter signal and based on Official Ruling No. 8(09)–19(I).[125]

Finally, FHWA proposes new Support statements that provides information differentiating a queue cutter signal and a queue jump signal. FHWA proposes the change to prevent confusion by users of the MUTCD.

569. FHWA proposes a new section numbered and titled, ''Section 8D.14 Warning Beacons or LED-Enhanced Warning Signs at Grade Crossings'' for the utilization, activation, and operation of warning beacons and LED-enhanced warning signs at grade crossings.

FHWA proposes new Option and Support paragraphs to provide information about the considerations and application of warning beacons and enhanced signs. FHWA proposes the change to provide consistency in the use of these devices.

FHWA also proposes new Standard and Support statements to require preemption interconnection to control the activation of warning beacons and

[124] FHWA Official Ruling No. 8(09)–19(I), November 5, 2014, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/8_09_19.htm.*

[125] FHWA Official Ruling No. 8(09)–19(I), November 5, 2014, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/8_09_19.htm.*

enhanced signs at grade crossings. FHWA proposes the change to improve safety through the consistent and fail-safe operation of the devices.

FHWA also proposes new Option and Guidance statements to recommend the timing of warning beacon and sign activation. FHWA proposes the change to provide for consistent operation of the devices.

Finally, FHWA proposes a new Guidance paragraph that recommends the use of back-up power for warning beacons and enhanced signs. FHWA proposes the change to reflect best practices for devices at grade crossings.

570. In Section 8D.15 (existing Section 8C.10) Traffic Control Signals at or Near Highway-LRT Grade Crossings, FHWA proposes to delete existing P16 that recommends that all existing turning movements toward the highway-LRT grade crossing be prohibited when a signalized intersection is preempted and located within 200 feet of a highway-LRT grade crossing. FHWA proposes the change because the Guidance is redundant with new Section 8D.10.

571. In Section 8D.16 (existing Section 8C.11), retitled, ''Use of LRT Signals for Control of LRT Vehicles at Highway-LRT Grade Crossings,'' FHWA proposes to delete Paragraph 1 recommending special LRT signal indications for LRT movements in semi-exclusive alignments at non-gated grade crossings that are equipped with traffic control signals. FHWA proposes this change to be consistent with the updated definition of a semi-exclusive LRT alignment.

FHWA also proposes to delete the LRT traffic signal configurations in Figure 8D–3 (existing Figure 8C–3). FHWA proposes this change to provide agencies with more flexibility in the design of LRT signal configurations.

FHWA proposes to add Guidance, Standard, and Option statements regarding the positioning of signal faces used to control LRT movements, requiring special LRT signal indications to be white, and providing the option to allow individual LRT signal sections to be displayed to form clustered signal faces, or for multiple LRT signal indications to be displayed using a single housing. FHWA proposes these changes to improve consistency in the use of LRT signal indications.

572. In Section 8E.01 (existing Section 8D.01) Purpose, FHWA proposes to include sidewalks in the provisions in Chapter 8E (existing Chapter 8D). FHWA also proposes a new Figure 8E–1 and accompanying text to illustrate and describe the difference between a pathway grade crossing and a sidewalk grade crossing. FHWA proposes these changes, as well as the following proposed changes in Chapter 8E, because additional focus has been placed on accessibility for all modes of travel at grade crossings, and as ridership has increased on light rail, commuter rail, and passenger rail facilities, pedestrian interaction with trains has led to an increasing trend in pedestrian and rail incidents.

573. In Section 8E.02 (existing Section 8D.02) Use of Standard Devices, Systems, and Practices, FHWA proposes a new Guidance statement recommending that the pathway or sidewalk user's ability to detect the presence of approaching rail traffic should be considered in determining the type and placement of traffic control devices at grade crossings, and that a Diagnostic Team should design and develop the traffic control devices.

FHWA also proposes a Support statement and accompanying new figures describing the pathway and sidewalk design that best enhances pedestrian safety at grade crossings.

574. In Section 8E.03 (existing Section 8D.03), retitled, ''Pathway and Sidewalk Grade Crossing Signs and Markings,'' FHWA proposes a new Guidance statement to recommend a 10-foot vertical clearance between overhead traffic control devices and the pathway surface directly under the sign or device on pathways used by equestrians.

FHWA also proposes Standard statements requiring that if overhead traffic control devices are placed above sidewalks, the clearance from the bottom edge of the device to the sidewalk surface directly under the sign or device to be at least 7 feet, and traffic control devices mounted adjacent to sidewalks that are mounted at a height of less than 7 feet must be at least 2 feet laterally offset from the sidewalk. FHWA proposes this change to incorporate existing provisions of Parts 2 and 4, which require a minimum mounting height of 7 feet when a traffic control device extends above the sidewalk. Restatement of these provisions within Part 8 is necessary to minimize situations where pedestrians may hit their heads and become injured while walking under a sign, signal, or other device.

FHWA also proposes Guidance and Option statements for utilizing and mounting the LOOK (R15–8) sign and the Skewed Crossing (W10–12) sign.

FHWA also proposes accompanying revised and new figures to illustrate the application of signing and pavement markings for pathways and sidewalk grade crossings.

FHWA proposes all of the changes in this section to be consistent with other areas of the MUTCD.

575. In Section 8E.04 (existing Section 8D.04) Stop Lines, Edge Lines, and Detectable Warnings, FHWA proposes a new Guidance statement and accompanying new figure recommending that pavement markings be installed in advance of the pathway grade crossing if pathway users include those who travel faster than pedestrians and that a stop line be provided at a pathway grade crossing if the surface where the marking is to be applied is capable of retaining the application of the marking. FHWA also proposes an Option that allows a stop line to be provided at a sidewalk grade crossing if the surface where the marking is to be applied is capable of retaining the marking.

FHWA also proposes Standard and Guidance statements, consistent with existing provisions in Part 3, regarding the design, implementation, and utilization of detectable warnings based on ADAAG criteria and to provide clarity for the new figures that address this issue. These provisions are restatements of the existing requirements of Part 3, which were previously referenced only in a Support statement. FHWA proposes these changes as conforming edits, which would not change the existing underlying provisions.

576. In Section 8E.05 (existing Section 8D.05), retitled, ''Passive Traffic Control Devices—Crossbuck Assemblies,'' FHWA proposes changes to the Standard paragraph, requiring a Crossbuck Assembly to be installed on each approach to the pathway or sidewalk grade crossing when the nearest edge of a pathway or sidewalk grade crossing is located more than 25 feet from the center of the nearest traffic control warning device at a grade crossing.

FHWA also proposes a new Option statement allowing the retroreflective strip on the back of the support to be omitted on the Crossbuck support at a pathway or sidewalk grade crossing.

Finally, FHWA proposes a new Standard statement and accompanying new figure requiring the minimum height of Crossbuck Assemblies installed on pathways or sidewalks to be 4 feet where the lateral offset to the nearest edge of the sign is at least 2 feet and 7 feet where the lateral offset to the nearest edge of the sign is less than 2 feet. The proposed Standard also requires the minimum lateral offset to be 0 feet for sidewalks and 2 feet for pathways.

577. FHWA proposes a new section numbered and titled, ''Section 8E.06 Passive Traffic Control Devices—Swing Gates, Fencing, and Pedestrian Barriers'' for designing and implementing swing gates, fencing, and pedestrian barriers.

FHWA proposes new Support and Option statements for the application of automatic gates and swing gates for sidewalk or pathway grade crossings. FHWA proposes the change to provide agencies with more information for the consistent and safe application of these measures.

FHWA also proposes a new Guidance statement for the signing recommended on swing gates. FHWA proposes the change to provide pedestrians with clear messages about the use of the swing gate.

Finally, FHWA also proposes a new Support paragraph and accompanying revised figure for the application of fencing near sidewalk or pathway grade crossings. FHWA proposes the change to provide agencies with information about measures that improve the effectiveness of automatic and swing gates at sidewalk and pathway grade crossings.

578. In Section 8E.07 (existing Section 8D.06), retitled, ''Active Traffic Control Systems,'' FHWA proposes new Standard paragraphs and accompanying revised figure requiring an active traffic control system at pathway-LRT and sidewalk-LRT grade crossings where LRT operating speeds on a semi-exclusive alignment exceed 25 mph. FHWA also proposes to add a new Standard requiring an active traffic control system, including automatic gates at pathway-LRT and sidewalk-LRT grade crossings where LRT operating speeds on a semi-exclusive alignment exceed 40 mph. Both proposed new Standards include an exception to omit flashing-light signals, bells, and other audible warning devices when the pathway or sidewalk grade crossing is located within 25 feet of an active warning device that is equipped with those devices.

FHWA also proposes a new Option statement that allows additional pairs of flashing-light signals, bells, or other audible warning devices to be installed on the active traffic control devices at a grade crossing for pathway or sidewalk users approaching the grade crossing from the back side of those devices.

Lastly, FHWA proposes a new Guidance statement recommending that if there is space, a pedestrian refuge area or island should be provided between the tracks and the roadway where railroad or LRT tracks in a semi-exclusive alignment are immediately adjacent to a roadway.

579. FHWA proposes a new section numbered and titled, ''Section 8E.08 Active Traffic Control Devices—Signals,'' for pedestrian signal heads, flashing red lights, and other active traffic control devices at pathway and sidewalk grade crossings. Some of the material in this section was relocated from existing Section 8C.13 and has been reorganized to provide all relevant information for flashing-light signals at pathway and sidewalk grade crossings in one section.

FHWA proposes new Standard and Support paragraphs that prohibit the use of pedestrian signal heads at pathway and sidewalk grade crossings. FHWA proposes the change to improve pedestrian safety and prevent user confusion at grade crossings.

FHWA also proposes a new Option statement that allows the use of pedestrian signal heads at pathway and sidewalk grade crossings with LRT. FHWA proposes the change to provide agencies with flexibility where the LRT movements are controlled by a traffic signal.

FHWA also proposes new Standards for flashing-light signals at pathway and sidewalk grade crossings. FHWA proposes the changes to provide uniformity in the design and operation of flashing-light signals.

FHWA also proposes a new Guidance statement for use of pedestrian gates in situations where flashing-light signals have not been effective. FHWA proposes the change to improve pedestrian safety at pathway and sidewalk grade crossings.

Finally, FHWA also proposes changes to an existing Guidance statement to clarify that flashing-light signals are recommended along semi-exclusive LRT alignments. FHWA proposes the change to improve pedestrian safety at LRT grade crossings which typically have much higher volumes of pedestrians and rail traffic.

580. FHWA proposes a new section numbered and titled, ''Section 8E.09 Active Traffic Control Devices—Automatic Pedestrian Gates,'' for the design, utilization, and implementation of automatic pedestrian gates including accompanying figures. Some of the material in this section was relocated from existing Section 8D.06 and has been reorganized to provide all relevant information for automatic gates at pathway and sidewalk grade crossings in one section.

FHWA proposes a new Standard statement to require automatic pedestrian gates, swing gates and fencing for pathway and sidewalk grade crossings where trains are permitted to travel 80 miles per hour and higher. FHWA proposes this change for pedestrian safety at grade crossings where higher speed trains operate.

FHWA also proposes a new Guidance statement to recommend an emergency escape route at automatic pedestrian gates. FHWA proposes this change to reflect industry best practices in the design of automatic pedestrian gates.

FHWA also proposes new Standards to require at least one red light on the automatic pedestrian gate arm and if there is more than one red light, they must be flashed in an alternating pattern. FHWA also proposes a new Option to omit the red light if the pathway or sidewalk crossing is within 25 feet of the roadway grade crossing. FHWA proposes this change for consistency with Section 8D.03, while providing agencies flexibility where the pathway or sidewalk grade crossing is in close proximity to automatic gates for the roadway grade crossing.

FHWA also proposes a new Option statement to clarify that a separate pedestrian gate is not required if the vehicular gate mechanism does not allow it to be raised by a pedestrian raising the pedestrian gate arm based on Official Ruling No. 8(09)–3(I).[126]

Finally, FHWA proposes new Option and Guidance statements to provide information about the use of horizontal hanging bars from a pedestrian gate arm.

581. FHWA proposes a new section numbered and titled, ''Section 8E.10 Active Traffic Control Devices—Multiple-Track Pathway or Sidewalk Grade Crossing'' that contains the first sentence of P1 in existing Section 8C.13.

Discussion of Proposed Amendments to Part 9 Traffic Control for Bicycle Facilities

582. FHWA proposes to consolidate existing Sections 9A.02 through 9A.04 into one section numbered and retitled, ''Section 9A.01 General.'' This section provides an overview of traffic control devices on bicycle facilities and describes some of the benefits and limitations thereof.

583. FHWA proposes to remove existing Sections 9A.01, 9A.05, 9A.06, 9A.07, and 9A.08 because they are not needed.

584. FHWA proposes to replace and retitle Section 9A.02 ''Standardization of Application for Signing,'' which includes Standard, Guidance, and Option statements from existing Sections 9B.01 and 9B.02. FHWA proposes to change P4 and P5 in

[126] FHWA Official Ruling No. 8(09)–3(I), August 24, 2010, can be viewed at the following internet website: *https://mutcd.fhwa.dot.gov/resources/interpretations/8_09_3.htm.*

existing Section 9B.01 from Standard to Guidance to provide agencies the discretion in placement of sign supports to accommodate field conditions that may require modifications during design or sign installation.

Lastly, FHWA also proposes to add an Option statement allowing 18″ x 18″ warning signs that are only applicable to bicyclists and pedestrians. FHWA proposes this change to allow agencies to use smaller signs where appropriate.

585. FHWA proposes to relocate and consolidate existing Sections 9C.01 and 9C.02 into a replaced and retitled, Section 9A.03 ''Standardization of Application for Markings.'' FHWA also proposes to remove Guidance about using bikeway design guides because the sentence did not provide any specific information.

FHWA also proposes to modify the existing Standard in Section 9C.02 requiring reflectorized markings on bikeways to require that pavement markings on bicycle facilities that must be visible at night be retroreflective unless the pavement markings are visible under provided lighting. FHWA proposes this change to clarify when retroreflectivity is required.

FHWA also proposes to add new Guidance paragraphs discouraging raised pavement markers with bicycle lanes or shared-use paths and also recommending that if raised pavement markers used around bicycle facilities that they are not immediately adjacent to the travel path of bicycles. FHWA proposes this Guidance because raised pavement markers create collision potential for bicyclists by placing fixed objects immediately adjacent to the travel path of the bicyclist.

586. FHWA proposes to separate existing Chapter 9B Signs into three chapters—retitle Chapter 9B to ''Regulatory Signs,'' add a new Chapter 9C ''Warning Signs and Object Markers,'' and add a new Chapter 9D ''Guide and Service Signs.'' In addition, FHWA proposes to separate Table 9B–1 Bicycle Facility Sign and Plaque Minimum Sizes into three tables—Table 9B–1 for regulatory signs, Table 9C–1 for warning signs and object markers, and Table 9D–1 for guide and service signs. These changes are for consistency with how signs are organized in Part 2 and to make it easier to locate bicycle-related signs by sign type.

587. In Section 9B.01 (existing Section 9B.03) STOP and YIELD Signs (R1–1, R1–2), FHWA proposes adding a Standard that prohibits a STOP sign or a YIELD sign from being installed in conjunction with a bicycle signal face. FHWA proposes this restriction to provide uniformity in the application of signals and to avoid conflicts between bicycle signal indications and signs.

588. FHWA proposes to add a new section numbered and titled, ''Section 9B.02 Except Bicycles Plaque (R3–7bP).'' This section describes the use of this plaque for circumstances where bicycles are exempt from regulatory restrictions that apply to other traffic. FHWA proposes new Standard paragraphs to prevent Except Bicycles Plaques from conflicting with STOP signs or YIELD signs and requires the plaques to be placed below the regulatory sign that it supplements. FHWA also proposes new Figure 9B–1 to show examples of how the Except Bicycles Plaque can be applied. FHWA proposes this new section because there are circumstances where it is appropriate to exempt bicyclists from regulatory restrictions applied to other traffic.

589. FHWA proposes to add a new section numbered and titled, ''Section 9B.03 Advance Intersection Lane Control Signs for Bicycle Lanes (R3–8 Series)'' to provide Standard, Guidance, Option, and Support statements for accommodating bicycle lanes on the R3–8 series of signing where determined to be appropriate. FHWA proposes this new section because improper dissemination of this information can result in unwieldy sign designs or legends. The amount of information that can be legibly displayed and comprehended by road users on signs or in signing sequence on the same approach to an intersection is limited. The number and combination of permissible movements by both the motor vehicle and the bicycle may be numerous, thereby complicating the cognitive task of the road user at a decision point.

590. In Section 9B.04, retitled, ''Bike Lane Signs and Plaques (R3–17, R3–17aP, R3–5hP),'' FHWA proposes changing a portion of the existing Guidance regarding the placement of Bike Lane signs and plaques periodically along the bicycle lane to an Option in order to give agencies the discretion of sign placement when developing a policy for the use of Bike Lane signs. As part of this change, FHWA also proposes to allow the use of other regulatory plaques such as BEGIN (M4–14) and END (M4–6) with Bike Lane signs.

FHWA also proposes adding Option statements allowing the use of a BIKE LANE plaque to supplement Mandatory Movement Lane Control signs in places where only a single bicycle movement is permitted from the bicycle lane and to supplement Optional Movement Lane Control signs where two or more movements from a bicycle lane are permitted in order to prevent operational problems. FHWA proposes these additional statements to provide uniformity in signing.

591. In Section 9B.08 (existing Section 9B.09) Selective Exclusion Signs, FHWA proposes the deletion of the Standard requiring that Selective Exclusion signs clearly indicate the type of traffic that is excluded. FHWA proposes this change, because the Selective Exclusion signs specify the user type, therefore a separate Standard statement is not necessary.

592. FHWA proposes to add a new section numbered and titled, ''Section 9B.10 Back-In Parking Sign (R7–10).'' This section provides Option and Support statements and a figure regarding the application of the proposed new R7–10 sign, which may be used where back-in angle parking is required by motor vehicles due to the presence of a bike lane.

593. In Section 9B.11, retitled, ''Bicycles Use Ped Signal (R9–5),'' FHWA proposes a new Option to remind drivers making turns that a Turning Vehicles Yield to Pedestrians (R10–15) or Left Turns Yield to Bicycles (R10–12b) sign may be used. Also, to increase uniformity in placement location, FHWA proposes new Guidance for the location and installation of the R9–5 sign to recommend placement where bicyclists cross the street.

594. FHWA proposes to add a new section numbered and titled, ''Section 9B.12 Bicycles Yield to Peds Sign (R9–6).'' While this sign exists in Section 9B.11 of the 2009 MUTCD, FHWA proposes to add additional Standard paragraphs regarding the application and use of this sign, along with a new figure, to provide practitioners with additional information and to promote uniformity in its use.

595. In Section 9B.14 (existing Section 9B.06), FHWA proposes to change the legend of the existing R4–11 (Bicycles May Use Full Lane) sign to ''Bicycles Allowed Use of Full Lane.'' The standardized sizes of the sign would not change and the proposed legend would continue to be of commensurate size for its application, ensuring adequate levels of legibility and recognition. FHWA proposes this change because the legend of the existing sign, which was introduced in the 2009 edition of the MUTCD, conveys a warning message on a regulatory sign while the proposed legend would be consistent with regulatory signs that display notification of vehicle codes governing rules of the road.

In addition to this change, FHWA proposes to redesignate this sign from R4–11 to R9–20. FHWA proposes this change to group this sign with several other proposed bicycle-related signs with the R9 series designations.

596. FHWA proposes to add a new section numbered and titled, ''Section 9B.15 Bicycle Passing Clearance Sign (R4–19)'' to describe the use of this proposed new sign.

Option and Guidance paragraphs are added to provide details on the use and restrictions of this sign that is only allowed in jurisdictions that have passed a law or ordinance specifying a specific passing clearance.

597. FHWA proposes to add a new section numbered and titled, ''Section 9B.16 Bicycles Use Shoulder Only Sign (R9–21)'' to describe the use of this proposed new sign that is an option to use on freeways or expressways. Also, FHWA proposes a new plaque R5–10dP that is an option to use on freeways to prohibit bicycles on ramps leading to an adjacent or parallel freeway. The Guidance provided in this section proposes that the Bicycles Use Shoulder Only sign (R9–21) only be placed adjacent to the on-ramp or entrance to the freeway at or near the location where the full-width should resume beyond the entrance ramp taper. FHWA proposes this sign because there are places where bicycles are permitted on a freeway but are required to travel on an available and usable shoulder.

598. FHWA proposes to add a new section numbered and titled, ''Section 9B.17 Signing for Bicycles on Freeways and Expressways'' to provide Standard, Option, and Support paragraphs along with a new figure, for bicycle signing on freeways and expressways. FHWA proposes to add a new Bicycles Must Exit (R9–22) sign that is required in advance of a location where a freeway or expressway becomes prohibited to bicycle travel. FHWA also proposes a new Standard requiring the No Bicycling Sign (R5–6) be placed downstream from the ramp departure point where the prohibited segment of freeway or expressway begins. FHWA proposes this new section to provide uniformity in signing for bicycles on freeways and expressways.

599. FHWA proposes to add a new section numbered and titled, ''Section 9B.18 Two-Stage Bicycle Turn Box Regulatory Signing (R9–23 series).'' FHWA proposes Standard, Option, and Support for the new sign as well as a new Figure 9B–5 that illustrates required signing for two-stage turn boxes that are used to simplify the turning task for bicyclists at certain intersections.

600. FHWA proposes to add a new section numbered and titled, ''Section 9B.19 Bicycle Jughandle Signs (R9–24, R9–25, R9–26, and R9–27 Series).'' FHWA proposes the new section to define a bicycle jughandle turn and provide Guidance, Option, and Support, as well as a new Figure 9B–6, that illustrates signing for such locations.

601. FHWA proposes to add a new section numbered and titled, ''Section 9B.20 Bicycle Actuation Signs (R10–4, R10–22, R10–24, R10–25, and R10–26),'' created from paragraphs in existing Section 9B.11 and Section 9B.13. FHWA proposes to rename sign R10–22 from ''Bicycle Signal Actuation'' to ''Bicycle Detector.'' Also, FHWA proposes to add a Guidance paragraph giving recommendations on where to place Bicycle Detector signs.

602. FHWA proposes to add a new section numbered and titled, ''Section 9B.21 LEFT TURN YIELD TO Bicycles Sign (R10–12b)'' to provide information regarding the proposed new R10–12b sign and refers the user to Section 2B.53. FHWA proposes this change because road users approaching a signalized intersection with opposing counter-flow bicycle lanes may not expect to yield to oncoming bicycles.

603. FHWA proposes to add a new section numbered and titled, ''Section 9B.22 Bicycle SIGNAL Signs (R10–40, R10–40a, R10–41, R10–41a, R10–41b).'' FHWA proposes this new section in concert with the addition of bicycle signal faces in the MUTCD. The proposed Standard in this section requires that a Bicycle Signal sign be installed immediately adjacent to every bicycle signal face to inform road users that the specialized signal control face is intended only for bicyclists. FHWA proposes this new section to be consistent with past FHWA action and proposed changes to Part 4 to establish uniform signal control indications for bicycles on a national basis, which would improve bicyclist safety, especially at locations where separate signal phases are provided for motor-vehicle and bicycle traffic.

604. In Section 9B.23 (existing Section 8.17) LOOK Sign (R15–8), FHWA proposes to relocate this section from Part 8 and allow the use of a LOOK sign on a shared-use path or separated bikeway at a railroad or LRT grade crossing.

605. FHWA proposes to add a new section numbered and titled, ''Section 9B.25 General Service Signing for Bikeways'' to provide information regarding General Service signs and their applicability for bicycles as referenced in Chapter 2I.

606. FHWA proposes to add a new section numbered and titled, ''Section 9C.05 Except Bicycles Plaque (W16–20P)'' to provide information regarding a proposed new plaque that can be used to notify bicyclists that a warning sign is not applicable to them.

607. FHWA proposes to add a new section numbered and titled, ''Section 9C.06 Bicycle Cross Traffic Warning Plaques (W16–21P, W21–16aP)'' to provide information regarding a proposed new plaque recommended for use below a STOP sign in isolated locations to alert motor vehicles of unexpected bicycle traffic.

608. FHWA proposes to add a new section numbered and titled, ''Section 9C.07 Bicycle Lane Ends Warning Sign (W9–5) and Bicycle Merging Sign (W9–5a)'' to provide Support, Option, and Guidance for two new signs, W9–5 and W9–5a that can be used to alert road users when a bicycle lane is ending or a bicycle merge is occurring.

609. In Section 9C.08 (existing Section 9B.19) Other Bicycle Warning Signs, FHWA proposes an Option to use a plaque displaying the legend IN ROAD (W16–1p and W16–1aP) with the Bicycle Warning Sign (W11–1) to communicate to bicycles and motor vehicles that bicycles are in the road. The SHARE THE ROAD plaque has been removed from the MUTCD based on research indicating that road users do not understand the intended message.

610. In Section 9C.09 (existing Section 9B.26) Object Markers, FHWA proposes to delete existing P3 and P4 regarding how markers are striped and instead reference Section 2C.69.

611. In Section 9D.01 (part of existing Section 9B.20), retitled, ''Bicycle Destination Signs (D1–1b, D1–1c, D1–2b, D1–2c, D1–3b, D1–3c),'' FHWA proposes to change the Guidance regarding the substitution of Bicycle Destination signs for vehicular destination signs to a Standard to be consistent with existing provisions in existing Section 9B.02. FHWA proposes this change to prohibit the use of smaller size Bicycle Destination signs when the message is also intended to be applicable to motorists as well as address an existing conflict in the MUTCD.

FHWA also proposes to add a new Support paragraph regarding the purpose of Bicycle Destination signs and example locations for placement.

FHWA also proposes to add an Option statement to permit Destination signs and Street Name signs to be installed instead of or in addition to Bicycle Destination signs if the

Destination or Street Name sign applies to motorists and bicyclists.

In addition, FHWA proposes to add an Option statement to permit the use of an oversized bicycle symbol as the top line of a Bicycle Destination sign instead of individual bicycle symbols for each of the destination/distance lines. FHWA proposes this option to facilitate legibility on these signs and in accordance with FHWA's Official Ruling No. 9(09)–20(I).[127]

Also, FHWA proposes Guidance to clarify that the bicycle symbol should be to the left of the destination legend where the arrow is located at the extreme right.

Finally, FHWA proposes to add a Guidance statement to discourage displaying travel times on Bicycle Destination signs. FHWA proposes this recommendation because travel times vary greatly by bicycle user speed and experience. Further, in terms of bike travel, the travel time does not provide any useful information that a distance would not already provide.

612. FHWA proposes to create a new section numbered and titled, ''Section 9D.02 BIKE ROUTE Guide Signs (D11–1, D11–1c, D11–1d, D11–1e, D11–1f, D11–1g)'' that contains relocated paragraphs from existing Section 9B.20 and new D11–1d, D11–1e, D11–1f, and D11–1g signs. FHWA proposes to add these new signs to provide alternative layouts and eliminate the potential need for an additional, separate sign on the same post.

FHWA also proposes to add a Guidance statement to discourage displaying travel times on BIKE ROUTE Guide signs or Alternative BIKE ROUTE guide signs in concert with the proposed change in Section 9D.01 (existing Section 9B.20).

613. FHWA proposes to add a new section numbered and titled, ''Section 9D.03 BIKE ROUTE Plaque (D11–1bP)'' to provide two new Options for installing the D11–1bP plaque to supplement the Alternative BIKE ROUTE Guide (D11–1c) sign and a Street Name (D3–1) sign, in addition to the Option contained in P3 of existing Section 9B.25 to supplement the Bicycle Directional (D11–1a) sign. FHWA also proposes to add three new Standards regarding the use of the proposed new sign.

614. FHWA proposes to add a new section numbered and titled, ''Section 9D.04 Numbered Bikeway Systems'' to provide Support, Guidance, Standard, and Option statements, as well as a new Figure 9D–3, describing the proper signing for numbered bicycle routes. FHWA proposes this new section to provide uniformity in the numbering and signing of bicycle route systems.

615. In Section 9D.05 (existing Section 9B.21), retitled, ''Numbered Bicycle Route Signs (M1–8, M1–8a),'' FHWA proposes a new Standard to require a bicycle symbol when the Numbered Bicycle Route (M1–8, M1–8a) sign is used on a roadway so that the bicycle route can be distinguished from other numbered route systems. FHWA also proposes new Guidance to clarify the dimensions and placement of use of a pictograph, if used, on these signs.

FHWA also proposes to relocate text related to U.S. Bicycle Route (M1–9) signs to new Sections 9D.02, 9D.04, and 9D.07.

616. FHWA proposes to add a new section numbered and titled, ''Section 9D.06 Non-Numbered Bicycle Route Sign (M1–8b, M1–8c)'' to provide Support, Option, Standard, and Guidance statements on the use and design of the Non-Numbered Bicycle Route (M1–8b, M1–8c) sign. FHWA proposes this new section to provide information for signing bicycle routes that are designated specifically by name or established using a distinctive route identity but are excluded from a numbered route system.

617. FHWA proposes to add a new section numbered and titled, ''Section 9D.07 U.S. Bicycle Route Sign (M1–9)'' containing paragraphs from existing Section 9B.21. FHWA also proposes to change the M1–9 sign layout in accordance with FHWA Interim Approval IA–15.[128]

618. In Section 9D.08 (existing Section 9B.22) Bicycle Route Sign Auxiliary Plaques, FHWA proposes a new Standard to require the route sign and auxiliary plaques for bikeways to be installed on independent assemblies if a designated or numbered bicycle route is concurrent with a numbered highway. FHWA proposes this change to minimize road user confusion in route signing.

FHWA also proposes to add a Standard prohibiting installing route signs for bikeways on guide signs or overhead because these signs are typically intended for motorists and bicyclists may not expect or be able to view the legends.

In addition, FHWA proposes to add an Option permitting route assemblies for a designated or numbered bicycle route to be installed at locations and distances other than those prescribed in Chapter 2B based on FHWA's Official Ruling No. 9(09)–39(I).[129]

Also, FHWA proposes adding clarification to the Guidance paragraph regarding the M4–8 plaque and that the sign color should match the color combination of the route for uniformity. FHWA proposes a new Guidance paragraph regarding minimum route sign sizes to improve visibility.

FHWA also proposes a new Standard to require the Junction, Cardinal Direction, or Alternative Route auxiliary plaque be installed above the Bicycle Route sign, and the Advance Turn Arrow or Directional Arrow auxiliary plaque be installed below the Bicycle Route sign where both are used on the same sign assembly. FHWA proposes this new section to provide uniformity in placement of auxiliary plaques on sign assemblies.

Also, FHWA proposes to delete the Option statement regarding destination sign mounting because it is redundant with Paragraph 4 of existing Section 9D.20.

FHWA proposes a new Standard regarding the usage of Bicycle Route Sign assembly that shall consist of a route sign and auxiliary sign. FHWA proposes this new Standard to improve uniformity and for consistency with provisions for other Route Sign assemblies, which provide positive direction to road users.

Also, FHWA proposes Guidance to clarify that Bicycle Route Sign assemblies should be installed on all approaches where bicycle routes meet other bicycle routes. This Guidance would improve bicycle network wayfinding.

In addition, FHWA proposes new a Standard regarding the arrangement of information displayed on groups of assemblies for bicycle routes to improve uniformity and consistency with existing provisions for other types of assemblies, which facilitates recognition by the road user. FHWA proposes a new Option allowing Bicycle Route Sign assemblies to be installed on common supports with numbered highway routes to reduce sign clutter.

Also, FHWA proposes new Standard and Option statements for the required signing of the Junction assembly and the optional placement in advance of an intersection to improvement uniformity and wayfinding for bicyclists.

[127] FHWA's Official Ruling No. 9(09)–20(I), July 29, 2011, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/9_09_20.htm.*

[128] FHWA's Interim Approval IA–15, June 1, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interim_approval/ia15/index.htm.*

[129] FHWA's Official Ruling No. 9(09)–39(I), December 26, 2012, can be viewed at the following internet website: *http://mutcd.fhwa.dot.gov/resources/interpretations/9_09_39.htm.*

Finally, FHWA proposes new Standard, Guidance, Option, and Support statements for bicycle route signs regarding the use and layout of Directional signs or Directional assemblies to improve uniformity and wayfinding for bicyclists.

619. In Section 9D.09 (existing Section 9B.23), retitled, ''Bicycle Parking Signs (D4–3, D4–4),'' FHWA proposes to delete the Standard regarding the color of the legend and border because the color for guide signs is covered elsewhere.

FHWA also proposes to add an Option permitting a new Bicycle-Sharing Station (D4–4) sign to be installed to provide directional information to a designated bicycle sharing system. FHWA proposes to add a Guidance recommending that, if used, the Bicycle-Sharing Station sign should be used in conjunction with a regulated bicycle-sharing system. FHWA proposes these changes to establish uniformity with signing for these new bicycle facilities.

In addition, FHWA proposes to add a new Standard reiterating existing prohibitions on promotional advertising, business logos, or other identification that would convey the involvement of a public-private partnership, in accordance with the existing provisions of Section 1A.02 that prohibit promotional advertising on traffic control devices.

620. In Section 9D.10 (existing Section 9B.24) Reference Location Signs (D10–1 through D10–3) and Intermediate Reference Location Signs (D10–1a through D10–3a), FHWA proposes to delete existing Standard P5 regarding the design of reference location signs because minimum sign sizes are specified in the existing table and sign designs are standardized and must comply with the existing provisions of Chapter 2A.

FHWA also proposes to change existing P4 and P6 regarding the use of decimal points and a zero numeral on the integer mile point on intermediate reference location signs and the placement of reference location signs from a Standard to a Guidance to provide agencies flexibility in mile point displays and sign placement.

621. FHWA proposes to add a new section numbered and titled, ''Section 9D.12 Destination Guide Signs for Shared-Use Paths (D11–10a, D11–10b, D11–10c)'' to provide Support, Standard, Guidance, and Option statements regarding the application of Destination Guide signs for shared-use paths. FHWA proposes new Standards that require the destination guide signs on shared-use paths, when used, to be retroreflective and limits the use of symbols to allowable modes on the path. FHWA also proposes new Standards related to sign content and layout requirements, including arrows, lettering, and pictographs. FHWA proposes this new section to provide practitioners information for shared-use path signing, the need for which has increased in recent years, as evidenced by an increasing number of technical inquiries that FHWA has answered regarding this type of signing.

622. FHWA proposes to add a new section numbered and titled, ''Section 9D.13 Two-Stage Bicycle Turn Box Guide Signing (D11–20 series)'' with Standard, Option, and Support statements related to the use of the guide signs for two-stage bicycle turn boxes. FHWA also proposes a new Figure 9D–6 that illustrates the guide signing for two-stage turn boxes that are used to simplify the turning task for bicyclists at certain intersections.

623. In Section 9E.01 (part of existing Section 9C.04), retitled, ''Bicycle Lanes,'' FHWA proposes to revise the Standard to require the use of bicycle lane symbol or word markings, in addition to longitudinal pavement markings, to define bicycle lanes. In concert with this change, FHWA proposes to add an Option statement permitting the use of the word marking BIKE LANE as an alternative to the bicycle symbol. FHWA proposes these changes to inform road users of the bicycle lane and to reduce wrong-way bicycling.

In addition, FHWA proposes adding clarification to the Guidance regarding the placement of the first symbol or word denoting a bicycle lane. This proposed change makes the bicycle markings consistent with preferential lane word and symbol markings.

FHWA also proposes a new Option allowing the use of arrow markings in conjunction with the bicycle lane symbol or word markings.

Finally, FHWA proposes to add a Standard prohibiting the bicycle symbol or BIKE LANE pavement word marking and the pavement marking arrow in a shoulder. FHWA also proposes to require that a portion of the travel way cannot be established as both a shoulder and a bicycle lane because each serves a different use and has differing regulations that apply. The uniform marking of each type would minimize any confusion and accommodate the expectancy of the road user.

624. FHWA proposes a new section numbered and titled, ''Section 9E.02 Bicycle Lanes at Intersection Approaches,'' which contains material from existing Section 9C.04.

FHWA proposes a new Option statement to allow a bicycle lane to be located on the outside of a turn lane if a bicycle signal face is used and the signal phasing and signing eliminates potential conflicts.

FHWA also proposes a new Standard that requires bicycle lanes located at an intersection approach between contiguous lanes for motor vehicle movements be marked with a bicycle symbol and arrow pavement markings. FHWA also proposes a Standard to prohibit bicycle lanes from being marked as contiguous with a general purpose turn lane, either with dotted or any other line markings. FHWA proposes these additions to alert motor vehicles of the presence of bicyclists and prevent potential conflicts.

In addition, FHWA proposes Option, Guidance, and Support statements for shifting over of buffer separated or separated bike lanes at intersections to improve visibility for motor vehicles and bicycles to account for developments in bicycle facility design since 2009 edition of the MUTCD.

Finally, FHWA proposes new Option, Standard, and Support statements and a new figure to provide an option and requirements for the use of mixing zones, which are when general purpose and bike lanes must share the same space through an intersection.

625. FHWA proposes a new section numbered and titled, ''Section 9E.03 Extensions of Bicycle Lanes through Intersections'' to provide Support, Standard, Guidance, and Option statements on the application of bicycle lane extensions. In this section, FHWA proposes to clarify that shared-lane markings and chevrons shall not be used through intersections. This is not a new Standard, rather a clarification of the Standard in existing Section 9C.07 and of the use of chevrons. FHWA proposes new Standard statements requiring only dotted lane lines for extensions of bike lanes through intersections, and requiring lane extension markings to extend buffer-separated or separated bicycle lanes through intersections and driveways. As part of these changes, FHWA proposes Support and Guidance statements regarding pavement markings for bicycle lanes through intersections. FHWA also adds a Standard requiring the lateral limits of bicycle lane extensions through intersections when the bicycle lane is contiguous to a crosswalk. FHWA proposes this new section because the uniform application of extensions of bicycle lanes through intersections assists all users of the intersection in identifying where bicyclists are expected to operate.

626. FHWA proposes a new section numbered and titled, ''Section 9E.04 Bicycle Lanes at Driveways'' to provide options for bicycle lanes at or through driveways. FHWA proposes this new section to provide practitioners with options for marking bicycle lanes in the vicinity of driveways and to promote the uniform application of these treatments.

627. FHWA proposes a new section numbered and titled, ''Section 9E.05 Bicycle Lanes at Circular Intersections,'' which contains material relocated from existing section 9C.04. FHWA proposes additional Support statements related to the use of shared-lane markings and bicycles on the sidewalk at circular intersections, since bicycle lanes are already prohibited through circular intersections.

628. FHWA proposes a new section numbered and titled, ''Section 9E.06 Buffer-Separated Bicycle Lanes'' to provide practitioners with Support, Standard, Guidance, and Option statements and a new figure to provide information on the application of buffer-separated bicycle lanes. FHWA proposes new Standards that provide requirements on the buffer-separated bicycle lines, including line types, markings in the buffer, width, location, and color. FHWA proposes this new section and associated figure, because providing a buffer space between a bicycle lane and a travel lane can reduce vehicle encroachment into the bicycle lane and reduce crashes between a bicyclist and open vehicle doors in a parking lane. In addition, the provisions of this Section would promote uniformity in the use of this treatment in accordance with existing traffic control devices in Section 3B.25 (existing Section 3B.24) and Chapter 3E (existing Chapter 3D).

629. FHWA proposes a new section numbered and titled, ''Section 9E.07 Separated Bicycle Lanes'' to provide Support, Standard, Option, and Guidance statements, along with a new figure, for the application of separated bicycle lanes. FHWA proposes Standard statements requiring a buffer space between parking spaces and separated bicycle lanes, buffer space markings, restrictions for edge line and lane line colors, and requiring directional arrows. FHWA also proposes Standards related to requirements for signalization with two-way separated bicycle lanes and prohibiting right turns on red across separated bicycle lanes when bicycle traffic is allowed to proceed through the intersection. FHWA proposes this new section to provide practitioners information for uniformity in application to promote the safe and efficient operation of the bicycle lanes by reducing conflicts between bicycles and pedestrians accessing parked vehicles, and between bicycles and motor vehicles turning across their path on separate traffic signal phases.

630. FHWA proposes a new section numbered and titled, ''Section 9E.08 Counter-Flow Bicycle Lanes'' to provide Support, Standard, and Guidance statements, along with a new figure, for the application of counter-flow bicycle lanes, which is when one direction bicycle lanes travel the opposite direction of the general traffic that is also traveling in one direction. FHWA proposes Guidance to recommend that a counter-flow bicycle lane be placed on the right-hand side of the road with opposing traffic on the left.

FHWA also proposes a Standard requiring double yellow line markings, a painted median island, raised median island, or some form of physical separation to define the counter-flow bicycle lane where the speed limit is 30 mph or less. When the speed limit is 35 mph or greater, FHWA proposes a Standard requiring a buffer, a painted median, raised median island, or another form of physical separation to ensure safe operation through adequate separation between opposing flows of bicycles and motor vehicles.

Lastly, FHWA proposes new Standards and Guidance for required and recommended signing and signalization for counter-flow bicycle lanes. FHWA proposes this new section to provide practitioners information for uniformity in application.

631. In Section 9E.09 (existing Section 9C.07) Shared-Lane Marking, FHWA proposes to revise the Guidance to recommend that shared-lane markings not be used on roadways with a posted speed limit of 40 mph or above, instead of 35 mph or above per the 2009 version of the Manual.

FHWA also proposes to revise the Standard to expand the listing of locations where shared-lane markings are prohibited. FHWA proposes this change to include some of the new applications that are proposed in this NPA but are not in the 2009 Edition of the Manual, and to address field experience with this marking since it was adopted in the 2009 MUTCD.

In addition, FHWA provides new Guidance statements on the placement of shared-lane markings and the use of Bicycles Allowed Use of Full Lane (R9–20, resdesignated from R4–11) signs.

Lastly, FHWA proposes new Options and an associated figure, for implementation of shared-lane markings in places where the width of the roadway is insufficient to continue a bike lane or separate bikeway on approach to the intersection. FHWA proposes this new section to provide practitioners discretion when developing a policy for the use of the shared-lane markings on intersection approaches.

632. FHWA proposes a new section numbered and titled, ''Section 9E.10 Shared-Lane Markings for Circular Intersections'' to provide Guidance and Support statements recommending that shared-lane markings not be used in the circulatory roadway of multi-lane circular intersections. FHWA proposes this new section to assist practitioners with providing uniform treatments of shared-use paths in the vicinity of circular intersections based on an NCHRP study.[130]

633. FHWA proposes a new section numbered and titled, ''Section 9E.11 Two-Stage Bicycle Turn Boxes'' to provide Support, Standard, Option, and Guidance statements, as well as two new figures, to describe the application of two-stage bicycle turn boxes. FHWA proposes Standards to provide requirements on location, pavement markings, arrows, and passive detection of bicycles at traffic signals. As two-stage bicycle turn boxes are intended to be positioned within an intersection for bicyclists to queue safely, these Standards define what is required to make those spaces both safe and operationally effective for bicyclists at traffic signals.

In addition, FHWA proposes Guidance to consider the peak hour bicycle demand and adjacent land uses for the size of the bicycle turn box.

FHWA also proposes an Option to use green colored pavement with an associated Standard that requires the entire turn box to be green colored pavement when used.

Lastly, FHWA proposes a Standard that requires a full-time turns-on-red prohibition where the path of vehicles lawfully turning right on red would pass through the bicycle turn box. FHWA proposes this section to describe the proper use of this new application that simplifies the turning task for bicyclists.

634. FHWA proposes a new section numbered and titled, ''Section 9E.12 Bicycle Box'' to provide Option, Standard, Guidance, and Support statements and a new figure, to describe the application of a bicycle box.

FHWA also proposes Guidance recommending consideration of motor vehicle and bicycle conflicts for when

[130] ''Roundabouts: An Informational Guide, Second Edition'' NCHRP 672, 2010, can be viewed at the following internet website: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_672.pdf.*

the bicycle box should be used, recommending that a bicycle lane be used on the approach to a bicycle box, and recommending that a bicycle box not be contiguous with a crosswalk.

In addition, FHWA proposes Standards requiring locations, markings, signal yellow change and red clearance intervals, and countdown pedestrian signals when the bicycle box extends across more than one approach lane of motor vehicles. FHWA proposes these changes to mitigate the potential conflict between bicyclists crossing a bicycle box across multiple lanes while motor vehicle traffic is given a green indication to move into the intersection.

Lastly, FHWA also proposes an Option to use green colored pavement with an associated Standard that requires the entire bicycle box to be green colored pavement when used. FHWA proposes this addition to describe the proper use of this new application that increases the visibility of stopped bicyclists on the approach to a signalized intersection when the signal is red.

635. In Section 9E.13 (existing Section 9C.03), retitled, ''Shared-Use Paths,'' FHWA proposes a new Option and Standard, and accompanying figure, to provide additional design options for pavement markings.

FHWA also proposes a new Guidance that the crossing areas for bicyclists should use green-colored pavement in order to distinguish between the crosswalk for pedestrians and the crossing area for bicyclists. FHWA proposes this new Guidance in concert with the proposal to add green-colored pavement for bicycle facilities.

636. FHWA proposes a new section numbered and titled, ''Section 9E.14 Bicycle Route Pavement Markings'' to provide Option, Standard, and Guidance statements, as well as a new figure, for the application of pavement markings to simulate route auxiliary plaques and Bicycle Route Guide signs to provide navigational guidance for bicyclists and pedestrians on shared-use paths, separated bikeways on independent alignment, and on improved trails.

Also, FHWA proposes Standards to limit the use of route markers on bicycle lanes, separated bikeways in the roadway, or on roadways where the shared-use path runs contiguous or concurrent with a street or highway.

Lastly, FHWA also proposes a Guidance to require that pavement markings simulating official guide signs for bicycle routes be supplemental to the sign(s) and shall not be a substitute for the sign(s), with an associated Guidance that recommends a systematic methodology of locating signs and bicycle route pavement markings. FHWA proposes this new section to provide uniformity for this new practice.

637. In Section 9E.15 (existing Section 9C.05) Bicycle Detector Symbol, FHWA proposes the addition of an Option statement that allows WAIT HERE FOR GREEN word markings to be placed on the pavement immediately below the bicycle detector symbol to help bicyclists know to stop on the bicycle detector symbol.

638. FHWA proposes a new section numbered and titled, ''Section 9E.17 Raised Devices'' to provide Support, Option, Standard, and Guidance statements for the application of raised devices in coordination with bicycle facilities. FHWA proposes a Standard that channelizing devices shall not incorporate the color green, consistent with an existing requirement in Part 3 that the color of channelizing devices shall match the color of the pavement markings they supplement. FHWA proposes this requirement to reiterate the existing requirement because some bicycle facilities utilize optional green-colored pavement to supplement the required white or yellow markings and the existing requirement could imply that the color of the channelizing devices are allowed to match the color of the pavement (green, in this case) rather than the color of the pavement marking. FHWA proposes this change as a conforming edit, which would not change the existing underlying requirement.

FHWA also proposes Guidance statements that the channelizing devices should be tubular markers, and that the selection of a raised device consider the collision potential of both the post and the base.

Lastly, FHWA proposes Guidance to recommend that if used in buffer-separated bicycle lanes, channelizing devices should be placed in the buffer space and at least one foot from the longitudinal bicycle lane pavement marking. FHWA proposes this new section because the purpose of channelizing devices is to emphasize pavement marking patterns associated with bicycle facilities.

639. FHWA proposes a new section numbered and titled, ''Section 9F.02 Bicycle Signal Face'' to provide a reference to Chapter 4H on the design and application of bicycle signal faces and Section 9B.22 for the Bicycle SIGNAL sign.

640. FHWA proposes a new chapter numbered and titled, ''Chapter 9G Bicycle Accommodations at Alternative Intersections.'' This new chapter contains six proposed new sections numbered and titled as follows: ''Section 9G.01 General,'' ''Section 9G.02 Displaced Left-Turn Intersection,'' ''Section 9G.03 Median U-Turn Intersection,'' ''Section 9G.04 Intercepted Crossroad Intersection,'' ''Section 9G.05 Restricted Crossing Intersection,'' and ''Section 9G.06 Diamond Interchange with Transposed-Alignment Crossroad'' to provide practitioners with information on how to accommodate bicyclists through these various types of alternate intersections. FHWA also proposes four new figures demonstrating examples of the bicycle accommodations at alternative intersections. The information in these proposed sections, along with the accompanying figures, are based on supporting research.[131]

641. In proposed Section 9G.01 General, FHWA proposes a Support that clarifies that the Chapter describes examples for the application and accommodation of bicycle traffic at alternative intersections but is not a requirement to provide the bicycle traffic control herein.

642. In proposed Section 9G.02 Displaced Left Turn Intersection, FHWA proposes Guidance to recommend that a left-turning bicycle movement should transition to an independent alignment that facilitates the bicycle to a two-stage turn box where bicycle lanes or shared-lane markings are used on the major street approaching a displaced left-turn intersection.

643. In proposed Section 9G.03 Median U-turn Intersection, FHWA recommends Guidance that a two-stage bicycle turn box should be used where left-turning bicycles need to be accommodated at median U-Turn intersections.

644. In proposed Section 9G.04 Intercepted Crossroad Intersection, FHWA recommends Guidance that shared-lane markings should be discontinued on a single lane intersection approach on cross streets and the bicycle movement should be transitioned to a bicycle lane contiguous to the exclusive right or left turn lane for motor vehicles.

645. In proposed Section 9G.05 Restricted Crossing Intersection, FHWA proposes Guidance to recommend that bicycle destination or bicycle route guide signs should be used at restricted crossing intersections where it is demonstrated that it would be difficult for bicycle movements.

[131] ''Alternative Intersections/Interchanges: Informational Report (AIIR)'' FHWA–HRT–09–060, April 2010, can be viewed at the following internet website: *http://www.fhwa.dot.gov/publications/research/safety/09060/09060.pdf.*

646. In proposed Section 9G.06 Diamond Interchange with Transposed-Alignment Crossroad, FHWA proposes Guidance to recommend destination guide signs for shared-use paths to transition pedestrian and bicycle travel to and from the median of the transposed alignment where a shared-use path is used.

647. In Appendix A1, FHWA proposes to retitle the section to ''Congressional Actions'' and add a new option to allow an alternative letter style for destination legends on freeway and expressway guide signs. For clarity in application, FHWA designates this letter style, commonly referred to as ''Clearview 5–W,'' as ''Series E (modified)—Alternative.'' In concert with this change, FHWA proposes a Standard provision to define the applicability and scope of this letter style because the design criteria differ from those of the Standard Alphabets. FHWA proposes these provisions to address the operational effect of the Consolidated Appropriations Act of 2018 that required FHWA to, ''. . . reinstate Interim Approval IA–5, relating to the provisional use of an alternative lettering style on certain highway guide signs, as it existed before its termination, as announced in the **Federal Register** on January 25, 2016 (81 FR 4083).'' FHWA requests comments on the proposed revisions to Appendix A1 as well as the proposal to add ''Series E (modified)—Alternative'' to Appendix A1.

FHWA granted Interim Approval (IA–5) to use Clearview 5–W in certain applications on September 2, 2004, based on early research that suggested improvements in sign legibility. FHWA rescinded this Interim Approval on January 25, 2016,[132] after subsequent research and a more thorough review of the early research finding showed no discernable improvement. In addition, it became apparent that having a separate optional letter style with different design criteria caused confusion in sign design and layouts resulting in inappropriate and sometime ineffective signs. However, the Omnibus Appropriations Act, 2018 (section 125 of Division L) required FHWA to reinstate Interim Approval IA–5 for that fiscal year. In addition, the Joint Explanatory Statement House Report 115–237 [133] directed FHWA to conduct a comprehensive review of the research on this alternative font and report on the safety and cost implications of the decision while fully addressing the comments submitted by affected States during the December 13, 2016, Request for Information [134] related to the alternative font. FHWA reviewed the comments submitted and conducted a comprehensive analysis of all research identified as being associated with the alternative font and submitted the *Report on Highway Guide Sign Fonts,*[135] to Congress with the findings of these reviews. As a result of this Congressional action, FHWA reinstated Interim Approval IA–5 on March 18, 2018.[136] Though not required, Interim Approval IA–5 has been allowed to continue past the end of that fiscal year so that FHWA could request comments on potential inclusion of this alternative letter style as part of the MUTCD.

Discussion Under 1 CFR Part 51

FHWA is proposing to incorporate by reference the more current versions of the manuals listed herein.

FHWA's 2009 ''Manual on Uniform Traffic Control Devices for Streets and Highways,'' including Revisions No. 1 and No. 2, dated May 2012 would be replaced with a more current edition the MUTCD. This document was developed by FHWA to define the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel.

The document that FHWA is proposing to incorporate by reference is reasonably available to interested parties, primarily State DOTs, local agencies, and tribal governments carrying out Federal-aid highway projects. The text, figures, and tables of a proposed new edition of the MUTCD incorporating the proposed changes from the current edition are available for inspection and copying, as prescribed in 49 CFR part 7, at FHWA Office of Transportation Operations, 1200 New Jersey Avenue, SE, Washington, DC 20590. Further, the text, figures, and tables of a proposed new edition of the MUTCD incorporating changes from the current edition are available on the MUTCD website *http://mutcd.fhwa.dot.gov.* The proposed text is available in two formats. The first format shows the current MUTCD text with proposed additions in blue underlined text and proposed deletions as red strikeout text, and also includes notes in green boxes to provide helpful explanations where text is proposed to be relocated or where minor edits are proposed. The second format shows a ''clean'' version of the complete text proposed for the next edition of the MUTCD, with all the proposed changes incorporated. Though the proposed text, figures, and tables are available only as separate documents for inspection, all three elements will be integrated when the new edition of the MUTCD is published in a consistent format, similar to the current edition. The complete current 2009 edition of the MUTCD with Revision No. 1 and Revision No. 2 incorporated is also available on the same website. The specific standards are discussed in greater detail elsewhere in this preamble.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), and 49 CFR Part 5 (DOT Rulemaking Procedures)

The proposed rule is a nonsignificant regulatory action within the meaning of Executive Order (E.O.) 12866 and DOT regulatory policies and procedures. This action complies with EOs 12866, 13563, and 13771 to improve regulation. These changes are not anticipated to affect adversely, in any material way, any sector of the economy. Most of the proposed changes in the MUTCD would provide additional guidance, clarification, and optional applications for traffic control devices. FHWA believes that the uniform application of traffic control devices supports efficiency of traffic operations and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. In addition, these changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory impact analysis is not required. An assessment of the potential economic impacts is available on the docket. FHWA requests public comment on all aspects of this analysis including data sources, methodology, and assumptions.

[132] **Federal Register** notice of Interim Approval IA–5 recension (81 FR 4083, Jan. 25, 2016) can be viewed at the following website: *https://www.govinfo.gov/content/pkg/FR-2016-01-25/html/2016-01383.htm.*

[133] The Joint Explanatory Statement House Report 115–237 can be viewed at the following website: *https://www.congress.gov/115/crpt/hrpt237/CRPT-115hrpt237.pdf.*

[134] The December 13, 2016, Request for Information on Clearview font (81 FR 89888, Dec. 13, 2016) can be viewed at the following website: *https://www.govinfo.gov/content/pkg/FR-2016-12-13/html/2016-29819.htm.*

[135] *https://mutcd.fhwa.dot.gov/resources/interim_approval/ia5rptcongress/ia5rptcongress.pdf.*

[136] Information on FHWA reinstatement of IA–5 can be viewed at the following website: *https://mutcd.fhwa.dot.gov/res-interim_approvals.htm.*

FHWA has considered the provisions of this NPA in relation to the regulatory policies found in 49 CFR 5.5 and has determined that the proposals contained herein are consistent with the policies governing the development and issuance of regulations. These include policies that there should be no more regulations than necessary, regulations should specify performance objectives, and, where they impose burdens, regulations should be narrowly tailored to address identified market failures or specific statutory mandates. Where this NPA proposes regulatory requirements prescribing specific conduct that regulated entities must adopt, FHWA has determined that these regulations are necessary to address the compelling need for nationwide uniformity to ensure the safety and efficiency of the traveling public.

Finally, this proposed rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866. The proposed rulemaking introduces a variety of revisions resulting in clarification of language and organization of the MUTCD, deregulation through increased flexibility and alternatives for agencies, deregulation through relaxation of standards to guidance where appropriate, and the introduction of new traffic devices. For the purposes of this analysis, where revisions increase the clarity of existing content, those revisions have been considered non-substantive. All other revisions are considered substantive as they materially change the requirements of the MUTCD.

This NPA provides quantitative estimates of the expected compliance costs associated with the proposed substantive revisions. There are 132 substantive revisions in total. There are 124 substantive revisions with minimal or no impact, including the introduction of 37 new traffic control device applications. These revisions materially change the MUTCD requirements but have no cost impacts or minimal cost impacts.

The remaining eight substantive revisions have quantifiable economic impacts:

- Weight Limit signs (proposed Section 2B.66);
- Normal longitudinal line widths (proposed Section 3A.04);
- Wide longitudinal line widths (proposed Section 3A.04);
- Stop and yield lines (proposed Section 3B.19);
- Markings for diamond interchange with transposed-alignment crossroad (proposed Section 3B.31);
- Markings for part-time travel on a shoulder (proposed Section 3E.04);
- Accessible pedestrian signals and audible information devices (proposed Sections 4K.01, 4J.02, 4L.02, 4S.03, and 4U.02); and
- Stop and Yield signs on bicycle facilities (proposed Section 9B.01).

For the three substantive revisions for which costs can be quantified, the total 10-year estimated cost measured in 2018 dollars is $541,978 when discounted to 2018 at 7 percent and $589,667 when discounted at 3 percent. These costs are estimated as the sum of the price of the traffic control device and the removal and installation costs of the device, applied to the current and future deployment rate of the traffic control device, considering the compliance date for the provision relating to the device. The proposed revisions differ in their compliance dates, the date after which the traffic control devices must comply with the MUTCD revisions. The cost estimates reflect whether the proposed revision includes a compliance date. For those proposed changes without a compliance date, the analysis assumes that agencies would make traffic control devices comply with the proposed revisions at the end of the service life of a device. For those proposed changes with a compliance date, the analysis assumes that agencies would upgrade non-conforming traffic control devices through systematic upgrading, proportionally each year until the compliance date. The analysis period is 10 years starting with an implementation date of 2021 and extending through 2030.

The costs of five substantive revisions could not be estimated due to lack of information, but all are expected to have net benefits based on per-unit or per-mile costs and benefits of the proposed revision. Costs for each substantive revision with appreciable impacts are estimated based on the cost of the traffic control device, the removal and installation costs of the device, the current and future deployment of the traffic control device, and the compliance date if applicable.

The benefits of the revisions include operational and safety benefits. Operational benefits include the capacity of the traffic control device to convey necessary information to road users and any mobility impacts from efficient operation. Currently, no specific data or studies exist to measure operational benefits or efficiency gains, and these benefits are evaluated qualitatively. Ideally, safety benefits would be measured by the revision's impact on crashes, but there are no data that correlate the direct impact of traffic control devices with crash rates, and the safety benefits of these revisions could not be quantified. Potential safety benefits are evaluated qualitatively as well.

For each substantive revision with appreciable costs, FHWA believe expects that the benefits will exceed the costs. Based on the qualitative and quantitative information presented, FHWA expects that, in general, the potential benefits of the rulemaking will exceed the costs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this action on small entities. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would add some new traffic control devices and only a limited number of new or changed requirements associated with existing topic areas, as well as new topic areas that were not previously addressed. Most of the proposed changes are expanded guidance and clarification information. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FHWA has determined that this NPA will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The proposed revisions can be phased in by the States over specified time periods in order to minimize hardship. Unless a compliance date is specified, the proposed changes to traffic control devices that would require an expenditure of funds allow for normal maintenance funds to replace the devices at the end of the material life-cycle. To the extent the proposed revisions would require expenditures by State and local governments on Federal-aid projects, they are reimbursable. This regulatory action will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155,000,000 or more in any one year (2 U.S.C. 1532). In addition, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal

Government. The Federal-aid highway program permits this type of flexibility. FHWA will publish a final analysis, including its response to public comments, when it publishes a final rule.

Executive Order 13132 (Federalism Assessment)

FHWA has analyzed this action in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient utilization of the highways. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made to this rule are directed at enhancing safety. To the extent that these proposed amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FHWA has determined that this action does not contain collection information requirements for purposes of the PRA.

National Environmental Policy Act

FHWA has analyzed this proposed rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action would not have any effect on the quality of the human and natural environment because it only would make technical changes and incorporate by reference the latest versions of design standards and standard specifications previously adopted and incorporated by reference under 23 CFR part 625 and would remove the corresponding outdated or superseded versions of these standards and specifications. The proposed rule qualifies as a categorical exclusion to NEPA under 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

FHWA has analyzed this action under E.O. 13175 and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt Tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 470

Grant programs—transportation, Highways and roads.

23 CFR Part 635

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.85(a)(1).

Nicole R. Nason,

Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend title 23, Code of Federal Regulations, parts 470, 635, and 655, as set forth below:

Title 23—Highways

PART 470—HIGHWAY SYSTEMS

■ 1. Revise the authority citation for part 470 to read as follows:

Authority: 23 U.S.C. 103(b)(2), 103(c), 134, 135, and 315; and 49 CFR 1.85.

■ 2. Amend appendix C to subpart A of part 470 by revising the Policy paragraph and Conditions paragraph 5 and removing the Sign Details heading and accompanying paragraphs 1 through 4 to read as follows:

Appendix C to Subpart A of Part 470—Policy for the Signing and Numbering of Future Interstate Corridors Designated by Section 332 of the NHS Designation Act of 1995 or Designated Under 23 U.S.C. 103(c)(4)(B)

Policy

State transportation agencies are permitted to erect informational signs along a federally designated future Interstate corridor only after the specific route location has been established for the route to be constructed to Interstate design standards.

Conditions

* * * * *

■ 5. Signing and other identification of a future Interstate route segment must comply with the provisions of the Manual on Uniform Traffic Control Devices for Streets and Highways.

* * * * *

PART 635—CONSTRUCTION AND MAINTENANCE

■ 3. The authority citation for part 635 continues to read as follows:

Authority: Sections 1525 and 1303 of Pub. L. 112–141, Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

■ 4. Amend § 635.309 by revising paragraph (o) to read as follows:

§ 635.309 Authorization.

* * * * *

(o) The FHWA has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs that comply with the Manual on Uniform Traffic Control Devices for Streets and Highways, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.;*) (Uniform Act).

* * * * *

PART 655—TRAFFIC OPERATIONS

■ 5. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.85.

■ 6. Amend § 655.601:

a. In the introductory text to paragraph (d), by removing the text ''below'' and ''call (202) 741–6030'' and adding in their places ''paragraphs (d)(1) and (2) of this section'' and ''email *fedreg.legal@nara.gov*'', respectively; and

b. By revising paragraph (d)(2)(i) to read as follows:

§ 655.601 Purpose.

* * * * *

(d) * * *

(2) * * *

(i) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 11th Edition, FHWA, dated [date to be determined].

* * * * *

■ 7. Amend § 655.603 by revising paragraph (b)(1) to read as follows:

§ 655.603 Standards.

* * * * *

(b) * * *

(1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Substantial conformance means that the State MUTCD or supplement shall conform as a minimum to the standard statements included in the national MUTCD. The FHWA Division Administrators and Associate Administrator for the Federal Lands Highway Program may grant exceptions in cases where a State MUTCD or supplement cannot conform to standard statements in the national MUTCD because of the requirements of a specific State law that was in effect prior to January 16, 2007, provided that the Division Administrator or Associate Administrator determines based on information available and documentation received from the State that the non-conformance does not create a safety concern. The guidance statements contained in the national MUTCD shall also be in the State Manual or supplement unless the reason for not including it is satisfactorily explained based on engineering judgment, specific conflicting State law, or a documented engineering study. A State MUTCD or supplement shall not contain standard, guidance, or option statements that contravene or negate standard or guidance statements in the national MUTCD. In addition to a State MUTCD or supplement, supplemental documents that a State issues, including but not limited to policies, directives, standard drawings or details, and specifications, shall not contravene or negate standard or guidance statements in the national MUTCD. The FHWA Division Administrators shall approve the State MUTCDs and supplements that are in substantial conformance as defined in this paragraph (b)(1) with the national MUTCD. The FHWA Associate Administrator of the Federal Lands Highway Program shall approve other Federal land management agencies' MUTCDs and supplements that are in substantial conformance as defined in this paragraph (b)(1) with the national MUTCD. The FHWA Division Administrators and the FHWA Associate Administrators for the Federal Lands Highway Program have the flexibility to determine on a case-by-case basis the degree of variation allowed in a State MUTCD or supplement to accommodate existing State laws as described in this paragraph (b)(1), for the express purpose of amending such laws over time.

* * * * *

[FR Doc. 2020–26789 Filed 12–11–20; 8:45 am]

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Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2014–BT–STD–0005]

RIN 1904–AD15

Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including consumer conventional cooking products. EPCA also requires the U.S. Department of Energy (''DOE'') to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notification of proposed determination (''NOPD''), DOE has initially determined that amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in a significant conservation of energy. DOE requests comment on this proposed determination and the associated analyses and results.

DATES:

Meeting: DOE will hold a webinar on Thursday, January 28, 2021, from 11:00 a.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: Written comments and information are requested and will be accepted on or before March 1, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0005, by any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: ApplianceStandardsQuestions@ee.doe.gov.* Include the docket number EERE–2014–BT–STD–0005 in the subject line of the message.

(3) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if one is held), comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Synopsis of the Proposed Determination

Title III, Part B [1] of EPCA,[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer conventional cooking products, and specifically conventional cooking tops [3] and conventional ovens,[4] the subject of this NOPD. (42 U.S.C. 6292(a)(10))

DOE is issuing this NOPD pursuant to the EPCA requirement that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)) Pursuant to the 6-year look-back provision, DOE proposed energy conservation standards for conventional cooking tops. 80 FR 33030 (June 10, 2015); 81 FR 60784 (Sep. 2, 2016). Based on additional analysis and review of comments received, DOE is publishing this proposed determination that establishing new and amended standards for conventional cooking products, including conventional cooking tops, is not needed because standards would not be economically justified and would not result in a significant conservation of energy.

For this proposed determination, DOE analyzed consumer conventional cooking products, including those subject to standards specified in 10 CFR 430.32(j)(1)–(2).

DOE first analyzed the technological feasibility of more energy efficient consumer conventional cooking products. For those consumer conventional cooking products for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential energy conservation standards by conducting a national impacts analysis (''NIA''). DOE then evaluated whether higher standards would be economically justified pursuant to the seven factors specified in EPCA.

Based on the results of the analyses, summarized in section V of this document, DOE has tentatively determined that current standards for consumer conventional cooking products do not need to be amended.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the historical background relevant to the establishment of standards for consumer conventional cooking products.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer conventional cooking products, and specifically consumer conventional cooking tops and conventional ovens, the subject of this document. (42 U.S.C. 6292(a)(10)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(h)(1)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(h)(2))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[3] Conventional cooking top means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a horizontal surface containing one or more surface units which include either a gas flame or electric resistance heating. This includes any conventional cooking top component of a combined cooking product. (10 CFR 430.2)

[4] Conventional oven means a class of kitchen ranges and ovens which is a household cooking appliance consisting of one or more compartments intended for the cooking or heating of food by means of either a gas flame or electric resistance heating. It does not include portable or countertop ovens which use electric resistance heating for the cooking or heating of food and are designed for an electrical supply of approximately 120 volts. This includes any conventional oven(s) component of a combined cooking product. (10 CFR 430.2)

product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for consumer conventional cooking products were established in title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix I (''appendix I''). However, as discussed further in section III.B of this document, the test procedures for the conventional cooking products that are the subject of this proposed determination have been withdrawn.

Federal energy conservation standards for covered products generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth in 42 U.S.C. 6297(d).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer conventional cooking products. In prescribing new or amended standards for covered products DOE must consider, among other things, the opportunity for energy savings, as well as the potential costs to consumers, and impacts on consumer choice. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

EPCA specifies requirements when promulgating an energy conservation standard for type or class of covered product that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class), or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) Although DOE currently does not have test procedures for consumer conventional cooking products,[5] previous versions of appendix I addressed standby mode and off mode energy use. In the absence of a test procedure, in this analysis DOE considers energy use as measured under the previous test procedure appendix I in its determination of whether energy conservation standards need to be amended.

DOE must periodically review its already established energy conservation standards for a covered product no later than 6 years from the issuance of a final rule establishing or amending a standard for a covered product. (42 U.S.C. 6295(m)) This 6-year look-back provision requires that DOE publish either a determination that standards do not need to be amended or a NOPR, including new proposed standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the

[5] *See* 85 FR 50757 (August 18, 2020).

product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost effective. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) Additionally, as discussed above, any new or amended energy conservation standard prescribed by the Secretary for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2(A) Among the factors DOE considers in evaluating whether a proposed level is economically justified includes whether the proposed standard at that level is cost effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. (42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II))

DOE is publishing this NOPD in satisfaction of the requirements under EPCA.

B. Background

1. Current Standards

In a final rule published on April 8, 2009 (''April 2009 Final Rule''), DOE prescribed the current energy conservation standards for consumer conventional cooking products to prohibit constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on or after April 9, 2012. 74 FR 16040. DOE's regulations, codified at 10 CFR 430.2, define conventional cooking tops and conventional ovens as categories of cooking products. As noted in the April 2009 Final Rule, DOE specified conventional cooking tops and conventional ovens as separate categories of cooking products, and noted that any cooking top or oven standard would apply to the individual components of a conventional range. 74 FR 16040, 16053.

2. History of Standards Rulemaking for Consumer Conventional Cooking Products

The National Appliance Energy Conservation Act of 1987 (''NAECA''), Public Law 100–12, amended EPCA to establish prescriptive standards for gas cooking products, requiring gas ranges and ovens with an electrical supply cord that are manufactured on or after January 1, 1990, not to be equipped with a constant burning pilot light. (42 U.S.C. 6295(h)(1)) NAECA also directed DOE to conduct two cycles of rulemakings to determine if more stringent or additional standards were justified for kitchen ranges and ovens. (42 U.S.C. 6295(h)(2))

DOE undertook the first cycle of these rulemakings and published a final rule on September 8, 1998, which found that no standards were justified for conventional electric cooking products at that time. 63 FR 48038. In addition, partially due to the difficulty of conclusively demonstrating at that time that elimination of standing pilots for conventional gas cooking products without an electrical supply cord was economically justified, DOE did not include amended standards for conventional gas cooking products in the final rule. 63 FR 48038, 48039–48040. For the second cycle of rulemakings, DOE published the April 2009 Final Rule amending the energy conservation standards for consumer conventional cooking products to prohibit constant burning pilots for all gas cooking products (*i.e.,* gas cooking products both with or without an electrical supply cord) manufactured on or after April 9, 2012. DOE decided to not adopt energy conservation standards pertaining to the cooking efficiency of conventional electric cooking products because it determined that such standards would not be technologically feasible and economically justified at that time. 74 FR 16040, 16085.[6]

As noted, EPCA requires that, not later than 6 years after the issuance of a final rule establishing or amending a standard, DOE publish a NOPR proposing new standards or a notification of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1)) On February 12, 2014, DOE published a request for information (''RFI'') notice (the ''February 2014 RFI'') to initiate the mandatory review process imposed by EPCA. 79 FR 8337. As part of the RFI, DOE sought input from the public to assist with its determination on whether new or amended standards pertaining to consumer conventional cooking products are warranted. 79 FR 8337, 8339. In making this determination, DOE must evaluate whether new or amended standards would (1) yield a significant savings in energy use and (2) be both technologically feasible and economically justified. (42 U.S.C. 6295(m)(1)(B) and 42 U.S.C. 6295(o)(3)(B))

On June 10, 2015, DOE published a NOPR (the ''June 2015 NOPR'') proposing new and amended energy conservation standards for consumer conventional ovens. 80 FR 33030. The June 2015 NOPR also announced that a public meeting would be held on July 14, 2015 at DOE headquarters in Washington, DC At this meeting, DOE presented the methodologies and results of the analyses set forth in the NOPR, and interested parties that participated in the public meeting discussed a variety of topics. As part of the June 2015 NOPR, DOE also noted that it was deferring its decision regarding whether to adopt amended energy conservation standards for conventional cooking tops, pending further study. 80 FR 33030, 33038–33040.

Prior to the June 2015 NOPR, DOE issued two notices requesting comment on the test procedures for cooking products. In both the test procedure NOPR published on January 30, 2013 (78 FR 6232, the ''January 2013 TP NOPR'') and the supplemental test procedure NOPR published on December 3, 2014 (79 FR 71894, the ''December 2014 TP SNOPR''), DOE proposed amendments to the cooking products test procedure in appendix I that would allow for the testing of active mode energy consumption of induction cooking tops. After reviewing public comments on the December 2014 TP SNOPR, conducting further discussions with manufacturers, and performing additional analyses, DOE decided that further study was required before an updated cooking top test procedure could be established that produces test results which measure energy use during a representative average use cycle for all types of cooking tops, is repeatable and reproducible, and is not unduly burdensome to conduct. 80 FR 37954 (July 2, 2015) (''July 2015 TP Final Rule''). Test procedures for cooking tops were again proposed, as

[6] As part of the April 2009 Final Rule, DOE decided not to adopt energy conservation standards pertaining to the cooking efficiency of microwave ovens. DOE also published a final rule on June 17, 2013 adopting energy conservation standards for microwave oven standby mode and off mode. 78 FR 36316. DOE is not considering energy conservation standards for microwave ovens as part of this rulemaking.

discussed in section III.B of this document, in an SNOPR on August 22, 2016. (81 FR 57374, the ''August 2016 TP SNOPR''). Subsequently a final rule was published on December 16, 2016 (the ''December 2016 TP Final Rule'') adopting amended test procedures for conventional cooking tops that include, among other things, test methods for induction cooking tops and gas cooking tops with high burner input rates. 81 FR 91418. This rule was subsequently withdrawn on August 18, 2020 as a result of a petition from the Association of Home Appliance Manufacturers (''AHAM''). As discussed in more detail in section III.B of this document, DOE withdrew the December 2016 TP Final Rule because it could not be certain that the results of the conventional cooking tops test procedure were accurate.

On September 2, 2016, prior to the now withdrawn test procedure amendments being adopted in the December 2016 TP Final Rule, DOE published in the **Federal Register** an SNOPR (the ''September 2016 SNOPR'') proposing new and amended energy conservation standards for conventional cooking tops based on the amendments to the test procedure as proposed in the August 2016 TP SNOPR. 81 FR 60784. In the September 2016 SNOPR, DOE also revised its proposal from the June 2015 NOPR for conventional ovens from a performance-based standard to a prescriptive standard given that DOE had proposed to repeal the test procedure for conventional ovens in the August 2016 TP SNOPR. 81 FR 60784, 60793–60794. (The repeal of the test procedure for conventional ovens is discussed in greater detail in section III.B of this document.) In response to the September 2016 SNOPR, DOE received a number of comments from interested parties and considered these comments in preparing this NOPD. The commenters are summarized in Table II–1. Relevant comments, and DOE's responses, are provided in the appropriate sections of this document.

Table II-1 Interested Parties Providing Comments on the September 2016 SNOPR

Name	Acronyms	Commenter Type*
Appliance Standards Awareness Project, Alliance to Save Energy, Consumer Federation of America, Natural Resources Defense Council ("NRDC"), Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council	The Joint Commenters	EA
American Gas Association, American Public Gas Association	AGA, AGPA	UR
Association of Home Appliance Manufacturers	AHAM	TA
Environmental Defense Fund; Union of Concerned Scientists; Jayni Hein**; Peter H. Howard**; NRDC; Richard L. Revesz**; Jason A. Schwartz**	The Joint Advocates	EA
Felix Storch, Inc.	Felix Storch	M
GE Appliances, a Haier Company†	GE	M
Miele, Inc.	Miele	M
Pacific Gas and Electric, San Diego Gas and Electric, Southern California Edison	CA IOUs	U
Southern California Gas Company, San Diego Gas and Electric, Southern California Edison	SoCal IOUs	U
Spire, Inc.	Spire	U
Sub-Zero Group, Inc.†	Sub-Zero	M
U.S. Chamber of Commerce, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Association of Home Appliance Manufacturers, Brick Industry Association, Council of Industrial Boiler Owners, National Association of Home Builders, National Association of Manufacturers, National Lime Association, National Mining Association, National Oilseed Processors Association, Portland Cement Association	The Associations	TA
Whirlpool Corporation†	Whirlpool	M

* EA: Efficiency Advocate; M: Manufacturer; TA: Trade Association; U: Utility; UR: Utility Representative.

** Institute for Policy Integrity, NYU School of Law; listed for identification purposes only and does not purport to present New York University School of Law's views, if any.

† GE, Sub-Zero, and Whirlpool supported the comments made by AHAM.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

III. General Discussion

DOE developed this proposed determination after considering oral and written comments, data, and information from interested parties that represent a variety of interests. This NOPD addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

As discussed in section II.A of this document, 42 U.S.C. 6292(a)(10) of EPCA covers kitchen ranges and ovens, or ''cooking products.'' DOE's regulations define ''cooking products'' as consumer products that are used as the major household cooking appliances. They are designed to cook or heat different types of food by one or more of the following sources of heat: Gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units[8] and/or one or more heating compartments. 10 CFR 430.2.

DOE defines a combined cooking product as a household cooking appliance that combines a conventional cooking top and/or conventional oven with other appliance functionality, which may or may not include another cooking product. (10 CFR part 430, subpart B, appendix I) In this analysis, DOE is not treating combined cooking products as a distinct product category and is not basing its product classes on such a category. Instead, DOE is evaluating energy conservation standards for conventional cooking tops and conventional ovens separately. Because combined cooking products consist, in part, of a cooking top and/or oven, the cooking top and oven standards would continue to apply to the individual components of the combined cooking product.

As part of the 2009 standards rulemaking for consumer conventional cooking products, DOE did not consider energy conservation standards for consumer conventional gas cooking products with higher burner input rates, including products marketed as ''commercial-style'' or ''professional-style,'' due to a lack of available data for determining efficiency characteristics of those products. DOE considered such products to be gas cooking tops with burner input rates greater than 14,000 British thermal units per hour (''Btu/h'') and gas ovens with burner input rates greater than 22,500 Btu/h. 74 FR 16040, 16054 (Apr. 8, 2009); 72 FR 64432, 64444–64445 (Nov. 15, 2007). DOE also stated that the DOE cooking products test procedures at that time may not adequately measure performance of gas cooking tops and ovens with higher burner input rates. 72 FR 64432, 64444–64445 (Nov. 15, 2007).

As part of the February 2014 RFI, DOE stated that it tentatively planned to consider energy conservation standards for all consumer conventional cooking products, including commercial-style gas cooking products with higher burner input rates. In addition, DOE stated that it may consider developing test procedures for these products and determine whether separate product classes are warranted. 79 FR 8337, 8340 (Feb. 12, 2014).

As discussed in section III.B of this document, DOE amended the conventional cooking top test procedure in appendix I to, in part, measure the energy use of commercial-style gas cooking tops with high burner input rates. See 81 FR 91418 (Dec. 16, 2016). However, on August 18, 2020, as a result of a petition from AHAM and data received in response to that petition, DOE withdrew the conventional cooking top test procedure in appendix I after determining that it was not representative of energy use or efficiency during an average use cycle and was overly burdensome to conduct. 85 FR 50757 (''August 2020 TP Final Rule''). DOE also repealed the conventional oven test procedure in the December 2016 TP Final Rule. See 81 FR 91418 (Dec. 16, 2016). In the absence of Federal test procedures to measure the energy use or energy efficiency of conventional cooking tops and conventional ovens, DOE is evaluating prescriptive design requirements for the control system of conventional electric smooth element cooking tops and conventional ovens, including commercial-style ovens with higher burner input rates. DOE would maintain the existing prescriptive design requirements for all conventional gas cooking products, noting that the current definitions for ''conventional cooking top'' and ''conventional oven'' in 10 CFR 430.2 already cover commercial-style gas cooking products with higher burner input rates, as these products are household cooking appliances with surface units or compartments intended for the cooking or heating of food by means of a gas flame. As discussed in section IV.A.1 of this document, DOE is not proposing a separate product class for gas cooking tops and ovens with higher burner input rates that are marketed as ''commercial-style'' and, as a result, DOE is not proposing separate definitions for these products.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)) DOE will finalize a test procedure establishing methodologies used to evaluate proposed energy conservation standards at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d) of appendix A to 10 CFR part 430, subpart C (''Process Rule'').

DOE established test procedures in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–20128. DOE revised its test procedures for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-clean oven cycles per year; and (3) incorporation of portions of International Electrotechnical Commission (''IEC'') Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 for the testing of

[7] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to consider energy conservation standards for consumer conventional cooking products. (Docket No. EERE–2014–BT–STD–0005, which is maintained at *www.regulations.gov/#!docketDetail;D=EERE–2014–BT–STD–0005*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[8] The term surface unit refers to burners for gas cooking tops and electric resistance heating elements or inductive heating elements for electric cooking tops.

microwave ovens. *Id.* The test procedures for consumer conventional cooking products established provisions for determining estimated annual operating cost, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and energy factor (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); appendix I. These provisions for consumer conventional cooking products were not used for compliance with any energy conservation standards because the standards to date have been design requirements; in addition, there is no EnergyGuide [9] labeling program for cooking products.

DOE subsequently conducted a rulemaking to address standby and off mode energy consumption, as well as certain active mode (*i.e.,* fan-only mode) testing provisions, for consumer conventional cooking products. DOE published a final rule on October 31, 2012 (77 FR 65942, the ''October 2012 TP Final Rule''), adopting standby and off mode provisions that satisfied the EPCA requirement that DOE include measures of standby mode and off mode power in its test procedures for residential products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

The January 2013 TP NOPR proposed amendments to appendix I that would allow for testing the active mode energy consumption of induction cooking products; *i.e.,* conventional cooking tops equipped with induction heating technology for one or more surface units on the cooking top. DOE proposed to incorporate induction cooking tops by amending the definition of ''conventional cooking top'' to include induction heating technology. Furthermore, DOE proposed to require for all cooking tops the use of test equipment compatible with induction technology. Specifically, DOE proposed to replace the solid aluminum test blocks specified at that time in the test procedure for cooking tops with hybrid test blocks comprising two separate pieces: an aluminum body and a stainless-steel base. 78 FR 6232, 6234 (Jan. 30, 2013).

In the December 2014 TP SNOPR, DOE modified its proposal from the January 2013 TP NOPR in response to comments from interested parties to specify different test equipment that would allow for measuring the energy efficiency of induction cooking tops, and would include an additional test block size for electric surface units with large diameters (both induction and electric resistance). 79 FR 71894. In addition, DOE proposed methods to test non-circular electric surface units, electric surface units with flexible concentric cooking zones, and full-surface induction cooking tops. *Id.* In the December 2014 TP SNOPR, DOE also proposed amendments to add a larger test block size to test gas cooking top burners with higher input rates. *Id.*

In the December 2014 TP SNOPR, DOE also proposed methods for measuring conventional oven volume, clarification that the existing oven test block must be used to test all ovens regardless of input rate, and a method to measure the energy consumption and efficiency of conventional ovens equipped with an oven separator. 79 FR 71894 (Dec. 3, 2014). DOE published the July 2015 TP Final Rule adopting the test procedure amendments discussed above for conventional ovens only. 80 FR 37954.

As discussed in the June 2015 NOPR for conventional ovens, DOE received a significant number of comments raising issues with the repeatability and reproducibility of the proposed hybrid test block test method for cooking tops in response to the December 2014 TP SNOPR and in separate interviews conducted with consumer conventional cooking product manufacturers in February and March of 2015. 80 FR 33030, 33039–33040 (June 10, 2015). A number of manufacturers that produce and sell products in Europe supported the use of a water-heating test method and harmonization with IEC Standard 60350–2 Edition 2, ''Household electric appliances—Part 2: Hobs—Method for measuring performance'' [10] (''IEC Standard 60350–2'') for measuring the energy consumption of electric cooking tops. These manufacturers stated that the test methods in IEC Standard 60350–2 are compatible with all electric cooking top types, specify additional cookware diameters to account for the variety of surface unit sizes on the market, and use test loads that represent real-world cooking top loads. Efficiency advocates also recommended that DOE require water-heating test methods to produce a measure of cooking efficiency for conventional cooking tops that is more representative of actual cooking performance than the hybrid test block method. 80 FR 33030, 33039–33040 (June 10, 2015). For these reasons, DOE decided to defer its decision regarding adoption of energy conservation standards for conventional cooking tops until a representative, repeatable and reproducible test method for cooking tops was finalized. 80 FR 33030, 33040 (June 10, 2015).

DOE published the August 2016 TP SNOPR that proposed amendments to the test procedures for conventional cooking tops. Given the feedback from interested parties discussed above and based on the additional testing and analysis conducted for the test procedure rulemaking, in the August 2016 TP SNOPR, DOE withdrew its proposal for testing conventional cooking tops with a hybrid test block. Instead, DOE proposed to amend its test procedure to incorporate by reference the relevant sections of European Standard EN 60350–2:2013 ''Household electric cooking appliances Part 2: Hobs—Methods for measuring performance'' [11] (''EN 60350–2:2013''), which provide a water-heating test method to measure the energy consumption of electric cooking tops. The test method specifies the quantity of water to be heated in a standardized test vessel whose size is selected based on the diameter of the surface unit under test. The test vessels specified in EN 60350–2:2013 are compatible with all cooking top technologies and surface unit diameters available on the U.S. market. 81 FR 57374, 57381–57384.

DOE also proposed to extend the test methods provided in EN 60530–2:2013 to measure the energy consumption of gas cooking tops by correlating test equipment diameter to burner input rate, including input rates that exceed 14,000 Btu/h. 81 FR 57374, 57385–57386. In addition, DOE also proposed in the August 2016 TP SNOPR to include methods for both electric and gas cooking tops to calculate the annual energy consumption (''AEC'') and integrated annual energy consumption (''IAEC'') to account for the proposed water-heating test method. 81 FR 57374, 57387–57388.

In the August 2016 TP SNOPR, DOE proposed to repeal the conventional oven test procedure. DOE determined that the conventional oven test procedure may not accurately represent consumer use as it favors conventional ovens with low thermal mass and does not capture cooking performance-related benefits due to increased thermal mass of the oven cavity. 81 FR 57374, 57378–57379.

[9] For more information on the EnergyGuide labeling program, see: *www.access.gpo.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

[10] Hob is the British English term for cooking top.

[11] The test methods in EN 60350–2:2013 are based on the same test methods in the draft version of IEC 60350–2 available at the time of the December 2016 TP Final Rule. As noted in that final rule, based on the few comments received during the development of the draft, DOE expected that the IEC procedure, once finalized, would retain the same basic test method as contained in EN 60350–2:2013. 81 FR 91418, 91421 (Dec. 16, 2016).

For the September 2016 SNOPR, DOE evaluated its proposed energy conservation standards for conventional cooking tops based on the proposed cooking top test procedure discussed above. 81 FR 60784, 60797 (Sept. 2, 2016). For conventional ovens, due to the uncertainties in analyzing a performance-based standard using oven testing provisions that DOE proposed to remove from the test procedure, as discussed above, DOE proposed in the September 2016 SNOPR prescriptive design requirements for the control system of conventional ovens. 81 FR 60784, 60794.

AHAM, AGA and APGA opposed consideration of proposed standards in the absence of a final test procedure, stating that the technological feasibility and economic justification of proposed standards can only be evaluated with a finalized test procedure. (AHAM, No. 53 at pp. 1–2; AHAM, No. 64 at p. 3; AGA and APGA, No. 68 at p. 2) AHAM, AGA and APGA asserted that 42 U.S.C. 6295(r) requires that test procedures are finalized in a sufficient period of time before energy conservation standards are proposed. (AHAM, No. 53 at pp. 1–2; AHAM, No. 64 at p. 3; AGA and APGA, No. 68 at p. 2) AHAM, AGA and APGA also argued that DOE has not followed section 7 of the then-current Process Improvement Rule, which stated that needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process and any necessary modifications will be proposed before issuance of an advanced notice of proposed rulemaking (''ANOPR'') in the standards process. In addition, these commenters stated that the then-current Process Improvement Rule specified that final modified test procedures will be issued prior to the NOPR on proposed standards. (AHAM, No. 53 at pp. 2–3; AGA and APGA, No. 68 at p. 2)

AHAM, AGA and APGA asserted that, even with the 30-day extension, the comment period for the September 2016 SNOPR was inadequate for industry to analyze and provide meaningful comment on the impacts of the proposed standards given the uncertainty in the test procedure. AHAM added that it was particularly difficult to comment on the proposed standards because manufacturers do not regularly conduct energy tests because there is not a standard that requires them to do so. (AHAM, No. 52 at pp. 3–4; AHAM, No. 64 at p. 3; AGA and APGA, No. 68 at pp. 1–2)

AHAM reiterated the list of issues with the test procedure presented in its comments on the August 2016 TP SNOPR [12] concerning the repeatability and reproducibility of tests results. AHAM urged DOE to issue a notice of data availability and/or supplemental proposed test procedure with a 30- to 60-day comment period to address AHAM's comments on the test procedure. AHAM added that DOE should finalize the test procedure before proposing standards, and provide 180 days after finalizing the test procedure before closing the comment period on a proposed standard to provide sufficient time for manufacturers to test enough models to evaluate the potential impact of proposed standards. AHAM stated that if DOE does not, however, issue an additional SNOPR on the proposed standard, DOE should at minimum explain how any additional changes to the test procedure impact the proposed standards and provide interested parties with an additional 60 days to comment on the proposed standards. (AHAM, No. 53 at pp. 5–6; AHAM, No. 64 at pp. 1, 3–4) AHAM also commented that if DOE proceeds with standards for cooking tops using the test procedure proposed in the August 2016 TP SNOPR, DOE should adjust the tolerance for enforcement from 5 percent to 20 percent, consistent with the variation in test results observed in AHAM's round robin test program. (AHAM, No 64 at p. 21)

Sub-Zero similarly commented that the proposed test procedure produces significant variation in test results and, thus, it is not feasible to adopt standards for conventional cooking tops. Sub-Zero commented that DOE should work with industry to develop a test procedure that produces repeatable and reproducible results. (Sub-Zero, No. 66 at p. 1) AGA and APGA also commented that adding what it stated is a complicated and unproven test procedure for gas cooking tops does not appear to be warranted for the testing and verification burden that would be placed on the industry, as well as the consumers that will pay for the added cost of testing and compliance. (AGA and APGA, No. 68 at p. 3)

On December 16, 2016, DOE published a final rule repealing the test procedures for conventional ovens for the reasons discussed above, and adopting the test procedure amendments for conventional cooking tops proposed in the August 2016 TP SNOPR, with the following modifications:

- Aligning the test methods for electric surface units with flexible concentric cooking zones (also referred to as multi-ring surface units) with the provisions in EN 60350–2:2013; [13]
- Clarifying the simmering temperature requirements, temperature sensor requirements, and surface unit diameter measurement; and
- Maintaining the existing installation requirements in appendix I. 81 FR 91418.

The Administrative Procedure Act (''APA''), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from AHAM requesting that DOE reconsider its December 2016 TP Final Rule. In its petition, AHAM requested that DOE undertake a rulemaking to withdraw the test procedure for conventional cooking tops, while maintaining the repeal of the oven test procedure that was part of the Final Rule. In the interim, AHAM sought an immediate stay of the effectiveness of the December 2016 TP Final Rule, including the requirement that manufacturers use the final test procedure to make energy-related claims. In its petition, AHAM claimed that its analyses showed that the test procedure is not representative for gas cooking tops and, for gas and electric cooking tops, has such a high level of variation it will not produce accurate results for certification and enforcement purposes and will not assist consumers in making purchasing decisions based on energy efficiency. DOE published AHAM's petition on April 25, 2018, and requested comments and information on whether DOE should undertake a rulemaking to consider the proposal contained in the petition. 80 FR 17944.

On August 9, 2019, DOE published a NOPR (''the August 2019 TP NOPR'') proposing to withdraw the test procedure for conventional cooking tops after evaluating new information and data produced by AHAM and other interested parties that suggested that the test procedure yields inconsistent results that are indicative of the test not being representative of energy use or efficiency during an average use cycle. As such, DOE determined that it would be unduly burdensome to subject those manufacturers seeking to make

[12] AHAM's comment on the August 2016 TP SNOPR is available at: *https://www.regulations.gov/document?D=EERE-2012-BT-TP-0013-0030.*

[13] EN 60350–2:2013 requires testing of the largest measured diameter of multi-ring surface units only, unless an additional test vessel category is needed to meet the test vessel selection requirements in EN 60350–2:2013. In that case, one of the smaller-diameter settings of the multi-ring surface unit may be tested if it fulfills the test vessel category requirement.

representations as to the efficiency of their products to the requirement to conduct such tests while DOE investigated the issues presented. 84 FR 39211.

On August 18, 2020, DOE published the August 2020 TP Final Rule withdrawing the test procedure for conventional cooking tops. 85 FR 50757. Testing conducted by DOE and outside parties using the test procedure yielded inconsistent results. 85 FR 50757, 50763. DOE had not identified the cause of the inconsistencies, and noted that its data to date is limited. *Id.* DOE concluded, therefore, that the test procedure was not representative of energy use or efficiency during an average use cycle. *Id.* DOE also determined that it would be unduly burdensome to leave the test procedure in place and require cooking top tests to be conducted using that test method without further study to resolve those inconsistencies. *Id.*

Under EPCA, any new or amended energy conservation standard must include, where applicable, test procedures prescribed in accordance with the test procedure provisions of the Act. (42 U.S.C. 6295(r)) As discussed previously, DOE repealed the conventional cooking top and conventional oven test procedures and is evaluating new prescriptive design requirements for the control system of conventional ovens and conventional electric smooth cooking tops, while proposing to maintain the existing prescriptive design requirements for conventional gas ovens and conventional gas cooking tops. As a result, the prescriptive design requirements would not require manufacturers to test using the DOE test procedure for conventional cooking tops and conventional ovens to certify products.

C. Technological Feasibility

1. General

In evaluating potential amendments to energy conservation standards, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(c)(3)(i) and 7(b)(1) of the Process Rule.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. Sections 6(c)(3)(ii)–(iv) and 7(b)(2)–(5) of the Process Rule. Section IV.B of this document discusses the results of the screening analysis for consumer conventional cooking products, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this proposed determination. For further details on the screening analysis for this proposed determination, see chapter 4 of the technical support document (''TSD'') [14] for this NOPD.

2. Maximum Technologically Feasible Levels

As when DOE proposes to adopt an amended standard for a type or class of covered product, in this analysis it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for consumer conventional cooking products, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.C of this proposed determination and in chapter 5 of the TSD for this NOPD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to consumer conventional cooking products purchased in the 30-year period that begins in the year of compliance with the potential standards (2023–2052).[15] The savings are measured over the entire lifetime of products purchased in the previous 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of new or amended energy conservation standards.

DOE used its NIA spreadsheet models to estimate national energy savings (''NES'') from potential new or amended standards for consumer conventional cooking products. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of full-fuel-cycle (''FFC'') energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[16] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

In determining whether amended standards are needed, DOE must consider whether such standards will result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A)) The term ''significant'' is not defined in EPCA. DOE has established a significance threshold for energy savings. Section 6(b) of the now-current Process Rule. In evaluating the significance of energy savings, DOE conducts a two-step approach that considers both an absolute site energy savings threshold and a threshold that is

[14] The TSD is available in the docket for this rulemaking at *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0005.*

[15] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPD are described in section V.A of this document. DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[16] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

a percent reduction in the covered product energy use. *Id.* DOE first evaluates the projected energy savings from a max-tech standard over a 30-year period against a 0.3 quadrillion British thermal units (''quads'') of site energy threshold. Section 6(b)(2) of the now-current Process Rule. If the 0.3 quads-threshold is not met, DOE then compares the max-tech savings to the total energy usage of the covered equipment to calculate a percentage reduction in energy usage. Section 6(b)(3) of the Process Rule. If this comparison does not yield a reduction in site energy use of at least 10 percent over a 30-year period, DOE proposes that no significant energy savings would likely result from setting new or amended standards. Section 6(b)(4) of the now-current Process Rule. The two-step approach allows DOE to ascertain whether a potential standard satisfies EPCA's significant energy savings requirements in 42 U.S.C. 6295(o)(3)(B) to ensure that DOE avoids setting a standard that ''will not result in significant conservation of energy.''

EPCA defines ''energy efficiency'' as the ratio of the useful output of services from a consumer product to the *energy use* of such product, measured according to the Federal test procedures. (42 U.S.C. 6291(5), *emphasis added*) EPCA defines ''energy use'' as the quantity of energy directly consumed by a consumer product at point of use, as measured by the Federal test procedures. (42 U.S.C. 6291(4)) Further, EPCA uses a household energy consumption metric as a threshold for setting standards for new covered products. (42 U.S.C. 6295(l)(1)) Given this context, DOE relies on site energy as the appropriate metric for evaluating the significance of energy savings.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this proposed determination.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new or amended standards on manufacturers, DOE conducts a manufacturer impact analysis (''MIA''), as discussed in section IV.I of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) the industry net present value (''INPV''), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in life-cycle cost (''LCC'') and simple payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value (''NPV'') of the consumer costs and benefits expected to result from particular standards.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first full year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards considered in this document would not reduce the utility or performance of consumer conventional cooking products.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the

nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) In the event DOE were to propose amended standards, DOE would transmit a copy of the proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE would then publish and respond to the Attorney General's determination in the final rule. Currently, DOE is not proposing to amend the energy conservation standards for consumer conventional cooking products so there is no proposed rule to submit to the Attorney General for review.

f. Need for National Energy Conservation

In evaluating the need for national energy conservation, DOE expects that energy savings from amended standards would likely provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. Energy savings from amended standards also would likely result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases primarily associated with fossil-fuel based energy production. Consistent with its past approach,[17] because DOE has initially concluded amended standards for consumer conventional cooking products would not result in significant energy savings and would not be economically justified, DOE did not conduct a utility impact analysis or emissions analysis for this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this document.

F. Other Issues

In response to the September 2016 SNOPR, the SoCal IOUs and the Joint Commenters supported performance-based standards for conventional cooking tops, stating that the August 2016 TP SNOPR proposed test methods to fully capture energy consumption for these products. (SoCal IOUs, No. 67 at p. 2; Joint Commenters, No. 70 at p. 1) Due to the repeal of the testing requirements for conventional cooking tops in the August 2020 TP Final Rule, DOE did not evaluate performance-based standards in this document.

The Joint Commenters opposed prescriptive standards for the power supply of conventional cooking tops. The Joint Commenters stated that while switch-mode power supplies (''SMPS'') are generally more efficient than linear power supplies, the standby power consumption of cooking tops with SMPS is not necessarily lower than that of cooking tops with linear power supplies based on DOE's test sample. The Joint Commenters also commented that a prescriptive standard that only required cooking tops to be equipped with a SMPS would eliminate significant energy savings from the proposed performance-based standard level that included energy savings from the automatic power-down design option for electric smooth cooking tops. (Joint Commenters, No. 70 at p. 2)

GE commented that for the proposed standard for electric smooth cooking tops, which corresponds to the automatic power-down technology option, the estimated standby power of 0.25 Watts (''W'') is unrepresentative of products available on the market and that none of its models would meet this level. AHAM and GE commented that DOE based the reduction in standby power consumption on a stand-alone cooking top, not a combined cooking product such as a range. AHAM and GE added that, according to the test procedure proposed in the August 2016 TP SNOPR, combined cooking products must include standby energy from the other components. According to AHAM and GE, the energy savings estimated by DOE are not achievable when accounting for the standby power consumption of a combined cooking product and would result in a loss of consumer utility because manufacturers would have to remove the clock function to meet the low standby power consumption levels. (AHAM, No. 64 at p. 10; GE, No. 72 at p. 2)

As discussed in chapter 5 of the TSD for this NOPD, DOE observed in its testing that the standby power for electric smooth cooking tops without an automatic power-down feature was similar among the units in its test sample, which included both stand-alone cooking tops and cooking tops in combined cooking products. Furthermore, DOE observed an electric smooth cooking top that implements an automatic power-down feature. The automatic power-down design option achieves very low standby power levels (approximately 0.25 W) by turning off most of the power-consuming components on the control board once a period of user inactivity has elapsed. DOE determined through product teardowns that the power supply requirements for all of the electric smooth cooking tops in its test sample are similar, including those in the unit that implements the automatic power-down feature. As a result, DOE identified no technical barrier to implementing this design option to power down most of the power-consuming components on the control board in any of its sample units and, therefore, concludes that similar levels of energy savings due to standby power improvements can be achieved for all electric smooth cooking tops. However, DOE also recognizes that a standby power level associated with the automatic power-down technology option may not be achievable while powering the continuous clock display typically used in combined cooking products, such as ranges. Therefore, as discussed in section V.A of this document, DOE evaluated prescriptive design standards in this NOPD for electric smooth cooking tops that would allow for a continuous clock display,

[17] See 81 FR 71325 (Oct. 17, 2016); see also 84 FR 17626 (Dec. 27, 2019).

and accordingly, would not require the elimination of clocks from products.

AGA and APGA commented that the proposed standards in the September 2016 SNOPR for conventional gas cooking tops and ovens would produce little real energy savings. In particular, AGA and APGA opposed DOE's proposal for gas cooking tops to eliminate the current prescriptive standard prohibiting constant burning pilot lights and replace it with a performance standard because the test procedure had not yet been finalized or vetted by industry. AGA and APGA asserted that the limited testing conducted by DOE was not adequate given the concerns about the test procedure. (AGA and APGA, No. 68 at pp. 3, 4)

The SoCal IOUs supported DOE's analysis and proposed standards, with the exception of those for gas cooking tops. The SoCal IOUs stated that under TSL 2, 26.1 percent of gas cooking top consumers would be adversely impacted and have an average payback period of 19.7 years. The SoCal IOUs recommended adopting TSL 2, with the exception of specifying standards at the baseline efficiency level for gas cooking tops. According to the SoCal IOUs, this approach would result in a fractional reduction in national energy savings of 0.06 quads. (SoCal IOUs, No. 67 at p. 3)

As discussed in section III.B of this document, DOE withdrew the testing provisions for conventional cooking tops in the August 2020 TP Final Rule and, therefore, is not evaluating performance standards for conventional cooking tops, including gas cooking tops, in this NOPD.

Spire commented that the higher efficiency of induction cooking tops, being technologically feasible and economically justified, obligates DOE to mandate their use for electric cooking products. (Spire, No. 61 at p. 4) As discussed in section V.C.3 of this document, DOE has initially determined that the electric smooth cooking top efficiency level associated with induction heating is not economically justified.

AHAM stated that, based on its comments regarding improved contact conductance (discussed in section IV.A.2.a of this document), the additional testing conducted by AHAM members (discussed in section IV.C.1.a of this document), and the estimated 19 percent of consumers that would experience a net cost at DOE's proposed standard level, DOE's proposed standard for electric coil cooking tops would not achieve actual energy savings in the field and could eliminate these products from the market. AHAM opposed standards for electric coil cooking tops and recommended that DOE maintain the ''no standard'' standard for this product class. (AHAM, No. 64 at p. 20) As discussed in section IV.A.2.a of this document, DOE is no longer considering improved contact conductance as a technology option. In addition, as discussed in section IV.C.2 of this document, DOE updated its efficiency levels to account for the additional data submitted by AHAM. Based on these revisions to the analysis for this NOPD, DOE is not evaluating standards for electric coil cooking tops, as discussed in section IV.C.2.b of this document.

The CA IOUs submitted a test report from their testing of gas and electric ovens. The CA IOUs noted that their test sample included a range of manufacturers, cavity sizes, and cooking modes. The CA IOUs conducted testing to evaluate pre-heating, steady-state (temperature) operation, broiling, and self-cleaning. In addition, the CA IOUs conducted testing according to the previous version of the test procedure. The CA IOUs asserted, based on their test results, that energy consumption was correlated to a number of factors, including: Cavity size, insulation, oven input rate, and whether the product was commercial-style. The CA IOUs noted that convection mode did not have a clear correlation to cooking efficiency, but most ovens had a higher efficiency in convection mode. The CA IOUs also noted that their test results did not show a correlation between energy consumption and retail price. (CA IOUs, No. 59) DOE appreciates the test data submitted by the CA IOUs. As discussed in section IV.C.2.c of this document, DOE similarly determined that conventional oven energy consumption was related to the oven cavity volume and developed relationships between IAEC and oven cavity volume. As discussed in section III.B of this document, DOE repealed the test procedures for conventional ovens. DOE, therefore, evaluated potential standards based on prescriptive design options for conventional ovens for this NOPD, as discussed in section IV.C.2 of this document.

Spire stated that a number of DOE's assumptions disadvantage cooking products that use natural gas. (Spire, No. 61 at p. 7) Spire identified DOE's assumptions with regard to the discount rate, marginal energy costs, appliance lifetimes, installation costs, and incremental maintenance costs, as resulting in the bias. DOE notes generally that it based its analysis on all available data for both gas and electric conventional cooking products, much of which was submitted by appliance manufacturers. DOE conducts its analysis to accurately represent, to the extent possible, the manufacture and consumer usage in the United States of both gas and electric conventional cooking products.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed determination with regard to consumer conventional cooking products. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of potential energy conservation standards. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential energy conservation standards. The NIA uses a second spreadsheet tool that provides shipments projections and calculates NES and NPV of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0005.*

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this proposed determination include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of consumer conventional cooking products. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the TSD for this NOPD for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justifies a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

a. Conventional Cooking Tops

During the previous energy conservation standards rulemaking for cooking products, DOE evaluated product classes for conventional cooking tops based on energy source (*i.e.,* gas or electric). These distinctions initially yielded two conventional cooking product classes: (1) Gas cooking tops and (2) electric cooking tops. For electric cooking tops, DOE determined that the ease of cleaning smooth elements provides enhanced consumer utility over coil elements. Because smooth elements typically use more energy than coil elements, DOE defined two separate product classes for electric cooking tops. DOE defined the following product classes for consumer conventional cooking tops in the April 2009 Final Rule TSD (''2009 TSD''): [18]

- Electric cooking tops—low or high wattage open (coil) elements;
- Electric cooking tops—smooth elements; and
- Gas cooking tops—conventional burners.

Induction Heating

In the September 2016 SNOPR, DOE proposed to maintain the product classes for conventional cooking tops from the previous standards rulemaking, as presented above. DOE also proposed to consider induction heating as a technology option for electric smooth cooking tops rather than as a separate product class. DOE noted that induction heating provides the same basic function of cooking or heating food as heating by gas flame or electric resistance, and that the installation options available to consumers are also the same for both cooking products with induction and with electric resistance heating. In addition, in considering whether there are any performance-related features that justify a higher energy use standard to establish a separate product class, DOE noted in the September 2016 SNOPR that the utility of speed of cooking, ease of cleaning, and requirements for specific cookware for induction cooking tops do not appear to be uniquely associated with higher energy use compared to other smooth cooking tops with electric resistance heating elements. 81 FR 60784, 60800–60801 (Sept. 2, 2016).

The SoCal IOUs supported DOE's analysis conducted for induction cooking tops and DOE's decision to consider induction heating as a technology option for electric smooth cooking tops rather than a separate product class because induction heating provides the same utility for electric smooth cooking tops as does electric resistance heating. (SoCal IOUs, No. 67 at pp. 3–4) AHAM agreed with DOE's determination that the ease of cleaning smooth elements is a consumer utility that justifies a separate product class from electric coil cooking tops. However, AHAM stated that it does not currently have enough information to support or oppose DOE's proposal to consider induction heating as a technology option for electric smooth cooking tops rather than as a separate product class. AHAM expressed concern whether the test procedure proposed in the August 2016 TP SNOPR for cooking tops would accurately measure the differences in energy use between induction and other smooth element cooking tops. (AHAM, No. 64 at p. 5)

As discussed in section III.B of this document, DOE withdrew the test procedure for conventional cooking tops in the August 2020 TP Final Rule. However, as discussed in section IV.C.2.b of this document, DOE determined that its testing using the water-heating method previously adopted in the December 2016 TP Final Rule provided measures of energy consumption that represent the energy use of both smooth–electric resistance and smooth–induction cooking tops with relative accuracy. For the reasons presented in the September 2016 SNOPR and discussed above, DOE is maintaining consideration of induction cooking tops as a technology option for electric smooth cooking tops and not as a separate product class.

Commercial-Style Cooking Tops

Based on DOE's review of conventional gas cooking tops available on the market, DOE determined for the September 2016 SNOPR that products marketed as commercial-style cannot be distinguished from standard residential-style products based on performance characteristics or consumer utility. While conventional gas cooking tops marketed as commercial-style have more than one burner rated above 14,000 Btu/h and cast-iron grates, approximately 50 percent of cooking top models marketed as residential-style also have one or more burners rated above 14,000 Btu/h and cast-iron grates.

As part of the September 2016 SNOPR, DOE considered whether separate product classes for commercial-style gas cooking tops with higher burner input rates are warranted by comparing the test energy consumption of individual surface units in a sample of cooking tops tested by DOE. For the September 2016 SNOPR analysis, DOE conducted testing of gas surface units in a sample of twelve gas cooking tops, which included six products marketed as commercial-style, and determined that there was no statistically significant correlation between burner input rate and the ratio of surface unit energy consumption to test load mass [19] for cooking tops marketed as either residential-style or commercial-style. DOE noted that its testing showed that this efficiency ratio for gas cooking tops is more closely related to burner and grate design rather than input rate. 81 FR 60784, 60801–60802 (Sept. 2, 2016).

DOE recognized in the September 2016 SNOPR that the presence of certain features, such as heavy cast iron grates and multiple high input rate burners, may help consumers perceive a difference between commercial-style and residential-style gas cooking top performance. However, DOE stated that it was not aware of clearly-defined and consistent design differences and corresponding utility provided by commercial-style gas cooking tops as compared to residential-style gas cooking tops. 81 FR 60784, 60803 (Sept. 2, 2016). Although DOE's testing indicated there is a difference in energy consumption between residential-style and commercial-style gas cooking tops, this difference could not be correlated to any specific utility provided to consumers. Moreover, DOE stated that is not aware of an industry test standard that evaluates cooking performance and that would quantify the utility provided by these products. *Id.*

For these reasons, DOE did not propose in the September 2016 SNOPR to establish a separate product class for gas cooking tops marketed as commercial-style or conventional gas cooking tops with higher burner input

[18] The TSD from the previous residential cooking products standards rulemaking is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0127-0097.*

[19] Because the mass of the test load depends on the input rate of the burner, the test energy consumption must be normalized for comparison. The higher the ratio of test energy consumption to test load mass, the less efficient the surface unit.

rates. 81 FR 60784, 60803 (Sept. 2, 2016).

AHAM stated that, due to the length of the comment period and the limited resources that could be dedicated to testing, it did not have enough information to support or oppose DOE's proposal to not define a separate product class for commercial-style cooking tops. Moreover, AHAM commented that because of its concerns that the test procedure does not produce repeatable and reproducible results and concerns with using a test procedure designed for electric cooking tops to measure gas cooking top energy use, it could not determine whether test results are accurate or assess whether separate product classes are warranted. (AHAM, No. 64 at p. 6)

Sub-Zero and Felix Storch both urged DOE to establish separate product classes for commercial-style cooking tops. (Sub-Zero, No. 66 at p. 2; Felix Storch, No. 62 at p. 1) Sub-Zero stated that high-performance [20] gas cooking tops include design features that enhance cooking performance (rapid boiling, precision simmering, and even heat distribution) while adhering to safety requirements, but that negatively impact efficiency as compared to conventional residential-style cooking tops. According to Sub-Zero, gas burner design attributes such as safety, performance, and efficiency are systematic, and that a change to one attribute significantly affects the others. (Sub-Zero, No. 66 at pp. 2, 4–5) The design features associated with high-performance gas cooking tops and the utility that Sub-Zero and Miele claimed these features provide include:

- High input rate burners with large diameters provide faster heat up times and allow consumers to use larger professional cooking vessels while maintaining even heat distribution (Sub-Zero, No. 66 at p. 5);
- High input rate burners with high levels of flame controllability, specifically high turndown ratios, allow for both simmering of foods such as chocolates and sauces and faster heat up times (Sub-Zero, No. 66 at p. 5);
- Greater spacing between the gas flame, grate, and cooking vessel is required for high input rate burners than for low input rate burners to meet performance and safety requirements, specifically even heat distribution and reduction of carbon monoxide (''CO''). Reducing the spacing between the gas flame and the cooking vessel can increase efficiency, but flame quenching due to flame impingement and contact with the grate/cooking vessel can lead to increased CO emissions and combustion by-products. Designing high performance products with safe combustion gases provides an inherent constraint to the efficiency level that can be attained (Sub-Zero, No. 66 at pp. 5–6);
- Heavy cast iron grates allow for better heat distribution to cooking vessels while also providing the strength required to support large loads and increased product longevity. (Sub-Zero, No. 66 at p. 6) Heavier cast iron grates also retain more heat once the burner is turned down during simmer or shut off. (Miele, No. 60 at p. 2; Sub-Zero, No. 66 at pp. 5–6)

Sub-Zero commented that the features listed above deliver superior performance by allowing consumers to use a wider range of cooking methods that differ significantly from how the average consumer uses a consumer conventional cooking product. (Sub-Zero, No. 66 at p. 2) Sub-Zero also commented that high performance cooking tops typically employ a range of burner inputs to allow consumers the ability to cook foods that require searing on one burner and foods that require melting temperatures on another burner. (Sub-Zero, No. 66 at p. 4) Miele provided similar comments as Sub-Zero regarding the features that distinguish cooking methods used with commercial-style cooking tops compared to residential-style cooking tops, such as the added mass and heat retention of the grates for improved temperature controllability. (Miele, No. 60 at pp. 1–2) Both Sub-Zero and Miele stated that their consumers often sauté at very high burner outputs, manipulate the pans to mix the ingredients like professional chefs, flame the contents, and keep most, if not all, the burners in the cooking top firing together when cooking. (Miele, No. 60 at p. 2; Sub-Zero, No. 66 at p. 2) Miele added that commercial-style models may be equipped with specialty burners such as a grill or griddle, not covered in the proposed standards, that are used by consumers together with the adjoining regular burners. Miele stated that the heat generated by specialty burners is not captured in the test procedure but could potentially provide a significant amount of heat energy to the adjoining grates prior to the ignition and use of the adjoining burners. Furthermore, Miele claimed that the vigorous actions of professional-style cooking require the support structure of the heavy grates typical of commercial-style cooking tops. (Miele, No. 60 at p. 1)

Sub-Zero suggested that DOE establish a separate product class for residential gas cooking tops that have an average burner input rate of at least 14,000 Btu/h and a grate mass of at least 4 pounds per burner. Sub-Zero claimed that its suggested product class definition was based on its research of product marketing, utility, and performance of residential gas cooking products. (Sub-Zero, No. 66 at p. 3)

Based on DOE's testing, including the additional testing conducted for this NOPD and discussed in section IV.C.1 of this document, DOE did not identify a correlation between measured energy consumption of conventional gas cooking products and any specific utility provided to consumers. While DOE recognizes the presence of certain commercial-style features described by manufacturers may allow consumers to cook with a wide variety of cooking methods, manufacturers have not provided consumer usage data demonstrating that consumers of commercial-style cooking tops and residential-style cooking tops employ significantly different cooking methods during a typical cooking cycle. Moreover, manufacturers have not provided evidence that consumers of commercial-style cooking tops would use more burners on a cooking top during a single cooking cycle than consumers of residential-style cooking tops. DOE notes that there are many residential-style cooking tops with one to two high input rate burners and continuous cast iron grates that provide consumers with the ability to sear food at high temperatures and simmer at low temperatures.

For these reasons, DOE is not evaluating a separate product class for gas cooking tops marketed as commercial-style or conventional gas cooking tops with higher burner input rates. However, as discussed in section IV.C.3.a of this document, DOE conducted its engineering analysis consistent with products currently available on the market and is not evaluating amendments to the current prescriptive standards for gas cooking tops; this will maintain the features available in conventional cooking tops marketed as commercial-style (*e.g.,* multiple high input rate burners, cast iron gates, *etc.*) that may be used to differentiate these products in the marketplace. In addition, the standards considered in this proposed determination are the same as those currently in effect and thus would not alter the safety of existing commercial-style gas cooking tops in terms of combustion products or emissions.

[20] Sub-Zero stated that ''high performance'' cooking is a better descriptor of this segment than ''commercial-style'' or ''professional-style.''

b. Conventional Ovens

During the first energy conservation standards rulemaking for cooking products, DOE evaluated product classes for conventional ovens based on energy source (*i.e.,* gas or electric). These distinctions initially yielded two conventional oven product classes: (1) Gas ovens and (2) electric ovens. DOE more recently determined that the type of oven-cleaning system is a utility feature that affects performance. DOE found that standard ovens and ovens using a catalytic continuous-cleaning process use roughly the same amount of energy. On the other hand, self-clean ovens use a pyrolytic process that provides enhanced consumer utility with lower overall energy consumption as compared to either standard or catalytically lined ovens. Therefore, in the April 2009 Final Rule analysis described in the 2009 TSD, DOE defined the following product classes for conventional ovens:

- Electric ovens—standard oven with or without a catalytic line;
- Electric ovens—self-clean oven;
- Gas ovens—standard oven with or without a catalytic line; and
- Gas ovens—self-clean oven.

Self-Cleaning Technology

Based on DOE's review of conventional gas ovens available on the U.S. market, and on manufacturer interviews and testing conducted as part of the engineering analysis, DOE noted in the June 2015 NOPR that the self-cleaning function of a self-clean oven may employ methods other than a high-temperature pyrolytic cycle to perform the cleaning action.[21] 80 FR 33030, 33043 (June 10, 2015). DOE clarified that a conventional self-clean electric or gas oven is an oven that has a user-selectable mode separate from the normal baking mode, not intended to heat or cook food, which is dedicated to cleaning and removing cooking deposits from the oven cavity walls. *Id.* As part of the September 2016 SNOPR, DOE stated that it is not aware of any differences in consumer behavior in terms of the frequency of use of the self-clean function that would be predicated on the type of self-cleaning technology rather than on cleaning habits or cooking usage patterns that are not dependent on the type of technology. As a result, DOE did not consider establishing separate product classes based on the type of self-cleaning technology. 81 FR 60784, 60804 (Sept. 2, 2016). DOE did not receive any comments on the September 2016 SNOPR regarding product classes for different self-cleaning technologies. As a result, for the reasons discussed previously, DOE is not considering separate product classes based on the type of self-cleaning technology.

Commercial-Style Ovens

With regard to gas oven burner input rates, DOE noted in the June 2015 NOPR that based on its review of the consumer conventional gas ovens available on the market, residential-style gas ovens typically have an input rate of 16,000 to 18,000 Btu/h, whereas residential gas ovens marketed as commercial-style typically have burner input rates ranging from 22,500 to 30,000 Btu/h.[22] 80 FR 33030, 33043 (June 10, 2015). Additional review of both the residential-style and commercial-style gas oven cavities indicated that there is significant overlap in oven cavity volume between the two oven types. Standard residential-style gas oven cavity volumes range from 2.5 to 5.6 cubic feet (''ft^3'') and gas ovens marketed as commercial-style have cavity volumes ranging from 3.0 to 6.0 ft^3. Sixty percent of the commercial-style models surveyed had cavity volumes between 4.0 and 5.0 ft^3, while fifty percent of the standard models had cavity volumes between 4.0 and 5.0 ft^3. The primary differentiating factor between the two oven types was burner input rate, which is greater than 22,500 Btu/h for commercial-style gas ovens. *Id.*

DOE conducted testing for the June 2015 NOPR using the version of the test procedure later adopted in the July 2015 TP Final Rule to determine whether commercial-style gas ovens with higher burner input rates warrant establishing a separate product class. DOE evaluated the cooking efficiency of eight conventional gas ovens, including five ovens with burners rated at 18,000 Btu/h or less and the remaining three with burner input rates ranging from 27,000 Btu/h to 30,000 Btu/h. 80 FR 33030, 33043 (June 10, 2015). DOE's testing showed that the measured cooking efficiencies for ovens with burner input rates above 22,500 Btu/h were lower than for ovens with ratings below 22,500 Btu/h, even after normalizing cooking efficiency to a fixed cavity volume. DOE also noted that the conventional gas ovens with higher burner input rates in its test sample were marketed as commercial-style and had greater total thermal mass, including heavier racks and thicker cavity walls, even after normalizing for cavity volume. DOE's testing of a 30,000 Btu/h oven suggested that much of the energy input to commercial-style ovens with higher burner input rates goes to heating the added mass of the cavity, rather than the test load, resulting in relatively lower measured efficiency when measured according to the test procedure adopted in the July 2015 TP Final Rule. 80 FR 33030, 33043–33044. DOE also investigated the time it took each oven in the test sample to heat the test load to a final test temperature of 234 degrees Fahrenheit (''°F'') above its initial temperature, as specified in the DOE test procedure in appendix I at the time of the testing. DOE's testing showed that gas ovens with burner input rates greater than 22,500 Btu/h do not heat the test load significantly faster than the ovens with lower burner input rates, and two out of the three units with the higher burner input rates took longer than the average time to heat the test load. Therefore, DOE concluded in the June 2015 NOPR that there is no unique utility associated with faster cook times that is provided by gas ovens with burner input rates greater than 22,500 Btu/h. 80 FR 33030, 33045.

Based on DOE's testing, reverse engineering, and additional discussions with manufacturers, DOE posited in the June 2015 NOPR that the major differentiation between conventional gas ovens with lower burner input rates and those with higher input rates, including those marketed as commercial-style, was design and construction related to aesthetics rather than improved cooking performance. Further, DOE did not identify any unique utility conferred by commercial-style gas ovens. For the reasons discussed above, DOE did not propose to establish a separate product class for commercial-style gas ovens with higher burner input rates. 80 FR 33030, 33045 (June 10, 2015).

As part of the September 2016 SNOPR, to further address whether commercial-style ovens provide a unique utility that would warrant establishing a separate product class, DOE conducted additional interviews with manufacturers of commercial-style cooking products and reviewed additional commercial-style test data. While these data demonstrated a difference in energy consumption between residential-style and

[21] DOE noted that it is aware of a type of self-cleaning oven that uses a proprietary oven coating and water to perform a self-clean cycle with a shorter duration and at a significantly lower temperature setting. The self-cleaning cycle for these ovens, unlike catalytically-lined standard ovens that provide continuous cleaning during normal baking, still have a separate self-cleaning mode that is user-selectable.

[22] However, DOE noted that many gas ranges, while marketed as commercial- or professional-style and having multiple surface units with high input rates, did not have a gas oven with a burner input rate above 22,500 Btu/h.

commercial-style ovens when measured according to the test procedure adopted in the July 2015 TP Final Rule, this difference could not be correlated to any specific utility provided to consumers. Moreover, DOE stated that it is not aware of an industry test standard that evaluates cooking performance and that would quantify the utility provided by these products. DOE also noted that all conventional ovens, regardless of whether or not the product is marketed as commercial-style, must meet the same safety standards for the construction of the oven. American National Standards Institute (''ANSI'') Z21.1 ''Household Cooking Gas Appliances'' (''ANSI Z21.1''), Section 1.21.1, requires that the oven structure, and specifically the baking racks, have sufficient strength to sustain a load of up to 25 pounds depending on the width of the rack. A similar standard (Underwriters Laboratories (''UL'') 858 ''Household Electric Ranges'' (''UL 858'')) exists for electric ovens. 81 FR 60784, 60805–60806 (Sept. 2, 2016).

DOE also observed as part of the September 2016 SNOPR that many of the design features identified by manufacturers as unique to commercial-style ovens and that may impact the energy consumption, such as extension racks, convection fans, cooling fans, and hidden bake elements, are also found in residential-style products. DOE noted that the presence of these features, along with thicker oven cavity walls and higher burner input rates, may help consumers perceive a difference between commercial-style and residential-style ovens. However, DOE stated in the September 2016 SNOPR that it was not aware of a clearly-defined and consistent design difference and corresponding utility provided by commercial-style ovens as compared to residential-style ovens. For these reasons, DOE did not propose in the September 2016 SNOPR to establish a separate product class for commercial-style ovens. 81 FR 60784, 60806 (Sept. 2, 2016).

Sub-Zero supported a differentiation based on utility between high-performance ovens and residential-style ovens. (Sub-Zero, No. 66 at p. 2) However, Sub-Zero asserted there could potentially be confusion if DOE defines a high-performance product class for ovens in a future rulemaking but does not do so for gas cooking tops as part of the current rulemaking. Sub-Zero stated that since both components are incorporated in combined cooking products such as ranges, different product classes for different components could lead to significant market uncertainty. Sub-Zero stated that the only accurate and equitable solution is to define separate product classes for high-performance ovens and gas cooking tops and set appropriate standards based on utility and performance considerations. (Sub-Zero, No. 66 at p. 6)

Based on DOE's analysis discussed previously, DOE is not evaluating a separate product class for commercial-style ovens.

Installation Configuration

As discussed in section III.B of this document, in the October 2012 TP Final Rule, DOE amended appendix I to include methods for measuring fan-only mode.[23] Based on DOE's testing of freestanding, built-in, and slide-in conventional gas and electric ovens, DOE observed that all of the built-in and slide-in ovens tested consumed energy in fan-only mode, whereas freestanding ovens did not. The energy consumption in fan-only mode for built-in and slide-in ovens ranged from approximately 1.3 to 37.6 watt-hours (''Wh'') per cycle, which corresponds to 0.25 to 7.6 kilowatt-hours per year (''kWh/yr''). Based on DOE's reverse engineering analyses, DOE noted that built-in and slide-in products incorporate an additional exhaust fan and vent assembly that is not present in freestanding products. The additional energy required to exhaust air from the oven cavity is necessary for slide-in and built-in installation configurations to meet safety-related temperature requirements because the oven is enclosed in cabinetry. For these reasons, DOE proposed in the June 2015 NOPR and September 2016 SNOPR to include separate product classes for freestanding and built-in/slide-in ovens. 80 FR 33030, 33045 (June 10, 2015); 81 FR 60784, 60806 (Sept. 2, 2016).

DOE did not receive comment on its proposal in the September 2016 SNOPR to include separate product classes for built-in/slide-in ovens. For the reasons discussed above, DOE analyzed separate product classes for freestanding and built-in/slide-in ovens for this NOPD.

In summary, DOE analyzed the product classes listed in Table IV–1 for this NOPD.

Table IV-1 Evaluated Product Classes for Consumer Conventional Cooking Products

Product Class	Product Type	Sub-Category	Installation Type
1	Electric cooking top	Open (coil) elements	-
2		Smooth elements	-
3	Gas cooking top	Conventional burners	-
4	Electric oven	Standard with or without a catalytic line	Freestanding
5			Built-in/Slide-in
6		Self-clean	Freestanding
7			Built-in/Slide-in
8	Gas oven	Standard with or without a catalytic line	Freestanding
9			Built-in/Slide-in
10		Self-clean	Freestanding
11			Built-in/Slide-in

[23] Fan-only mode is an active mode that is not user-selectable in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function.

2. Technology Options

As part of the market and technology assessment, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to improve energy efficiency. Initially, these technologies encompass all those that DOE believes are technologically feasible. Chapter 3 of the TSD for this NOPD includes the detailed list and descriptions of all technology options identified for this equipment.

a. Conventional Cooking Tops

In the September 2016 SNOPR, DOE proposed to consider the technology options for conventional cooking tops listed in Table IV–2. 81 FR 60784, 60808 (Sept. 2, 2016).

Table IV-2 September 2016 SNOPR Technology Options for Conventional Cooking Tops

Open (coil) element electric cooking tops
1. Improved contact conductance
Smooth element electric cooking tops
2. Halogen elements
3. Induction elements
4. Low-standby-loss electronic controls
Gas Cooking Tops
5. Radiant gas burners
6. Reduced excess air at burner
7. Reflective surfaces
8. Optimized burner and grate design
9. Catalytic burners[24]

In response to the September 2016 SNOPR, DOE received comments regarding the potential energy savings and applicability of the improved contact conductance and low-standby-loss electronic control technology options for conventional cooking tops. These specific technology options are discussed in the following sections.[25]

Improved Contact Conductance

AHAM opposed improved contact conductance as a technology option for electric coil cooking tops. AHAM commented that the test procedure specifies narrow tolerances on the flatness of the test vessel, which AHAM feels are appropriate to reduce variability in test results. AHAM stated that if a consumer does not use pots with comparable flatness, any reduction in energy consumption due to greater flatness of the heating element that would be measured using the test procedure will not be realized in the field. AHAM supplied data from testing of different pan diameters and materials showing that all pan materials warp after the first use, and the warping continues as the cookware is used.[26] Based on this testing, AHAM asserted that consumers are using warped pans and that improving the flatness of the heating element will not achieve improved contact conductance. AHAM stated, therefore, that the energy savings associated with the improved contact conductance technology option measured under the test procedure is not representative of what consumer will experience in the field and, as a result, this should not be considered as a technology option. (AHAM, No. 64 at pp. 7–10)

DOE agrees that, based on the test data provided by AHAM, improving the flatness of the electric coil heating element may not result in energy savings due to the warping of pots and pans used by consumers. As a result, DOE did not consider improved contact conductance as a technology option for electric coil cooking tops for this NOPD.

Low-Standby-Loss Electronic Controls

AHAM commented that most baseline products on the market are already using a low-standby-loss SMPS and, as a result, this should not be considered a viable technology option to improve efficiency for electric smooth cooking tops. (AHAM, No. 64 at p. 10) Among the six electric smooth cooking tops that DOE tore down, DOE observed units that incorporated a baseline efficiency linear power supply. As a result, DOE maintained SMPS as a technology option for reducing the standby power consumption of electric smooth cooking tops for this NOPD.

Table IV–3 lists the technology options for cooking tops that DOE considered for this NOPD.

[24] Catalytic burners were included in the September 2016 SNOPR screening analysis, but not included in the table of technology options.

[25] Previous comments and DOE's responses on the various cooking top technology options listed in Table IV–2 are discussed in the September 2016 SNOPR. 81 FR 60784, 60807–60808 (Sept. 2, 2016).

[26] AHAM test data showed that the average pan warpage ranged from –0.02 inches for aluminum pans to –0.08 inches for stainless steel pans.

Table IV-3 Evaluated Technology Options for Conventional Cooking Tops

Open (coil) element electric cooking tops
1. None
Smooth element electric cooking tops
1. Halogen elements
2. Induction elements
3. Low-standby-loss electronic controls
Gas Cooking Tops
1. Radiant gas burners
2. Catalytic burners
3. Reduced excess air at burner
4. Reflective surfaces
5. Optimized burner and grate design

b. Conventional Ovens

In the September 2016 SNOPR, DOE proposed to consider the technology options for conventional ovens listed in Table IV–4. 81 FR 60784, 60808–60810 (Sept. 2, 2016).

Table IV-4 September 2016 SNOPR Technology Options for Conventional Ovens

1. Bi-radiant oven (electric only)
2. Intermittent/interrupted ignition or intermittent pilot ignition system
3. Forced convection
4. Halogen lamp oven (electric only)
5. Improved and added insulation
6. Improved door seals
7. No oven-door window
8. Oven separator (electric only)
9. Reduced conduction losses
10. Reduced vent rate (electric standard ovens only)
11. Reflective surfaces
12. Low-standby-loss electronic controls
13. Optimized burner and cavity design

In response to the September 2016 SNOPR, DOE received a number of comments regarding the potential energy savings and applicability of intermittent/interrupted ignition or intermittent pilot ignition systems, forced convection, improved insulation, improved door seals, oven separator, reduced conduction losses, and reduced vent rate, as technology options for conventional ovens. These specific technology options are discussed in the following sections.[27]

Intermittent/Interrupted Ignition or Intermittent Pilot Ignition System

As part of the September 2016 SNOPR, DOE conducted a review of ignition systems available on the market as well as various industry definitions for automatic gas ignition available in household gas appliances. DOE based its analysis on existing industry terminology such as definitions available in ANSI Z21.1 and ANSI Z21.20, ''Automatic Electrical Controls for Household and Similar Use Part 2: Particular Requirements for Automatic Burner Ignition Systems and Components.'' When a conventional gas oven cooking cycle is initiated, an ignition system is energized before gas is allowed to flow to the main burner to be lit. Ignition types observed on the market for conventional gas ovens fall under three categories: (1) Intermittent ignition, (2) intermittent/interrupted ignition, and (3) intermittent pilot ignition.[28] 81 FR 60784, 60809 (Sept. 2, 2016).

DOE noted in the September 2016 SNOPR that its testing showed that intermittent pilot ignition systems (*i.e.,* electronic spark ignition systems) reduce energy consumption as compared to intermittent glo-bar ignition systems. However, based on DOE's review of different ignition systems, DOE additionally determined that energy savings can be achieved from switching from the baseline intermittent glo-bar ignition system to either an intermittent/interrupted ignition or intermittent pilot ignition. As a result, DOE expanded the gas ignition system technology option to account for both of these options. 81 FR

[27] Prevoius comments and DOE's responses on the various oven technology options listed in Table IV–4 are discussed in the June 2015 NOPR and September 2016 SNOPR. 80 FR 33030, 33046–33047 (June 10, 2015); 81 FR 60784, 60808–60810 (Sept. 2, 2016).

[28] Continuous ignition systems (*e.g.,* constant-burning or ''standing'' pilot), defined in ANSI Z21.1, were eliminated for all gas cooking products by the current standards as of April 9, 2012.

60784, 60809–60810 (Sept. 2, 2016). Because DOE proposed in the September 2016 SNOPR to adopt a prescriptive standard for the control system of conventional gas ovens to require the use of an intermittent/interrupted ignition or intermittent pilot ignition, DOE also proposed to define ''intermittent/interrupted ignition'' and ''intermittent pilot ignition'' in 10 CFR 430.2. 81 FR 60784, 60810.

In response to the September 2016 SNOPR, Spire reiterated its April 14, 2014 comments [29] that its test data indicate that glo-bar ignition systems consume only 0.16 kWh per cycle. Spire claimed that this is equivalent to 160 W, which is no more than half of DOE's estimates. (Spire, No. 61 at pp. 5–6) DOE responded to these comments in the June 2015 NOPR by presenting test data on the glo-bar power and energy consumption from its test sample. DOE noted that while the power consumption of the glo-bar ignition systems was measured as 330 W to 450 W, the per-cycle energy consumption was similar to that reported by Spire, ranging from 0.141 to 0.261 kWh, because the glo-bar ignition systems do not stay on for the entire cooking cycle and instead cycle on and off as the main burner cycles on and off. 80 FR 33030, 33051 (June 10, 2015). DOE analyzed standards for conventional ovens using the IAEC metric, which includes the energy use from the glo-bar ignition system.

AHAM and GE questioned whether DOE's proposal to require gas ovens to be equipped with an intermittent/interrupted ignition or intermittent pilot ignition would achieve energy savings. AHAM and GE noted that a glo-bar ignition system, which stays on when the main burner is on, contributes heat to the cavity and the food load. (AHAM, No. 64 at p. 28; GE, No. 72 at p. 3) AHAM stated that unlike DOE's testing that compared two different models, one with a glo-bar ignition and one with an intermittent/interrupted or intermittent pilot system, AHAM members conducted testing by comparing the same model with two different ignition systems. AHAM member testing, presented in Table IV–5, showed that the units equipped with the glo-bar ignition system consumed less energy than the same models equipped with the intermittent pilot (*i.e.,* spark ignition) system. (AHAM, No. 64 at pp. 28–29)

Table IV-5 AHAM Test Data Comparing Ignition Systems

	Change in energy consumption between glo-bar and intermittent pilot ignition systems, solid door (*kBtu/yr**)	Change in energy consumption between glo-bar and intermittent pilot ignition systems, window door (*kBtu/yr*)
Model A	10	41
Model B	35	36
Model C	106	139
Model D	9	1

* kilo-British thermal units per year.

Note: Positive values indicate that the unit consumed additional energy with the intermittent pilot ignition system as compared to the identical model with the glo-bar ignition system.

In addition, AHAM and GE presented data from testing of a single oven that was configured to switch between the glo-bar ignition system and the intermittent pilot ignition system. AHAM and GE noted that the testing, conducted according to the DOE test procedure adopted in the July 2015 TP Final Rule, showed that when replacing the glo-bar ignition system with spark ignition, the electrical energy consumed by the glo-bar is replaced by additional gas usage when using the intermittent pilot ignition system, and the overall energy use of both systems is essentially the same. Based on this, AHAM and GE asserted that replacing the glo-bar ignition system with an intermittent/interrupted ignition or intermittent pilot ignition does not achieve energy savings. (AHAM, No. 64 at pp. 29–30; GE, No. 72 at p. 3)

Based on review of the additional test data provided by AHAM, DOE agrees that replacing the intermittent glo-bar ignition system with an intermittent/interrupted ignition or intermittent pilot ignition may not achieve energy savings due to the elimination of heat input that the glo-bar contributes to the cavity and food load, which must be offset by additional gas consumption. As a result, DOE is no longer considering intermittent/interrupted or intermittent pilot ignition systems as a technology option. Because DOE is no longer considering these ignition systems as technology options, DOE is not considering prescriptive standards to require that conventional gas ovens be equipped with a control system that uses intermittent/interrupted ignition or intermittent pilot ignition in this NOPD.

Instead, DOE is evaluating prescriptive standards requiring that conventional ovens not be equipped with a control system that uses a linear power supply. DOE's analysis revealed that conventional ovens at the baseline efficiency level use a conventional linear power supply control design. A linear power supply typically produces unregulated as well as regulated power. The main characteristic of an unregulated power supply is that its output may contain significant voltage ripple and that the output voltage will usually vary with the current drawn. The voltages produced by regulated power supplies are typically more stable, exhibiting less ripple than the output from an unregulated power supply and maintaining a relatively constant voltage within the specified current limits of the device(s) regulating the power. The unregulated portion of a linear power supply typically consists of a transformer that steps alternating current (''AC'') line voltage down, a voltage rectifier circuit for AC to direct current (''DC'') conversion, and a capacitor to produce unregulated, DC output. However, there are other means of producing and implementing an unregulated power supply such as

[29] Spire, formerly the Laclede Group, Inc., April 14, 2014 comments are available at *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0005-0008.*

transformerless capacitive and/or resistive rectification circuits.

Within a linear power supply, the unregulated output serves as an input into a single or multiple voltage-regulating devices. Such regulating devices include Zener diodes, linear voltage regulators, or similar components which produce a lower-potential, regulated power output from a higher-potential DC input. This approach results in a rugged power supply which is reliable, but typically has an efficiency of about 40 percent. As discussed in section IV.C.2.b of this document, DOE's analysis showed that switching from a conventional linear power supply to an SMPS reduces the standby mode energy consumption for conventional ovens. An SMPS offers higher conversion efficiencies of up to 75 percent in appliance applications for power supply sizes similar to those of conventional ovens. An SMPS also reduces the no-load standby losses. DOE seeks comment on both its initial decision to no longer consider intermittent/interrupted or intermittent pilot ignition systems as a technology option, and its initial decision to only evaluate prescriptive standards requiring that conventional ovens not be equipped with a control system that uses a linear power supply (see section VII.B of this document).

Forced Convection

AHAM commented that, depending on the total energy consumption of the unit, the convection motor wattage could negate any potential energy savings of forced convection. AHAM also asserted that convection is not appropriate for cooking all food types, such as covered food loads. AHAM commented that because DOE proposed to repeal the oven test procedure in the August 2016 TP SNOPR, there was no way to determine whether there are efficiency gains from this technology option. (AHAM, No. 64 at p. 11)

As discussed in chapter 3 of the TSD for this NOPD, DOE conducted testing on ovens equipped with forced convection, comparing the measured energy consumption of each oven in bake mode to the average energy consumption of bake mode and convection mode, including energy consumption due to the fan motor, as specified in the test procedure adopted in the July 2015 TP Final Rule. Based on this testing, DOE determined that forced convection provides a 4 to 6-percent increase in cooking efficiency. In addition, DOE notes that because the test procedure specified that the bake mode and convection mode energy consumption be averaged when calculating cooking efficiency, the test procedure did not assume that forced convection would be used for cooking all food loads. For these reasons, DOE retained forced convection as a technology option for this NOPD. However, as discussed in section III.B of this document, DOE repealed the test procedures for conventional ovens. DOE will reevaluate the energy savings associated with this technology option if it considers performance standards in a future rulemaking.

Improved Insulation

AHAM commented that DOE's estimate of the efficiency increase associated with improved insulation is based on data from the 1996 TSD.[30] AHAM also noted that added insulation would decrease the overall cavity size and reduce consumer utility. AHAM commented that DOE must conduct testing on products currently on the market using an active test procedure to determine the energy savings associated with these technology options. (AHAM, No. 64 at p. 13) As discussed in chapter 3 of the TSD for this NOPD, DOE noted that using denser insulation can increase cooking efficiency, and that self-clean ovens typically have a more effective insulation package to meet surface temperature safety requirements due to the higher temperatures during the self-cleaning operation. DOE observed from teardowns of products in its test sample that standard and self-clean ovens may use different density insulations. As a result, DOE believes that the efficiency of standard ovens can be increased by using improved insulation. For these reasons, DOE maintained improved insulation as a technology option for standard ovens for this NOPD, although as discussed in section IV.B.1.b of this document, DOE screened out added insulation from further analysis. DOE recognizes that the estimates for the energy savings may vary depending on the test procedure. DOE will reevaluate the energy savings associated with this technology option if it considers performance standards in a future rulemaking.

Improved Door Seals

AHAM commented that further improving door seals will lead to a loss of performance due to a loss of sufficient airflow. According to AHAM, door seals are already optimized to retain heat while offering enough airflow for cooking performance. AHAM stated that if the door is sealed further, increased airflow would be required by means of implementing an additional motor that would likely consume more energy, and the 1-percent energy gain DOE estimated would be eliminated. For these reasons, AHAM opposed considering improved door seals as a technology option. (AHAM, No. 64 at p. 11)

As discussed in chapter 3 of the TSD for this NOPD, DOE noted that because some venting is required for proper cooking performance, a complete seal on the oven is undesirable. However, the oven door seals can be improved further without sealing the oven completely. As discussed in chapter 5 of the TSD for this NOPD, the estimated efficiency improvement for improving the door seals was based on replacing the baseline silicone rubber door seal that DOE observed in its test sample with the fiberglass door seals with metallic mesh typically found in self-clean ovens and that DOE also observed in its test sample. As a result, DOE initially concludes that efficiency can be increased by improving the door seals and retained this technology option for this NOPD.

Oven Separator

AHAM opposed considering oven separators as a technology option. AHAM commented that oven separators are not a widely available feature and that DOE does not have data to show the frequency with which consumers actually use the oven separator. AHAM stated that without knowing whether consumers use the oven separator, it is not possible to determine the energy savings that would be realized in the field. (AHAM, No. 64 at p. 11) DOE notes that the test procedure adopted in the July 2015 TP Final Rule specified that the total AEC of an oven equipped with an oven separator be calculated as the average energy. As discussed in the September 2016 SNOPR, DOE's testing showed that oven separators can reduce energy use by reducing the cavity volume that must be heated. 81 FR 60784, 60818. Because oven separators have the potential to reduce energy use for conventional electric ovens, DOE retained this technology option for this NOPD.

Reduced Conduction Losses

AHAM commented that DOE's data on reduced conduction losses are based on products that are more than 10 years old. AHAM noted that testing at the time indicated an extremely small absolute percentage point increase in efficiency of 0.05 percent, and that DOE does not have any current data to evaluate the efficiency improvement for products currently on the market.

[30] Available online at *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0070-0053.*

(AHAM, No. 64 at p. 12) Based on DOE's testing and reverse engineering for this proposed determination, DOE did not observe variation in the interface between the door and the oven cavity that would demonstrate an opportunity for improving efficiency. As a result, DOE did not consider reduced conduction losses as a technology option in this NOPD.

Reduced Vent Rate

AHAM opposed considering reduced vent rate as a technology option. AHAM commented that DOE's estimates of energy savings rely on old testing and product designs, and that the negligible energy savings are based on a test procedure that DOE proposed to repeal in the August 2016 TP SNOPR. According to AHAM, any future energy savings may not be captured if the test procedure is changed. AHAM also commented that oven vent rates are part of a complex air flow design that affects preheat times, cooking performance, and fire and explosion safety performance. AHAM asserted that forcing manufacturers to implement this technology option would reduce energy use by a negligible amount while forcing a significant redesign effort. AHAM added that this could also lead to the elimination of self-clean ovens or cause poor cooking performance because it would result in low air flow and the development of hots spots in the cavity. (AHAM, No. 64 at p. 12)

DOE notes that it proposed to consider reduced vent rate as a technology option for only electric standard ovens, and that no further increase in efficiency can be achieved for gas and electric self-clean ovens and gas standard ovens with this technology option. In addition, because DOE did not consider reduced vent rate for gas ovens, DOE does not believe that fire and explosion safety performance from gas combustion would be an issue. As noted in the September 2016 SNOPR, DOE observed from its testing that reduced vent rate could be considered for improving the cooking efficiency for electric standard ovens. 81 FR 60784, 60810 (Sept. 2, 2016). As a result, DOE retained reduced vent rate as a technology option for electric standard ovens in this NOPD.

Table IV–6 lists the technology options for ovens that DOE considered for this NOPD.

Table IV-6 Evaluated Technology Options for Conventional Ovens

1.	Bi-radiant oven (electric only)
2.	Forced convection
3.	Halogen lamp oven (electric only)
4.	Improved and added insulation (standard ovens only)
5.	Improved door seals (standard ovens only)
6.	Low-standby-loss electronic controls
7.	No oven-door window
8.	Oven separator (electric only)
9.	Optimized burner and cavity design (gas only)
10.	Reduced vent rate (electric standard ovens only)
11.	Reflective surfaces

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option uses proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

10 CFR part 430, subpart C, appendix A, 6(c)(3) and 7(b)

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

a. Conventional Cooking Tops

For conventional cooking tops, in the September 2016 SNOPR, DOE screened out radiant gas burners, catalytic burners, reduced excess air at burner, and reflective surfaces. 81 FR 60784, 60810–60811 (Sept. 2, 2016). DOE did not receive any comments opposing the technology options screened out in the September 2016 SNOPR. For the same reasons discussed in the September 2016 SNOPR, DOE is continuing to screen out radiant gas burners, catalytic burners, reduced excess air at burner, and reflective surfaces from further analysis in this NOPD.

In addition, AHAM commented that halogen heating elements are not being used in any commercially available products or working prototypes. AHAM also noted that DOE's estimated energy savings using the previous version of the test procedure are no longer relevant. AHAM asserted that halogen

heating elements should be screened out from the analysis. (AHAM, No. 64 at p. 10) Based on DOE's review of products available on the market and its product teardowns, DOE is not aware of any cooking tops that incorporate halogen heating elements. Because this technology is currently not being used commercially or in working prototypes, DOE does not believe that it would be practicable to produce this technology in commercial products on the scale necessary to serve the market by the potential compliance date of the proposed standards. As a result, DOE is screening out halogen elements from further analysis in this NOPD.

AHAM commented that the optimized burner and grate design technology option for gas cooking tops should be screened out from the analysis. AHAM stated that designs of the burner system components are interdependent and must consider safety as well. According to AHAM, gas cooking top burner and grate designs are already optimized to meet consumer utility and to stay within combustion safety requirements. AHAM also asserted that the additional heat retention of heavier grates contributes to the efficiency of longer cooking cycles that are not measured under the test procedure. (AHAM, No. 64 at p. 6)

As discussed in the September 2016 SNOPR, DOE considered different efficiency levels associated with the optimized burner and grate design technology option that it observed in products available on the market, including a range of commercial-style gas cooking tops that maintain the utilities discussed previously in section IV.A.1.a of this document. 81 FR 60784, 60187 (Sept. 2, 2016). DOE characterized the optimized burner and grate design incremental efficiency levels based on different observed features (*e.g.,* high input rate burners, grate types and material). DOE further notes that all gas cooking tops on the market, including those with an optimized burner and grate design, have been certified to applicable safety standards. However, DOE recognizes that the estimates for the energy savings associated with optimized burner and grate design may vary depending on the test procedure, and thus screened out this technology option from further analysis of gas cooking tops. DOE will reevaluate the energy savings associated with this technology option if it considers performance standards in a future rulemaking.

b. Conventional Ovens

For conventional ovens, in the September 2016 SNOPR, DOE screened out added insulation, bi-radiant oven, halogen lamp oven, no oven door window, reflective surfaces, and optimized burner and cavity design. 81 FR 60784, 60811 (Sept. 2, 2016).

AHAM supported DOE's proposal to screen out optimized burner and cavity design as well as no oven door window from the analysis. (AHAM, No. 64 at pp. 12, 13) Because DOE did not receive any comments opposing the technology options screened out in the September 2016 SNOPR, for the same reasons discussed in the September 2016 SNOPR, DOE screened out added insulation, bi-radiant oven, halogen lamp oven, no oven door window, reflective surfaces, and optimized burner and cavity design from further analysis in this NOPD.

2. Remaining Technologies

Based on the screening analysis, DOE considered the design options listed in Table IV–7 for conventional cooking tops and Table IV–8 for conventional ovens.

Table IV-7 Remaining Conventional Cooking Top Technology Options

Open (coil) element electric cooking tops
1. None
Smooth element electric cooking tops
1. Induction elements
2. Low-standby-loss electronic controls
Gas Cooking Tops
1. None

Table IV-8 Remaining Conventional Oven Technology Options

1. Forced convection
2. Improved insulation
3. Improved door seals (standard ovens only)
4. Oven separator (electric only)
5. Reduced vent rate (electric standard ovens only)
6. Low-standby-loss electronic controls

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, nor require unique-pathway proprietary technologies). For additional details, see chapter 4 of the TSD for this NOPD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of conventional cooking products. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies

and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market).

In this rulemaking, DOE is adopting a design-option approach, supplemented by reverse engineering (physical teardowns and testing of existing products in the market) to identify the incremental cost and efficiency improvement associated with each design option or design option combination. In addition, DOE considered data from the previous rulemaking analysis provided in the 2009 TSD. DOE also conducted interviews with manufacturers of consumer conventional cooking products to develop a deeper understanding of the various combinations of design options used to increase product efficiency, and their associated manufacturing costs.

DOE conducted testing and reverse engineering teardowns on products available on the market. Because there are no performance-based energy conservation standards or energy reporting requirements for consumer conventional cooking products, DOE selected test units based on performance-related features and technologies advertised in product literature.

a. Conventional Cooking Tops

As noted in the September 2016 SNOPR, DOE's test sample for conventional cooking tops included four gas cooking tops, eight gas ranges, six electric cooking tops, and two electric ranges for a total of 20 conventional cooking tops covering all of the considered product classes. 81 FR 60784, 60811–60812 (Sept. 2, 2016). DOE conducted testing on each cooking top in its test sample. DOE notes that it originally conducted testing using the withdrawn hybrid test block method proposed in the December 2014 TP SNOPR. DOE also tested nine of the twenty units in its test sample using the water heating test method adopted in the December 2016 TP Final Rule, which as discussed in section III.B of this document has since been withdrawn. To maintain its full test sample to be representative of products on the market, DOE then used the relative difference in results between the two test methods to scale the normalized total cooking top energy consumption for the remaining units in its test sample.

DOE conducted physical teardowns on each test unit to develop a manufacturing cost model and to evaluate key design features. DOE supplemented its reverse engineering analyses by conducting manufacturer interviews to obtain feedback on efficiency levels, design options, inputs for the manufacturing cost model, and resulting manufacturing costs. DOE used the results from testing, reverse engineering, and manufacturer interviews to develop the efficiency levels and manufacturing costs discussed in section IV.C.2 and section IV.C.3 of this document.

In response to the September 2016 SNOPR, AHAM requested information on which of the IAECs for units in DOE's test sample were measured using the methods proposed in the August 2016 TP SNOPR and which IAECs were calculated using scaling factors derived from the results of testing using the hybrid test block method proposed in the December 2014 TP SNOPR. AHAM also requested that DOE provide the scaling factors for each scaled unit in the test sample. (AHAM, No. 57 at p. 2) On October 24, 2016, DOE added to the rulemaking docket the information requested by AHAM, which included: (1) The IAECs for the units tested according to the August 2016 TP SNOPR, (2) the IAECs for the units tested according to the withdrawn hybrid test block method, and (3) the scaling factor used to scale results obtained with the hybrid test block method.[31]

AHAM did not agree with DOE's method to scale results using the difference between products tested with both the hybrid block and water-heating test procedures. AHAM did not believe that DOE had enough data to understand how different cooking top configurations affect the scaling factor, and as such asserted that DOE should not develop a scaling factor. (AHAM, No. 64 at pp. 14–15) AHAM noted that the hybrid test block method specified three different test load diameters, while the test procedure proposed in the August 2016 TP SNOPR specified eight different test load diameters. Additionally, AHAM claimed that due to the variety of cooking top configurations and surface unit diameters that were available on the U.S. market, a single scaling factor for any cooking top product class would not be meaningful. (AHAM, No. 64 at p. 14)

AHAM specifically noted that the scaling factors used for the smooth–electric resistance cooking tops were calculated using units that contained multi-ring elements. AHAM also stated that because ''zone-less'' smooth–induction cooking tops (*i.e.,* those with full-surface induction) were tested differently than ''zoned'' smooth–induction cooking tops (*i.e.,* those with individual surface units)—the test load sizes were based on the number of controls rather than the diameter of each of the surface units—it was inappropriate to use a scaling factor developed using zoned cooking tops for zone-less cooking tops. (AHAM, No. 64 at pp. 14–15) Furthermore, for gas cooking tops, AHAM stated that because DOE's test sample contained cooking tops with unique burner/grate designs that had an impact on the efficiency of the product, it was inappropriate to apply the same scaling factor to all of the gas models in the DOE test sample. (AHAM, No. 64 at p. 16)

AHAM noted that DOE tested less than half of the cooking tops in its test

[31] Available at *https://www.regulations.gov/document?D=EERE-2014-BT-STD-0005-0058.*

sample according to the test procedure proposed in the August 2016 TP SNOPR, and as a result, based the standards for conventional cooking tops proposed in the September 2016 SNOPR on test data for only nine products. (AHAM, No. 64 at p. 14) Moreover, AHAM stated that because the rulemaking started 3 years prior to the September 2016 SNOPR, DOE relied on old samples for its analysis and that it was possible that products on the market at the time of AHAM's comments differed from the products on the market at the time DOE started its analysis. (AHAM, No. 64 at p. 14) AHAM also commented that the number of different product types in DOE's test sample was disproportionate to the percentage of shipments for each product type. AHAM noted that DOE tested only two smooth–electric resistance cooking tops and three electric coil cooking tops even though these product types represented a significant portion of the market. (AHAM, No. 64 at pp. 14, 16)

AHAM submitted test data for 8 electric coil cooking tops, 15 electric smooth cooking tops (11 electric resistance and 4 induction), and 10 gas cooking tops. AHAM's test results are presented in Table IV–9 to Table IV–11. The coefficient of variation in AHAM's test data ranges from 7.1 to 9.2 percent, depending on the product class. According to AHAM, this variation introduced uncertainty about whether or not a data point would meet the proposed standard level and made it difficult to evaluate the potential impact of the proposed standard. (AHAM, No. 64 at pp. 18, 20)

Table IV-9 AHAM Electric Coil Cooking Top Test Data

Test Unit #	Configuration	Product Class	IAEC (*kWh/yr*)
1	Range	Electric Coil	120.1
2	Range	Electric Coil	120.3
3	Range	Electric Coil	130.7
4	Range	Electric Coil	143.6
5	Stand-alone Cooking Top	Electric Coil	129.0
6	Stand-alone Cooking Top	Electric Coil	115.6
7	Stand-alone Cooking Top	Electric Coil	121.4
8	Range	Electric Coil	118.0

Table IV-10 AHAM Electric Smooth Cooking Top Test Data

Test Unit #	Configuration	Product Class	IAEC (*kWh/yr*)
1	Stand-alone Cooking Top	Smooth–Induction	133.5
2	Range	Smooth–Induction	164.4
3	Range	Smooth–Induction	201.2
4	Stand-alone Cooking Top	Smooth–Induction	126.7
5	Range	Smooth–Electric Resistance	122.3
6	Stand-alone Cooking Top	Smooth–Electric Resistance	140.2
7	Range	Smooth–Electric Resistance	128.7
8	Range	Smooth–Electric Resistance	154.9
9	Range	Smooth–Electric Resistance	150.1
10	Range	Smooth–Electric Resistance	146.2
11	Range	Smooth–Electric Resistance	126.3
12	Range	Smooth–Electric Resistance	118.7
13	Range	Smooth–Electric Resistance	116.6
14	Range	Smooth–Electric Resistance	125.4
15	Range	Smooth–Electric Resistance	126.6

Table IV-11 AHAM Gas Cooking Top Test Data

Test Unit #	Configuration	Product Description	IAEC (*kBtu/yr*)
1	Range	4 burners (1 high input rate burner)	712.6
2	Range	4 burners (1 high input rate burner)	928.5
3	Range	4 burners (1 high input rate burner)	961.8
4	Range	4 burners (1 high input rate burner)	970.1
5	Stand-alone Cooking Top	4 burners (1 high input rate burner)	850.4
6	Range	4 burners (2 high input rate burners)	1039.5
7	Range	4 burners (2 high input rate burners)	1060.0
8	Range	5 burners (2 high input rate burners)	1062.6
9	Range	5 burners (3 high input rate burners)	1443.3
10	Range	6 burners (6 high input rate burners)	1324.1

DOE notes that for each of the electric cooking top product classes, it did not base the scaling factor on simply the overall AEC calculated according to each test method, because the difference in the overall AECs that were measured for each electric cooking top subject to the two test methods varied by more than 2 percentage points for some product classes. Instead, DOE scaled the measured results for each individual surface unit of each cooking top based on the heating technology of the surface unit (coil, smooth–electric resistance, and smooth–induction) and the surface unit diameter, accounting for any difference in the diameter of the test loads for each respective test method used to test the surface unit. The scaling factors presented in DOE's October 24, 2016 response to AHAM's data request thus are an average obtained from individually scaling four or more surface units per cooking top, and represent the aggregate difference between the overall AEC determined using each test method.

This scaling method for electric cooking tops allowed DOE to account for configuration differences among units in its test sample, including the presence of multi-ring surface units, and the effects of the test cookware selection process specified in the December 2016 TP Final Rule. Regarding the latter, for a given surface unit, the test vessel with a diameter that most closely matched the surface unit diameter was selected for the test. The number of test vessels and test vessel size categories [32] needed to assess the energy consumption of the cooking top was based on the number of controls that could be independently but simultaneously operated on the cooking top. If the number of independent controls/surface units for the cooking top exceeded two, the cooking top was required to be tested with test vessels from at least two cookware categories. As a result, the test vessel selected for testing an individual surface unit was based on the diameter of that surface unit as well as the configuration of diameters of all the surface units on the cooking top to ensure that the test vessel size category requirements were also met. Scaling test results for each individual surface unit ensured that DOE factored in this test procedure requirement.

In contrast, for the gas cooking top test data that were scaled from the results using the hybrid test block method, DOE used the average difference in overall AEC between the two test methods to scale the test results because the test load selection process for gas cooking tops depended only on the input rate of each individual burner and did not depend on the configuration of all the burners on the cooking top. Thus, scaling by the percent difference in overall AEC instead of surface unit energy consumption was appropriate for gas cooking tops, as evidenced by the results for the three gas units in the DOE test sample that were tested according both test methods. For these three gas cooking tops, the percent difference in overall AEC varied less than 1 percentage point.

For these reasons, in this NOPD DOE maintained the same approach to scale test results measured with the hybrid test block method and updated the scaling factors to reflect the test procedure adopted in the December 2016 TP Final Rule.

DOE's test sample of 20 consumer conventional cooking products that were used for the September 2016 SNOPR analysis, as well as being subjected to additional testing for this NOPD, comprised units purchased in 2014 and 2015. To supplement its analysis for this NOPD, DOE also purchased and tested two additional commercial-style gas cooking tops and one additional smooth–electric resistance cooking top. DOE has periodically reviewed the market throughout the course of the rulemaking and has determined that this test sample captures the range of features currently available on the market for each product class. The key characteristics and test results for all cooking top units in DOE's test sample are listed in Table IV–12 and Table IV–13.

[32] Test vessels are grouped into categories based on ranges of test vessel diameters to represent different cookware types.

Table IV-12 Updated DOE Conventional Gas Cooking Top Test Results

Test Unit #	Burner Type	Burner Input Rating (*Btu/h*)	Average Burner Input Rate (*Btu/h*)	Grate Material	Grate Weight per Burner (*pounds* (*lbs*))*	IAEC (*kBtu/yr*)
1	Open	4×9,000	9,000	Steel	0.5	655.2
2	Open	4×9,100	9,100	Steel	1.1	758.9
3	Open	4×9,100	9,100	Steel	1.1	832.6
4	Sealed	5,000; 9,500; 10,000; 15,000; 17,000	11,300	Cast Iron	2.2	958.4
5	Sealed	2×7,000; 2×8,000	7,500	Cast Iron	2.1	745.5
6	Sealed	2×15,000; 9,500; 5,000	11,125	Cast Iron	3.7	837.9
7	Sealed	4×18,000	18,000	Cast Iron	6.1	974.6
8	Sealed	5,000; 2×9,100; 11,000; 20,000	10,540	Cast Iron	4.2	1031.4
9	Sealed	4×18,000	18,000	Cast Iron	4.8	928.6
10	Sealed	2×9,500; 2×15,000; 2×18,500	14,333	Cast Iron	5.4	922.4
11	Open	4×23,000	23,000	Cast Iron	8.6	907.1
12	Open	12,000; 2×18,000; 3×25,000	20,500	Cast Iron	6.3	1102.5
13	Sealed	5×15,000; 9,200	14,033	Cast Iron	5.8	922.0
14	Sealed	18,500; 5×15,000	15,583	Cast Iron	7.0	895.3

*For cooking tops with continuous grates covering multiple surface unit burners, the total grate weight was divided by the number of burners.

Table IV-13 Updated DOE Conventional Electric Cooking Top Test Results

Test Unit #	Cooking Top Product Class	Surface Unit Input Rating (*W*)	IAEC (*kWh/yr*)
1	Smooth–Induction	1,900; 2,600; 3,200; 3,400	119.9
2	Smooth–Induction	Max 3,600	105.7
3	Smooth–Induction	1,800; 2×2,500; 3,700	121.0
4	Smooth–Electric Resistance	2×1,200; 2,400; 3,000	127.4
5	Smooth–Electric Resistance	2×1,200; 2×3,000	120.2
6	Open (Coil)	3×1,300; 1×2,100	111.4
7	Open (Coil)	2×1,300; 2×2,400	115.0
8	Open (Coil)	3×1,250; 2,100	113.8
9	Smooth–Electric Resistance	2×1,200; 1,800; 2,500	106.6

For completeness, DOE supplemented its dataset by incorporating AHAM's test data, and considered this combined dataset in evaluating the efficiency levels, as discussed in section IV.C.2 of this document. The combined dataset significantly expands the number of models included in the engineering analysis and further ensures that the full range of energy consumption for products on the market is captured.

b. Conventional Ovens

As noted in the September 2016 SNOPR, DOE's test sample for conventional ovens included 1 gas wall oven, 7 gas ranges, 5 electric wall ovens, and 2 electric ranges for a total of 15 conventional ovens covering all of the considered product classes. DOE conducted testing according to the test procedure adopted in the July 2015 TP Final Rule. 81 FR 60784, 60812 (Sept. 2, 2016). As discussed in section III.B of

this document, although DOE has since repealed the conventional oven test procedure in appendix I, DOE based its analyses on the data measured using that test procedure. Table IV–14 and Table IV–15 present the testing results maintained from the September 2016 SNOPR for the conventional gas and electric ovens, respectively. As with cooking tops, DOE used the results from testing, reverse engineering, and manufacturer interviews to develop the efficiency levels and manufacturing costs for conventional ovens discussed in section IV.C.2 and section IV.C.3 of this document.

Table IV-14 DOE Conventional Gas Oven Test Results

Test Unit #	Oven Product Class	Burner Input Rate (*Btu/h*)	Cavity Volume (*ft*^{3})	Ignition Type	Convection (Y/N)	IAEC (*kBtu/yr*)
1	Gas Standard – Freestanding	18,000	4.8	Spark	N	1341.4
2	Gas Standard – Freestanding	18,000	4.8	Glo-bar	N	1489.1
3	Gas Self-Clean - Freestanding	18,000	5.0	Glo-bar	Y	1403.4
4	Gas Standard – Freestanding	16,500	4.4	Glo-bar	N	1501.3
5	Gas Self-Clean – Built-in/Slide-in	13,000	2.8	Glo-bar	N	1159.9
6	Gas Standard – Freestanding	28,000	5.3	Glo-bar	Y	2061.3
7	Gas Standard – Built-in/Slide-in	27,000	4.4	Glo-bar	Y	1922.9
8	Gas Standard – Freestanding	30,000	5.4	Glo-bar	Y	2296.9

Table IV-15 DOE Conventional Electric Oven Test Results

Test Unit #	Oven Product Class	Heating Element Wattage (*W*)	Cavity Volume (*ft*^{3})	Convection (Y/N)	IAEC (*kWh/yr*)
1	Electric Self-Clean – Freestanding	3,000	5.9*	Y	266.2
2	Electric Standard – Freestanding	2,000	2.4	N	213.6
3	Electric Self-Clean – Built-in/Slide-in	3,400	2.7	N	158.7
4	Electric Standard – Built-in/Slide-in	2,600	4.3	N	287.7
5	Electric Self-Clean – Built-in/Slide-in	2,600	4.3	N	308.8
6	Electric Self-Clean – Built-in/Slide-in	2,600	4.3	Y	341.8
7	Electric Self-Clean – Built-in/Slide-in	2,800	4.3	N	370.0

* Test Unit 1 was equipped with an oven separator that allowed for splitting the single cavity into two separate smaller cavities with volumes of 2.7 ft^3 and 3.0 ft^3.

2. Efficiency Levels

a. Baseline Efficiency Levels

A baseline unit is a product that just meets current Federal energy conservation standards. DOE uses the baseline unit for comparison in several phases of the NOPD analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline.

Conventional Cooking Tops

As part of the September 2016 SNOPR, DOE developed baseline efficiency levels by considering both data from the previous standards rulemaking and the energy use for the test units based on the water heating test procedure that was later adopted in the December 2016 TP Final Rule. 81 FR 60784, 60813–60814 (Sept. 2, 2016). DOE conducted testing for units in its test sample to measure IAEC, which included energy use in active mode and standby mode. DOE also requested energy use data as part of the manufacturer interviews. However, because manufacturers were not required at the time of the September 2016 SNOPR to conduct testing according to the DOE test procedure, very little energy use information was available. DOE noted in the September 2016 SNOPR that the highest measured IAEC in DOE's test sample was higher than the baseline IAEC observed during the 2009 rulemaking for each cooking top product class, suggesting that the baseline energy consumption of cooking tops has increased since 2009. Thus, to establish the new baseline IAEC for cooking tops, DOE set the baseline IAEC equal to the maximum IAEC measured in the test sample for each product class. 81 FR 60784, 60814.

As part of the September 2016 SNOPR, because DOE observed that baseline electric coil cooking tops and gas cooking tops have only electromechanical controls, DOE calculated the baseline IAEC for these product classes based on zero standby mode and off mode energy consumption. In contrast, baseline

electric cooking tops with smooth elements have electronic controls which consume energy in standby and off mode. For the September 2016 SNOPR, DOE determined the baseline IAEC for electric smooth cooking tops by setting the baseline standby energy consumption equal to that of the cooking top with the highest standby energy consumption in its test sample to maintain the full functionality of controls for consumer utility. 81 FR 60784, 60814 (Sept. 2, 2016).

The baseline efficiency levels for conventional cooking tops proposed in the September 2016 SNOPR are presented in Table IV–16. *Id.*

Table IV-16 September 2016 SNOPR Proposed Conventional Cooking Top Baseline Efficiency Levels

Product Class	Proposed IAEC
Electric Cooking Tops –Open (Coil) Elements	118.1 kWh/yr
Electric Cooking Tops – Smooth Elements	144.7 kWh/yr
Gas Cooking Tops	1104.8 kBtu/yr

AHAM commented that all electric coil cooking tops will require a significant redesign to comply with a change to the voluntary safety standard, UL 858, which took effect on June 15, 2018. The updated UL 858 requires manufacturers to monitor and limit pan bottom temperature for coil elements to reduce the incidence of unattended cooking fires. AHAM stated that, at the time of the comment, manufacturers were developing products to comply with the UL 858 requirements and did not yet know how the changes would impact energy consumption. AHAM asserted that DOE's data and efficiency level analysis may not be representative because they do not reflect products that will enter the market before the compliance date of DOE's proposed standards. (AHAM, No. 64 at pp. 19–20)

DOE notes that AHAM did not provide data showing how the redesigns necessary to comply with changes to UL 858 impact the measured energy use for electric coil cooking tops. AHAM did, however, provide data in its petition requesting the withdrawal of the test procedure for conventional cooking tops, showing that the time to boil did not significantly increase using temperature limiting controls on electric coil cooking tops that meet UL 858's recently updated requirements.[33] As a result, DOE did not revise its efficiency level analysis for this NOPD based on the requirements in UL 858.

With respect to the standby energy consumption for baseline electric coil and gas cooking tops, GE commented that the test procedure proposed in the August 2016 TP SNOPR, which proposed to apportion standby power to the cooking top on a combined cooking product, negatively impacts the cooking top IAEC. GE noted that on a majority of combined cooking products, while the entire product may consume standby power, the controls for the cooking top component consist of electromechanical switches that consume no standby power. GE stated that, as a result of assigning a portion of the standby energy consumption measured for the full combined cooking product to the cooking top component, when comparing the IAEC between an electromechanically controlled stand-alone cooking top and a similarly controlled combined cooking product that has a cooking top, the combined product's cooking top will appear to use more energy. (GE, No. 72 at p. 2)

DOE agrees with GE's assertion that apportioning standby power to the cooking top component on a combined cooking product negatively impacts the cooking top IAEC. As discussed in chapter 9 of the TSD for this NOPD, combined cooking products, such as ranges, represent over 70 percent of the total shipments for consumer conventional cooking products. As a result, DOE revised its analysis for electric coil and gas cooking tops, including the baseline efficiency levels, to account for the standby power consumption apportioned to the cooking top component of a combined product based on the maximum standby power for each product class in DOE's test sample for a cooking top that is part of a combined cooking product. DOE estimated the annual standby energy consumption for gas and electric coil cooking tops to be 30 thousand British thermal units per year (''kBtu/yr'') and 5 kWh/yr, respectively. Because DOE's analysis for electric smooth cooking tops already included standby power, and because the range of observed standby power was similar for stand-alone electric smooth cooking tops and combined cooking products with an electric smooth cooking top, DOE is maintaining its estimates for the standby power consumption of electric smooth cooking tops in this NOPD. DOE also notes that the majority of products in AHAM's test sample, which was factored into this analysis, were conventional ranges that included standby power consumption for the cooking top component.

Based on AHAM's comments regarding the validity of DOE's test sample discussed in section IV.C.1.a of this document, DOE evaluated the combined dataset, including both DOE and AHAM test data, to determine the baseline efficiency levels for this NOPD. For each product class, the IAEC of several units in AHAM's test sample exceeded the baseline efficiency proposed in the September 2016 SNOPR. In light of this, DOE revised the baseline IAEC to equal the maximum IAEC observed in the combined DOE and AHAM test sample for each product class, as shown in Table IV–17.

[33] AHAM's petition requesting the withdrawal of the test procedure for conventional cooking tops is available at: *https://www.regulations.gov/document?D=EERE-2018-BT-TP-0004-0002*.

Table IV-17 Evaluated Conventional Cooking Top Baseline Efficiency Levels

Product Class	IAEC
Electric Cooking Tops –Open (Coil) Elements	143.6 kWh/yr
Electric Cooking Tops – Smooth Elements	154.9 kWh/yr
Gas Cooking Tops	1443.3 kBtu/yr

Conventional Ovens

As part of the September 2016 SNOPR, DOE developed baseline efficiency levels for conventional ovens considering both data from the previous standards rulemaking and the measured energy use for the test units. DOE conducted testing for all units in its test sample to measure IAEC, which included energy use in active mode (including fan-only mode) and standby mode. 81 FR 60784, 60814 (Sept. 2, 2016). As discussed in the September 2016 SNOPR, to address concerns raised by interested parties in response to the June 2015 NOPR regarding the limited data used to establish the baseline efficiency levels for the electric standard oven product classes, DOE augmented its analysis of electric standard ovens by considering the energy use of the electric self-clean units in its test sample, adjusted to account for the differences between standard-clean and self-clean ovens. Augmenting the electric standard oven dataset with self-clean models from the DOE test sample allowed DOE to consider a wider range of cavity volumes in its analysis. 81 FR 60784, 60815.

To establish the baseline efficiency levels for conventional ovens, DOE first derived a relationship between IAEC and cavity volume as discussed in section IV.C.2.c of this document. Using the slope from the previous rulemaking, DOE selected new intercepts corresponding to the ovens in its test sample with the lowest efficiency, so that no ovens in the test sample were cut off by the baseline curve. DOE then set baseline standby energy consumption for conventional ovens equal to that of the oven (including the oven component of a range) with the highest standby energy consumption in DOE's test sample to maintain the full functionality of controls for consumer utility. As part of the September 2016 SNOPR, DOE proposed the baseline efficiency levels presented in Table IV–18, which are based on an oven with a cavity volume of 4.3 ft^3. 81 FR 60784, 60815–60816 (Sept. 2, 2016).

Table IV-18 September 2016 SNOPR Proposed Conventional Oven Baseline Efficiency Levels

Product Class	Sub Type	Proposed IAEC*
Electric Oven – Standard Oven with or without a Catalytic Line	Freestanding	315.2 kWh
	Built-in/Slide-in	322.3 kWh
Electric Oven – Self-Clean Oven	Freestanding	354.9 kWh
	Built-in/Slide-in	362.0 kWh
Gas Oven – Standard Oven with or without a Catalytic Line	Freestanding	2083.1 kBtu
	Built-in/Slide-in	2093.0 kBtu
Gas Oven – Self-Clean Oven	Freestanding	1959.6 kBtu
	Built-in/Slide-in	1969.6 kBtu

* Proposed IAEC baseline efficiency levels were normalized based on a 4.3 ft^3 volume oven.

DOE did not receive comment on the baseline efficiency levels considered for conventional ovens. Thus, DOE did not modify the baseline levels for conventional ovens in this NOPD.

b. Incremental Efficiency Levels

For each product class for both conventional cooking tops and conventional ovens, DOE analyzes several efficiency levels (''ELs'') and determines the incremental cost at each of these levels.

Conventional Cooking Tops

For the September 2016 SNOPR, DOE developed incremental efficiency levels for each cooking top product class by first considering information from the previous rulemaking analysis available in the 2009 TSD. In cases where DOE identified design options during testing and reverse engineering teardowns, DOE updated the efficiency levels based on the test data. 81 FR 60784, 60817 (Sept. 2, 2016). Table IV–19 and Table IV–20 show the incremental efficiency levels for the electric cooking top product classes as proposed in the September 2016 SNOPR, including whether the efficiency level is from the 2009 TSD or based on testing for that SNOPR.

Table IV-19 September 2016 SNOPR Proposed Open (Coil) Element Electric Cooking Top Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kWh/yr*)	Relative % Decrease in IAEC
Baseline	SNOPR Testing	Baseline	118.1	-
1	2009 TSD	Baseline + Improved Contact Conductance	113.2	-4.2%

Table IV-20 September 2016 SNOPR Proposed Smooth Element Electric Cooking Top Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kWh/yr*)	Relative % Decrease in IAEC
Baseline	SNOPR Testing	Baseline	144.7	-
1	SNOPR Testing	Baseline + SMPS	137.0	-5.3%
2	SNOPR Testing	1 + Automatic Power Down	121.2	-11.5%
3	2009 TSD	2 + Halogen Lamp Element	119.5	-1.4%
4	SNOPR Testing	2 + Induction Heating Element	102.3	-14.4%

AHAM commented that the induction cooking tops in AHAM's test sample appear to consume more energy than many of the smooth–electric resistance models in both the DOE and AHAM datasets, which AHAM claimed undermines DOE's estimate of the efficiency improvement due to induction. (AHAM, No. 64 at p. 21) AHAM stated that it was not clear whether the difference between DOE and AHAM's induction test data can be attributed to differences in how the laboratories conducted testing or to differences in the test units themselves. (AHAM, No. 64 at p. 22) AHAM expressed concern that smooth–electric resistance cooking tops, which perform better when the contact between the element and the pan is optimized, may benefit more from the flat cookware specified in the test procedure than do induction cooking tops. AHAM noted that induction cooking tops, which induce an electromagnetic field in the cookware itself, are not affected by contact. (AHAM, No. 64 at p. 22)

To evaluate whether DOE's analysis provides an accurate representation of the efficiency improvement associated with induction heating elements, DOE reviewed data for 128 electric cooking tops sold on the European market and compared the data to results from DOE's test sample. Cooking tops sold on the European market are tested and rated using the same basic test provisions as the DOE test procedure adopted in the December 2016 TP Final Rule. DOE also notes that, based on product teardowns conducted in support of the September 2016 SNOPR, the heating elements and glass cooking surfaces used in electric smooth cooking tops are typically purchased parts that are manufactured by companies that produce and supply these parts to countries worldwide.[34] As a result, DOE believes that the comparative energy use of smooth–electric resistance and smooth–induction cooking tops on the European market is similar to the comparative performance of products on the U.S. market. As demonstrated in Table IV–21, for both smooth–electric resistance and smooth–induction cooking tops, DOE's test data fell within the range of AEC observed for products on the European market. For both DOE's test data and data for products on the European market, smooth–induction cooking tops are, on average, more efficient than smooth–electric resistance cooking tops.

Table IV-21 Range of AEC for the DOE Test Sample and Cooking Tops Sold on the European Market

		DOE Test Sample AEC (*kWh/yr*)	AHAM Test Sample AEC (*kWh/yr*)	EU Market Survey[35] AEC (*kWh/yr*)
Smooth–Electric Resistance	Maximum	113.7	132.3	123.7
	Average	109.5	119.7	112.1
	Minimum	106.6	105.4	100.9
Smooth–Induction	Maximum	103.0	145.6	118.9
	Average	98.8	127.5	106.0
	Minimum	94.6	118.2	89.7

If the test procedure provided an advantage to smooth–electric resistance cooking tops over smooth–induction cooking tops due to the flatness of the test vessel, DOE would expect to see similar results in the DOE, AHAM, and European market data. However, as discussed above, both DOE and European data indicate that smooth–induction cooking tops consume less energy compared to smooth–electric resistance cooking tops. Therefore, DOE believes that its test data and analysis accurately reflect the decrease in AEC associated with a change from electric resistance to induction heating. As a result, DOE relied on its own test sample to estimate the average decrease in AEC due to induction.

Moreover, as discussed in section III.B of this document, DOE updated the AEC and IAEC values for all electric smooth cooking tops in its test sample that were equipped with multi-ring surface units

[34] DOE observed during product teardowns that many electric smooth cooking top heating elements are supplied by E.G.O. Worldwide *(http://www.egoproducts.com/en/home/)*.

[35] Manufacturers selling products into the European market publish the normalized average test energy consumption for a cooking top. To compare EU data to DOE test data, DOE adjusted for the differences in the normalization factors specified in EN 60350–2:2013 and the DOE test procedure adopted in the December 2016 TP Final Rule. DOE then calculated annual energy consumption for the European cooking tops using the method specified in section 4.1.2.1.1 of the test procedure adopted in the December 2016 TP Final Rule.

to reflect the test procedure adopted in the December 2016 TP Final Rule. Accordingly, DOE updated its estimates for the efficiency improvement due to induction for this NOPD. Additional discussion of DOE's estimate of the energy savings attributable to induction technology is presented in chapter 5 of the TSD for this NOPD.

AHAM expressed concern that the use of the automatic power-down low-standby-loss electronic controls design option to reduce energy consumption for electric smooth cooking tops is not technologically feasible. AHAM commented that, based on the combined dataset, reducing or eliminating standby energy consumption through the use of the automatic power-down design option would not be sufficient to achieve the proposed efficiency level for electric smooth cooking tops. AHAM noted that only one induction cooking top model in the test sample could meet the proposed level by reducing or eliminating its standby energy consumption. Therefore, AHAM recommended that DOE adopt a less stringent level for electric smooth cooking tops. (AHAM, No. 64 at pp. 22–23)

DOE notes that AHAM's conclusion appears to be based on the max-tech efficiency level rather than the efficiency levels associated with low-standby-loss electronic controls that were evaluated in this NOPD. As discussed in section IV.C.2.a of this document, DOE revised the baseline efficiency level for electric smooth cooking tops based on the combined dataset. DOE then applied its estimates for the decrease in IAEC that would be expected from implementing low-standby-loss electronic controls to the new baseline efficiency level. This resulted in higher overall IAECs for these efficiency levels than were proposed in the September 2016 SNOPR. With these revised efficiency levels, more than 50 percent of electric smooth cooking tops in the combined DOE and AHAM test sample have a measured IAEC that already meets the efficiency level associated with automatic power-down, the most stringent implementation of low-standby-loss electronic controls. Nonetheless, as discussed in section V.A of this document, DOE determined that the electric smooth cooking top efficiency level associated with the automatic power-down low-standby-loss design option may result in a loss in the utility of the clock display for combined cooking products. As a result, DOE evaluated prescriptive design standards in this NOPD for electric smooth cooking tops that would allow for a continuous clock display, and accordingly, would not require the elimination of clocks from products.

Table IV–22 and Table IV–23 show the efficiency levels considered for the electric cooking top product classes. As discussed in section IV.A.2.a and section IV.B.1.a of this document, DOE is no longer considering improved contact conductance and halogen lamp elements as design options for electric coil cooking tops and electric smooth cooking tops, respectively. As a result, DOE did not analyze incremental efficiency levels associated with these design options for this NOPD. For electric coil cooking tops, this resulted in no incremental efficiency levels above the baseline. Additional discussion of DOE's analysis of the incremental efficiency levels is presented in chapter 5 of the TSD for this NOPD.

Table IV-22 Evaluated Open (Coil) Element Electric Cooking Top Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kWh/yr*)	Relative % Decrease in IAEC
Baseline	AHAM Test Data	Baseline	143.6	-

Table IV-23 Evaluated Smooth Element Electric Cooking Top Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kWh/yr*)	Relative % Decrease in IAEC
Baseline	AHAM Test Data	Baseline	154.9	-
1	SNOPR Testing	Baseline + SMPS	147.6	-4.7%
2	SNOPR Testing	1 + Automatic Power Down	131.4	-11.0%
3	SNOPR Testing	2 + Induction Heating Element	118.8	-9.6%

Table IV–24 shows the incremental efficiency levels for the gas cooking top product class proposed in the September 2016 SNOPR. 81 FR 60784, 60818 (Sept. 2, 2016).

Table IV-24 September 2016 SNOPR Proposed Gas Cooking Top Efficiency Levels

Level	Design Option	Proposed IAEC (*kBtu/yr*)	Relative % Decrease in IAEC
Baseline	Baseline	1104.6	-
1	Baseline + Optimized Burner/Improved Grates (Achievable with a 6-surface-unit configuration with 4 or more high input rate burners and cast-iron grates)	924.4	-16.3%
2	Baseline + Optimized Burner/Optimized Grates (Achievable with at least one high input rate burners and cast-iron grates)	837.8	-9.4%
3	Baseline + Optimized Burner/Optimized Grates (Highest efficiency unit with cast-iron grates)	730.2	-12.8%

As discussed in the September 2016 SNOPR, DOE considered multiple efficiency levels associated with optimized burner and grate design for gas cooking tops. 81 FR 60784, 60817 (Sept. 2, 2016). DOE's testing showed that energy use was correlated to burner design (*e.g.,* grate weight, flame angle, distance from burner ports to the cooking surface) and could be reduced by optimizing the design of the burner and grate system. DOE noted that cooking tops that incorporate different combinations of burners, including high input rate burners for larger food loads, have differing capabilities to cook or heat different sized food loads. Based on DOE's review of the test data for the gas cooking tops in its test sample, DOE identified three efficiency levels associated with improving the burner and grate design that take into account key burner configurations. *Id.*

DOE proposed Efficiency Level 1 based on an optimized burner and improved grate design of the unit in the test sample with the lowest measured IAEC among those with cast-iron grates and a six-surface unit configuration with at least four out of the six surface units having burner input rates exceeding 14,000 Btu/h. DOE selected these criteria to maintain the full functionality of cooking tops marketed as commercial-style. DOE noted that while there are some such products with fewer than six surface units and fewer than four high input rate burners, DOE did not observe any products marketed as residential-style with the burner configuration DOE associated with Efficiency Level 1. *Id.*

DOE proposed Efficiency Level 2 for conventional gas cooking tops based on an optimized burner and further improved grate design of the unit in the DOE test sample with the lowest measured IAEC among those units with cast iron grates and at least one surface unit having a burner input rate exceeding 14,000 Btu/h. None of the gas units in the DOE test sample marketed as commercial-style were capable of achieving this efficiency level. The cooking tops in the DOE test sample capable of meeting this efficiency level were marketed as residential-style and had significantly lighter cast iron grates than the commercial-style units. *Id.*

DOE proposed Efficiency Level 3 (max-tech) based on the unit in the DOE test sample with the lowest measured IAEC among those with cast iron grates, regardless of the number of burners or burner input rate. DOE noted that the grate weight for this unit was not lowest in the DOE test sample, confirming that a fully optimized burner and grate design, and not a reduction in grate weight alone, is required to improve cooking top efficiency. *Id.*

In response to the September 2016 SNOPR, AHAM agreed that DOE should adopt standards for gas cooking tops that would ensure that commercial-style cooking tops are not eliminated from the market. (AHAM, No. 64 at p. 24) However, AHAM commented that there were commercial-style products on the market at that time with up to six high input rate burners. AHAM's test data indicated that cooking products meeting this description were not able to meet DOE's Efficiency Level 1 (see Table IV–24, above) as proposed in the September 2016 SNOPR. (AHAM, No. 64 at p. 25) Because DOE's proposed standard level was designed to maintain the full functionality of commercial-style gas cooking tops, AHAM urged DOE to propose a less stringent level for gas cooking tops. (AHAM, No. 64 at p. 28)

Sub-Zero commented that the U.S. market has evolved differently than international markets such as Europe, which has driven manufacturers on the U.S. market to update product designs to satisfy consumer demand for high input rate burners. Sub-Zero commented that for high-performance cooking tops, a range of burner input rates allows consumers the ability to cook foods that require searing on one burner and foods that require melting temperatures on another burner. Sub-Zero commented that the large, massive grates complement the burner by absorbing heat and allowing consumers more control over the distribution of heat so that cooking vessels can be moved off of a burner's dead-center position, but still maintain a proper food temperature. To demonstrate evidence of the evolving commercial-style market and how DOE's efficiency levels for gas cooking tops do not adequately account for the utility provided by a range of burner input rates, Sub-Zero provided the IAECs for both a model that it had discontinued shortly before its comments (with five 15,000 Btu/h burners and one 9,200 Btu/h burner) and the updated version of that same model that incorporated higher input rate burners (including one burner at 20,000 Btu/h and two at 18,000 Btu/h). Sub-Zero's test data, presented in Table IV–25, showed that the updated model with the higher input rate burners had a higher measured IAEC. (Sub-Zero, No. 66 at pp. 3–4)

Table IV-25 Sub-Zero Gas Cooking Top Test Data

Model – Wolf SRT366	Burner Input Ratings (*Btu/h*)	Average Burner Input Rate (*Btu/h*)	IAEC (*kBtu/yr*)
Older Vintage	5×15,000; 9,200	14,033	922–955
Updated Model	20,000; 2×18,000; 2×15,000; 9,200	15,867	992*

* This model was a stand-alone cooking top with a measured energy consumption of 992 kBtu/yr. Because this unit was equipped with electromechanical controls and did not consume standby power, DOE estimated a baseline annual standby energy consumption of 30 kBtu/yr to account for cooking tops that are part of a combined cooking product when evaluating efficiency levels, as discussed in section IV.C.2.a of this document.

As discussed in section IV.B.1.a of this document, DOE is no longer considering optimized burners and grate designs as a technology option for gas cooking tops. As a result, DOE did not analyze incremental efficiency levels associated with these design options for this NOPD. For gas cooking tops, this resulted in no incremental efficiency levels above the baseline.

Table IV–26 includes the efficiency levels for gas cooking tops considered in this NOPD.

Table IV-26 Evaluated Gas Cooking Top Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kBtu/yr*)	Relative % Decrease in IAEC
Baseline	AHAM Test Data	Baseline	1443.3	-

Conventional Ovens

For the September 2016 SNOPR, DOE developed incremental efficiency levels for each conventional oven product class by first considering information from the previous rulemaking analysis described in the 2009 TSD. In cases where DOE identified design options during testing and reverse engineering teardowns, DOE updated the efficiency levels based on the tested data. 81 FR 60784, 60818 (Sept. 2, 2016). Table IV–27 through Table IV–30 present the efficiency levels for each product class proposed in the September 2016 SNOPR, normalized based on an oven with a cavity volume of 4.3 ft^3.

Table IV-27 September 2016 SNOPR Proposed Electric Standard Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kWh/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	NOPR Testing	Baseline	315.2	322.3
1	NOPR Testing	Baseline + SMPS	306.3	313.3
2	2009 TSD	1 + Reduced Vent Rate	292.3	299.0
3	2009 TSD	2 + Improved Insulation	278.7	285.0
4	2009 TSD	3 + Improved Door Seals	274.0	280.3
5	NOPR Testing	4 + Forced Convection	262.8	268.8
6	NOPR Testing	5 + Oven Separator	222.8	227.8
7	2009 TSD	6 + Reduced Conduction Losses	222.2	227.2

Table IV-28 September 2016 SNOPR Proposed Electric Self-Clean Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kWh/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	NOPR Testing	Baseline	354.9	362.0
1	NOPR Testing	Baseline + SMPS	346.0	353.0
2	NOPR Testing	1 + Forced Convection	327.9	334.5
3	NOPR Testing	2 + Oven Separator	279.3	284.9
4	2009 TSD	3 + Reduced Conduction Losses	278.5	284.1

Table IV-29 September 2016 SNOPR Proposed Gas Standard Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kBtu/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	-	Baseline (Intermittent Glo-bar Ignition)	2083.1	2093.0
1	NOPR Testing	Baseline + SMPS	2052.5	2062.4
2	NOPR Testing	1 + Intermittent/interrupted Ignition or Intermittent Pilot Ignition	1849.9	1858.8
3	2009 TSD	2 + Improved Insulation	1754.6	1763.1
4	2009 TSD	3 + Improved Door Seals	1736.8	1745.1
5	NOPR Testing	4 + Forced Convection	1665.7	1673.7
6	2009 TSD	5 + Reduced Conduction Losses	1654.9	1662.9

Table IV-30 September 2016 SNOPR Proposed Gas Self-Clean Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	Proposed IAEC (*kBtu/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	-	Baseline (Intermittent Glo-bar Ignition)	1959.6	1969.6
1	NOPR Testing	Baseline + SMPS	1929.0	1939.0
2	NOPR Testing	1 + Intermittent/interrupted Ignition or Intermittent Pilot Ignition	1740.5	1749.4
3	NOPR Testing	2 + Forced Convection	1664.5	1673.0
4	2009 TSD	3 + Reduced Conduction Losses	1658.9	1667.4

Table IV-31 Evaluated Electric Standard Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kWh/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	NOPR Testing	Baseline	315.2	322.3
1	NOPR Testing	Baseline + SMPS	306.3	313.3
2	2009 TSD	1 + Reduced Vent Rate	291.9	299.0
3	2009 TSD	2 + Improved Insulation	278.0	285.0
4	2009 TSD	3 + Improved Door Seals	273.2	280.3
5	NOPR Testing	4 + Forced Convection	261.7	268.7
6	NOPR Testing	5 + Oven Separator	220.6	227.7

Table IV-32 Evaluated Electric Self-Clean Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kWh/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	NOPR Testing	Baseline	354.9	362.0
1	NOPR Testing	Baseline + SMPS	346.0	353.0
2	NOPR Testing	1 + Forced Convection	327.3	334.3
3	NOPR Testing	2 + Oven Separator	277.8	284.7

Table IV-33 Evaluated Gas Standard Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kBtu/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	-	Baseline	2083.1	2093.0
1	NOPR Testing	Baseline + SMPS	2052.5	2062.4
2	2009 TSD	1 + Improved Insulation	1946.4	1955.8
3	2009 TSD	2 + Improved Door Seals	1926.6	1935.9
4	NOPR Testing	3 + Forced Convection	1832.9	1841.7

Table IV-34 Evaluated Gas Self-Clean Oven Efficiency Levels

Level	Efficiency Level Source	Design Option	IAEC (*kBtu/yr*)	
			Freestanding	Built-in / Slide-in
Baseline	-	Baseline	1959.6	1969.6
1	NOPR Testing	Baseline + SMPS	1929.0	1939.0
2	NOPR Testing	1 + Forced Convection	1830.5	1839.9

c. Relationship Between IAEC and Oven Cavity Volume

The conventional oven efficiency levels detailed above are predicated upon baseline ovens with a cavity volume of 4.3 ft^3. Based on DOE's testing of conventional gas and electric ovens and discussions with manufacturers, IAEC scales with oven cavity volume due to larger ovens having higher thermal masses and larger volumes of air (including larger vent rates) than smaller ovens. Because the DOE test procedure adopted in the July 2015 TP Final Rule for measuring IAEC uses a fixed test load size, larger ovens with higher thermal mass will have a higher measured IAEC. As a result, DOE considered available data to characterize the relationship between IAEC and oven cavity volume.

For the September 2016 SNOPR, DOE established the slopes by first evaluating the data from the previous rulemaking analysis described in the 2009 TSD, which presented the relationship between measured energy factor (''EF'') and cavity volume, then translating from EF to IAEC, considering the range of cavity volumes for the majority of products available on the market as well as testing of units in DOE's test sample. The intercepts for each efficiency level were then chosen so that the equations passed through the desired IAEC corresponding to a particular volume. 81 FR 60784, 60821–60822 (Sept. 2, 2016).

As part of the NOPD analysis, DOE updated the intercepts in the IAEC versus cavity volume relationships for each product class to reflect the revisions to the incremental efficiency levels described in section IV.C.2.b of this document. Table IV–35 and Table IV–36 present the updated slopes and intercepts for the IAEC versus cavity volume relationship for electric and gas ovens, respectively. Additional discussion of DOE's derivation of the oven IAEC versus cavity volume relationship is presented in chapter 5 of the TSD for this NOPD.

Table IV-35 Slopes and Intercepts of Evaluated Electric Oven IAEC versus Cavity Volume Relationship

Level	Standard Electric Ovens		Self-Clean Electric Ovens	
	Slope = 46.3		Slope = 46.3	
	Freestanding Intercepts	Built-in / Slide-in Intercepts	Freestanding Intercepts	Built-in / Slide-in Intercepts
Baseline	116.3	123.3	156.0	163.1
1	107.3	114.4	147.1	154.1
2	93.0	100.1	128.4	135.4
3	79.1	86.1	78.9	85.8
4	74.3	81.4	-	-
5	62.7	69.8	-	-
6	21.7	28.8	-	-

Table IV-36 Slopes and Intercepts of Evaluated Gas Oven IAEC versus Cavity Volume Relationship

Level	Standard Gas Ovens		Self-Clean Gas Ovens	
	Slope = 229.5		Slope = 229.5	
	Freestanding Intercepts	Built-in / Slide-in Intercepts	Freestanding Intercepts	Built-in / Slide-in Intercepts
Baseline	1096.1	1106.1	972.7	982.6
1	1065.5	1075.5	942.1	952.0
2	959.5	968.9	843.5	852.9
3	939.6	948.9	-	-
4	846.0	854.8	-	-

3. Cost-Efficiency Results

a. Conventional Cooking Tops

For the September 2016 SNOPR, DOE developed the cost-efficiency results for each conventional cooking top product class shown in Table IV–37. Where available, DOE developed incremental MPCs based on manufacturing cost modeling of test units in its sample featuring the proposed design options. For design options that were not observed in DOE's sample of test units for this rulemaking, DOE used the incremental manufacturing costs developed as part of the previous rulemaking analysis described in the 2009 TSD, then adjusted the values to reflect changes in the Bureau of Labor Statistics' Producer Price Index (''PPI'') for household cooking appliance manufacturing.[36] 81 FR 60784, 60822 (Sept. 2, 2016).

Table IV-37 September 2016 SNOPR Proposed Conventional Cooking Top Incremental Manufacturing Production Costs (2014$)

Level	Open (Coil) Element Electric Cooking Tops	Smooth Element Electric Cooking Tops	Gas Cooking Tops
Baseline	-	-	-
1	$2.71	$0.70	$11.33
2	-	$2.42	$11.33
3	-	$108.19	$11.33
4	-	$186.08	-

DOE did not receive comments on the incremental MPCs for conventional cooking tops presented in the September 2016 SNOPR. As a result, DOE maintained its estimates for the incremental MPCs in this NOPD, but adjusted the cost-efficiency results to reflect updates to parts pricing estimates and the most recent PPI data. DOE also notes that it is no longer considering improved contact conductance for electric coil cooking tops, halogen lamp elements for electric smooth cooking tops, and optimized burner and grate designs for gas cooking tops, as discussed in section IV.C.2.b of this document. As a result, DOE updated the cost-efficiency results to reflect the revised efficiency levels. The updated estimates for the incremental MPCs considered in this NOPD are presented in Table IV–38.

Table IV-38 Evaluated Conventional Cooking Top Incremental Manufacturing Production Costs (2018$)

Level	Open (Coil) Element Electric Cooking Tops	Smooth Element Electric Cooking Tops	Gas Cooking Tops
Baseline	-	-	-
1	-	$0.69	-
2	-	$1.81	-
3	-	$198.33	-

b. Conventional Ovens

As described in the September 2016 SNOPR, DOE developed the cost-efficiency results for each conventional oven product class shown in Table IV–39. DOE noted that the estimated incremental MPCs would be equivalent for the freestanding and built-in/slide-in oven product classes. 81 FR 60784, 60823 (Sept. 2, 2016).

[36] Available at: *http://www.bls.gov/ppi/.*

Table IV-39 September 2016 SNOPR Proposed Conventional Oven Incremental Manufacturing Production Costs (2014$)

Level	Electric Ovens		Gas Ovens	
	Standard	Self-Clean	Standard	Self-Clean
Baseline	-	-	-	-
1	$0.82	$0.82	$0.82	$0.82
2	$2.76	$25.00	$7.31	$7.31
3	$7.89	$56.74	$12.44	$27.96
4	$10.22	$61.93	$14.77	$33.15
5	$34.40	-	$35.43	-
6	$66.14	-	$39.74	-
7	$70.36	-	-	-

As for conventional cooking tops, DOE did not receive comments on the incremental MPCs for conventional ovens presented in the September 2016 SNOPR. As a result, DOE maintained its estimates for the incremental MPCs in this NOPD, but adjusted the cost-efficiency results to reflect updates to parts pricing estimates and the most recent PPI data. DOE also notes that it is no longer considering intermittent/interrupted and intermittent pilot ignition systems or reduced conduction losses as design options for conventional ovens, as discussed in section IV.C.2.b of this document. As a result, DOE updated the cost-efficiency results to reflect the revised efficiency levels. The updated estimates for the incremental MPCs considered in this NOPD are presented in Table IV–40.

Table IV-40 Evaluated Conventional Oven Incremental Manufacturing Production Costs (2018$)

Level	Electric Ovens		Gas Ovens	
	Standard	Self-Clean	Standard	Self-Clean
Baseline	-	-	-	-
1	$0.81	$0.81	$0.81	$0.81
2	$2.73	$26.97	$6.00	$21.35
3	$7.91	$58.68	$8.40	-
4	$10.31	-	$28.94	-
5	$36.48	-	-	-
6	$68.19	-	-	-

4. Consumer Utility

In determining whether a standard is economically justified, EPCA requires DOE to consider ''any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(IV))

a. Conventional Cooking Tops

DOE stated in the September 2016 SNOPR that it did not believe that the design options and efficiency levels associated with the proposed standards would impact the consumer utility of conventional cooking tops. DOE noted that the proposed standards for gas cooking tops corresponded to the efficiency level that would maintain features of gas cooking tops marketed as commercial-style, namely multiple high input rate burners (*i.e.,* greater than 14,000 Btu/h) that would allow for quicker cooking times. DOE stated in the September 2016 SNOPR that the proposed standards for gas cooking tops would not preclude the availability of cooking tops marketed as commercial-style. 81 FR 60784, 60823 (Sept. 2, 2016).

AHAM commented that commercial-style products provide consumer utility and incorporate certain features that are expected by purchasers of such products such as heavier cast iron grates to support larger, heavier loads and high input rate burners to provide faster cooking times for such loads. According to AHAM, the heavier grates provide additional consumer utility by retaining heat that helps provide for even heat distribution in the cooking vessel during the cool down/simmering phase and allows consumers to keep the cooking vessel warm by moving the pot off center. AHAM added that heavier grates allow for a sliding motion across burners to mix food without dislodging the grates. AHAM commented that heavier grates also provide increased durability and reliability over the lifetime of the product. AHAM stated that high input rate burners allow for cooking techniques not possible with lower burner input rates, such as flambé, wok cooking, canning, and pressure cooking. AHAM claims that high input rate burners also provide for a better sear on meat, which provides better flavor and texture, due to the higher temperature. (AHAM, No. 64 at p. 24)

Spire and AHAM stated that DOE's proposed standards would likely eliminate commercial-style gas cooking products from the market, which Spire believes would contravene the provisions set forth for adopting new or amended standards under section 6295(o)(4)) of EPCA. (AHAM, No. 64 at p. 27; Spire, No. 61 at p. 5)

AHAM stated that although products in Europe can be designed to have a lower flame to reduce energy consumption, this is not possible in the United States because the CO levels of the burner will increase beyond the acceptable limits specified in ANSI Z21.1. (AHAM, No. 64 at p. 28) AHAM stated that manufacturers are already incentivized to optimize burner and

grate design because it is less costly to use smaller gauge metals.[37] AHAM believes the lower material costs for lighter-weight grates supports its point that heavier grates and higher input rate burners offer consumer utility—if consumers did not demand these features, manufacturers would choose the lower cost option. (AHAM, No. 64 at p. 24) Miele commented that the European market for cooking appliances varies greatly from the product offerings in the United States. Miele noted that gas cooking has a very small market share in Europe, electric cooking products are most prevalent, and commercial-style cooking products are not typically offered to residential consumers. Miele also noted that safety standards and CO emission levels are stricter in the United States. (Miele, No. 60 at p. 3)

For electric cooking tops, DOE conducted the engineering analysis by considering cooking top design options that are consistent with products currently on the U.S. market. For gas cooking tops, as discussed in section IV.C.2.b of this document, DOE revised the evaluated baseline efficiency level based on additional test data and information regarding commercial-style cooking tops. As discussed in section IV.A.1.a of this document, DOE did not consider establishing a separate product class for commercial-style gas cooking tops, noting that there are no clearly-defined and consistent design differences and corresponding utility provided by commercial-style gas cooking tops as compared to residential-style gas cooking tops. Further, as discussed in section III.B of this document, DOE eliminated optimized burner and grate designs from consideration as a technology option in this NOPD. As a result, DOE has initially determined that the existing prescriptive standards for gas cooking tops that preclude the use of constant burning pilot lights do not warrant amendment.

b. Conventional Ovens

DOE stated in the September 2016 SNOPR that it conducted the engineering analysis by considering design options that are consistent with products currently on the market and that it did not believe that any of the design options and efficiency levels considered would impact the consumer utility of conventional ovens. 81 FR 60784, 60823. DOE noted in the September 2016 SNOPR that it was not able to identify a clearly-defined utility provided to consumers by commercial-style ovens and, as a result, DOE did not establish separate product classes for these products. However, DOE recognized that commercial-style ovens are a product type that typically incorporate certain features that may be expected by purchasers of such products (*e.g.,* heavier-gauge cavity construction, high input rate burners, and extension racks). DOE also noted that these features result in inherently lower efficiencies for commercial-style ovens than for residential-style ovens with comparable cavities sizes, due to the greater thermal mass of the cavity and racks, when measured using the test procedure adopted in the July 2015 TP Final Rule. As discussed in section III.B of this document, DOE repealed the oven test procedure in the December 2016 TP Final Rule due to uncertainties in its ability to measure representative energy use of commercial-style ovens. As a result of these uncertainties, DOE did not propose a performance-based standard for conventional ovens, but instead proposed a prescriptive design requirement for the conventional oven control system in the September 2016 SNOPR. 81 FR 60784, 60823–60824 (Sept. 2, 2016). DOE did not receive any comments regarding the impact of the proposed standards on conventional ovens. For the reasons discussed above, DOE maintains its findings from the September 2016 SNOPR that the evaluated prescriptive-based standards would not impact the consumer utility of conventional ovens.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* manufacturer markups, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MPCs determined in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the MIA. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margins.

For consumer conventional cooking products, the main parties in the distribution chain are manufacturers, retailers, and consumers.

The manufacturer markup converts MPC to manufacturer selling price (''MSP''). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly-traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes consumer conventional cooking products.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup, and is designed to maintain similar per-unit operating profit before and after new or amended standards.[38]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[39]

AHAM commented that it strongly disagrees with the concept of incremental markups. According to AHAM, manufacturers, wholesalers, retailers and contractors have all provided numerous amounts of data, studies, and surveys saying that the incremental markup concept has no foundation in actual practice. AHAM asked what additional information DOE would need to reassess the markups approach. AHAM further asked if DOE would agree to put the concept of incremental markups up for peer review. (AHAM, No. 64 at p. 31) AHAM stated that DOE persists in relying on a simplistic interpretation of economic theory that assumes only variable costs can be passed through to customers because economic returns on capital cannot increase in a competitive marketplace. According to AHAM, it and the other associations and industry participants take the position that DOE's conclusions are incorrect and that percentage margins throughout the distribution channels have remained largely constant. In addition, AHAM asserted that Shorey Consulting has shown that empirical studies of industry structure and other variables have only weak correlation with profitability, demonstrating that the economic theory DOE relies upon is proven not to apply in practice. AHAM commented that DOE should submit both its work and that of the various industry groups to an

[37] AHAM also commented that while reducing the gauge of the grates reduces material cost, this does not include the retooling costs resulting from a switch from heavier grates to lighter ones. (AHAM, No. 64 at p. 24)

[38] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[39] 2012 Annual Retail Trade Survey, Electronics and Appliance Stores (NAICS 443). 2012. Washington, DC *http://www.census.gov/retail/arts/historic_releases.html.*

independent peer review process. (AHAM, No. 64 at p. 31)

DOE disagrees that the theory behind the concept of incremental markups has been disproved. The concept is based on a simple notion: an increase in profitability, which is implied by keeping a fixed markup percentage when the product price goes up, is not likely to be viable over time in a business that is reasonably competitive. DOE agrees that empirical data on markup practices would be desirable, but such information is closely held and difficult to obtain.

Regarding the Shorey Consulting interviews with appliance retailers, although the retailers said that they maintained the same percentage margin after amended standards for refrigerators took effect, it is not clear to what extent the wholesale prices of refrigerators actually increased. There is some empirical evidence indicating that prices may not always increase following a new standard.[40 41 42] If this happened to be the case following the new refrigerator standard, then there is no reason to suppose that percentage margins changed either.

DOE's analysis necessarily considers a simplified version of the world of appliance retailing; namely, a situation in which other than appliance product offerings, nothing changes in response to amended standards. DOE's analysis assumes that product cost will increase while the other costs remain constant (*i.e.,* no change in labor, material, or operating costs), and asks whether retailers will be able to keep the same markup percentage over time. DOE recognizes that retailers are likely to seek to maintain the same markup percentage on appliances if the price they pay goes up as a result of appliance standards, but DOE contends that over time downward adjustments are likely to occur due to competitive pressures. Some retailers may find that they can gain sales by reducing the markup and maintaining the same per-unit gross profit as they had before the new standard took effect. Additionally, DOE contends that retail pricing is more complicated than a simple percentage margin or markup. Retailers undertake periodic sales and they reduce the prices of older models as new models come out to replace them.[43 44 45] Even if retailers maintain the same percent markup when appliance wholesale prices increase as the result of a standard, retailers may respond to competitive pressures and revert to pre-standard average per-unit profits by holding more frequent sales, discounting products under promotion to a greater extent, or discounting older products more quickly. These factors would counteract the higher percentage markup on average, resulting in much the same effect as a lower percentage markup in terms of the prices consumers actually face on average.

DOE acknowledges that its approach to estimating retailer markup practices after amended standards take effect is an approximation of real-world practices that are both complex and varying with business conditions. However, DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable.

Chapter 6 of the TSD for this NOPD provides details on DOE's development of markups for consumer conventional cooking products.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer conventional cooking products at different efficiencies in representative U.S. single-family homes, and multi-family residences, and to assess the energy savings potential of increased cooking product efficiency. The energy use analysis estimates the range of energy use of consumer conventional cooking products in the field (*i.e.,* as they are actually used by consumers) at the considered efficiency levels. DOE uses these values in the LCC and PBP analyses and in the NIA to establish the savings in consumer operating costs at various product efficiency levels. DOE developed energy consumption estimates for all product classes analyzed in the engineering analysis.

For this analysis, DOE used the 2009 *California Residential Appliance Saturation Survey* (''RASS'')[46] and a Florida Solar Energy Center (''FSEC'') study[47] to establish representative annual energy use values for conventional cooking tops and ovens. These studies confirmed that annual cooking energy use has been consistently declining since the late 1970s.

Energy use by consumer conventional cooking products varies greatly based on consumer usage patterns. DOE established a range of energy use from data in the Energy Information Administration (''EIA'')'s 2015 *Residential Energy Consumption Survey* (''RECS 2015'').[48] RECS 2015 does not provide the annual energy consumption of cooking products, but it does provide the frequency of cooking product use.[49] DOE was unable to use the frequency of use to calculate the annual energy consumption using a bottom-up approach, as data in RECS did not include information about the duration of a cooking event to allow for an annual energy use calculation. DOE therefore relied on California RASS and FSEC studies to establish the average annual energy consumption of conventional cooking tops and ovens.

From RECS 2015, DOE developed household samples for each product class. For each household using a consumer conventional cooking product, RECS provides data on the frequency of use and number of meals cooked in the following bins: (1) Less than once per week, (2) once per week, (3) a few times per week, (4) once per day, (5) two times per day, and (6) three or more times per day. DOE utilized the frequency of use to define the variability of the annual energy consumption. First, DOE assumed that the weighted-average cooking frequency from RECS represents the average energy use values based on the California RASS and FSEC studies. DOE then varied the annual energy consumption across the RECS households based on their reported

[40] Spurlock, C. A. 2013. ''Appliance Efficiency Standards and Price Discrimination.'' Lawrence Berkeley National Laboratory Report LBNL–6283E.

[41] Houde, S. and C. A. Spurlock. 2015. ''Do Energy Efficiency Standards Improve Quality? Evidence from a Revealed Preference Approach.'' Lawrence Berkeley National Laboratory Report LBNL–182701.

[42] Taylor, M., C. A. Spurlock, and H.-C. Yang. 2015. ''Confronting Regulatory Cost and Quality Expectations: An Exploration of Technical Change in Minimum Efficiency Performance Standards.'' *Resources for the Future* (*RFF*) 15–50.

[43] Bagwell, K. and Riordan, M.H., 1991. ''High and declining prices signal product quality.'' *The American Economic Review,* pp. 224–239.

[44] Betts, E. and Peter, J.M., 1995. ''The strategy of the retail 'sale': typology, review and synthesis.'' *International Review of Retail, Distribution and Consumer Research,* 5(3), pp. 303–331.

[45] Elmaghraby, W. and Keskinocak, P., 2003. ''Dynamic pricing in the presence of inventory considerations: Research overview, current practices, and future directions.'' *Management Science,* 49(10), pp. 1287–1309.

[46] California Energy Commission, *Residential Appliance Saturation Survey* (*RASS*) (2009).

[47] Parker, D., Fairey, P., Hendron, R., ''Updated Miscellaneous Electricity Loads and Appliance Energy Usage Profiles for Use in Home Energy Ratings, the Building America Benchmark Procedures and Related Calculations,'' Florida Solar Energy Center (FSEC) (2010).

[48] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey: 2015 RECS Survey Data (2017) (Available at: *http://www.eia.gov/consumption/residential/data/2015/).* RECS 2015 is based on a sample of 5,686 households statistically selected to represent 118.2 million housing units in the United States.

[49] DOE was unable to use the frequency of use to calculate the annual energy consumption using a bottom-up approach, as data in RECS did not include information about the duration of a cooking event to allow for an annual energy use calculation.

cooking frequency relative to the weighted-average cooking frequency.

Since there were no comments on DOE's approach to developing the energy use analysis, DOE retained the approach used for this NOPD. Chapter 7 of the TSD for this NOPD describes the energy use analysis for consumer conventional cooking products in detail.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for consumer conventional cooking products. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (MSP, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of cooking products in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the 2015 RECS. For each sample household, DOE determined the energy consumption for the cooking product and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of consumer conventional cooking products.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially-available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and cooking product user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

DOE calculated the LCC and PBP for all consumers of conventional cooking products as if each were to purchase a new product in the expected first year of required compliance with new or amended standards. Any amended standards would apply to cooking products manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) Therefore, DOE used 2023 as the first full year of compliance with any amended standards for consumer conventional cooking products.

Table IV–41 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the TSD for this NOPD and its appendices.

Table IV-41 Summary of Inputs and Methods for the LCC and PBP Analysis*

Inputs	Source/Method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level, except for induction heating design option of electric smooth cooking top.
Annual Energy Use	The total annual energy use was based on CA RASS and FSEC Studies. Variability: Based on the 2015 RECS.
Energy Prices	Electricity: Based on EIA's Form 861 data for 2018. Variability: Regional energy prices determined for 9 census divisions.
Energy Price Trends	Based on the EIA's *Annual Energy Outlook* ("*AEO*") *2019* price forecasts.
Repair and Maintenance Costs	Assumed no change with efficiency level for all cooking tops and electric ovens.
Product Lifetime	16.8 years for electric and 14.5 years for gas cooking products.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2023

* References for the data sources mentioned in this table are provided in the sections following the table and in chapter 8 of the TSD for this NOPDR.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described in section IV.D of this document (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products. DOE assumed that the product costs would be the same in the compliance year as at the time of this analysis.

2. Installation Cost

Installation costs include labor, overhead, and any miscellaneous materials and parts needed to install the product. For this evaluation, DOE used data from the 2015 *RS Means Residential Cost Data* on labor requirements to estimate installation costs for consumer conventional cooking products.[50]

In general, DOE estimated that installation costs would be the same for different efficiency levels. In the case of electric smooth cooking tops, the induction heating design option requires a change of cookware to those that are ferromagnetic to operate the cooking tops. DOE treated this as additional installation cost for this particular design option. DOE used average number of pots and pans utilized by a representative household and average retail price of induction-compatible cooking utensils to estimate this portion of the installation cost. AHAM requested DOE to provide details on how the cost required to change cookware when purchasing an induction cooking top was obtained. The comment specifically requested details regarding the approach used for estimating the average number of pots and pans to be replaced, as well as the retail average price of an induction-compatible utensil. AHAM also suggested that DOE investigate consumers' cost of upgrading their wiring to ensure necessary amperes are directed to the cooking activity without compromising power to other areas of the home. (AHAM, No. 64 at pp. 31–32) For the September 2016 SNOPR as well as the updated analysis in this proposal, DOE utilized the Willem *et al.* study to determine the average number of pots and pans to be replaced.[51] With regard to those consumers who may need to upgrade the electrical wiring to accommodate for higher amperage, DOE did not have information about the existing amperage of the electrical circuit of the consumer population. In order to be representative of the consumer population in this NOPD, DOE estimated an average additional cost based on the assumption that 50 percent of the user population may need upgrades and 50 percent may not, using the wiring cost contained in 2015 RS Means Mechanical Cost Data. See chapter 8 of the TSD for this NOPD for details about this component. Given the installation costs of the induction cooking top, the market share is expected to remain at 1.6 percent in the standards case in the year 2023. See section IV.F.9 and section IV.H.1 of this document for details on the market shares.

[50] RS Means Company Inc., RS Means Residential Cost Data (2015) (Available at *http://rsmeans.reedconstructiondata.com/default.aspx*).

[51] Willem, H. *et al.* 2015. ''Understanding Cooking Behavior in U.S. Households.''

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a cooking product at different efficiency levels using the approach described above in section IV.E of this document.

4. Energy Prices

DOE used average prices (for baseline products) and marginal prices (for higher-efficiency products) which vary by season, region, and baseline electricity consumption level for the LCC. DOE derived marginal residential electricity and natural gas prices for 27 geographic areas.[52] Marginal prices are appropriate for determining energy cost savings associated with possible changes to efficiency standards.

For electricity, DOE derived marginal and average prices which vary by season, region, and baseline electricity consumption level. DOE estimated these prices using data published with the Edison Electric Institute (''EEI''), Typical Bill and Average Rates reports for summer and winter 2018.[53] For the residential sector each report provides, for most of the major investor-owned utilities (''IOUs'') in the country, the total bill assuming household consumption levels of 500, 750, and 1,000 kWh for the billing period.

For the residential sector, DOE defined the average price as the ratio of the total bill to the total electricity consumption. DOE also used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption. DOE first calculated weighted-average values for each geographic area for each type of price. Each EEI utility in an area was assigned a weight based on the number of consumers it serves. Consumer counts were taken from the most recent EIA Form 861 data (2018).[54]

DOE assigned seasonal average prices to each household in the LCC sample based on its location and its baseline monthly electricity consumption for an average summer or winter month. For sampled households who were assigned a product efficiency greater than or equal to the considered level for a standard in the no-new-standards case, DOE assigned marginal price to each household based on its location and the decremented electricity consumption. In the LCC sample, households could be assigned to one of 27 geographic areas.

DOE obtained data for calculating prices of natural gas from the EIA publication, Natural Gas Navigator.[55] DOE used the complete annual data for 2017 to calculate an average annual price for each geographic area. (For use in the LCC model, prices were scaled to 2018$.) For each State, DOE calculated the annual residential price of natural gas using a simple average of data. DOE then calculated a price for each geographic area, weighting each State in an area by its number of households.

The method used to calculate marginal natural gas prices differs from that used to calculate electricity prices, because EIA does not provide consumer- or utility-level data on gas consumption and prices. EIA provides historical monthly natural gas consumption and expenditures by State. This data was used to determine 10-year average marginal price factors for the geographical areas. These factors are then used to convert average monthly energy prices into marginal monthly energy prices. Because cooking products operate all year around, DOE determined summer and winter marginal price factors.

To estimate energy prices in future years, DOE multiplied the average regional energy prices by projections of annual change in national-average residential energy found in *AEO 2019*.[56] *AEO 2019* has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2030 through 2050.

See Chapter 8 of the TSD for this NOPD for more information on the derivation of energy prices.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

For all electric cooking products, DOE did not include any changes in maintenance and repair for products more efficient than baseline products.

Spire stated that DOE did not provide explanation as to why Electrolux's comment regarding glo-bar repair frequency was ignored. (Spire, No. 61 at p. 6–7). In the September 2016 SNOPR, DOE determined the repair and maintenance costs associated with different types of ignition systems for gas ovens. Utilizing inputs from interested parties, including Electrolux, along with the earlier data from manufacturers, DOE revised the average repair cost attributable to glo-bar and electronic spark ignition systems and annualized it over the life of the unit for glo-bar and electronic spark ignition systems. 81 FR 60784, 60827. For this rule, taking into account manufacturer inputs and test data for standard and self-clean gas ovens, DOE revised the efficiency levels, and electronic spark ignition has been eliminated in the considered levels (see section IV.C of this document). The issue of frequency of repair of glo-bar is therefore no longer relevant.

Based on input from manufacturers, DOE did not include maintenance costs for glo-bars.

See chapter 8 of the TSD accompanying this NOPD for further information regarding repair and maintenance costs.

6. Product Lifetime

Equipment lifetime is the age at which the equipment is retired from service. In the September 2016 SNOPR, DOE revised the average lifetime estimates based on data provided by AHAM, thereby establishing average product lifetime of 16 years for all electric cooking products and 13 years for all gas cooking products. 81 FR 60784, 60827. AHAM provided further detail on the average useful life by product categories, such as electric range, gas range, wall oven, and electric cooking top. (AHAM, No. 64 at p. 32) Utilizing this detail and the market shares of these product categories, DOE fine-tuned the average lifetime estimates to a more representative 16.8 years for all electric cooking products and 14.5 years for all gas cooking products. DOE characterized the product lifetimes with Weibull probability distributions.

See chapter 8 of the TSD accompanying this NOPD for further details on the sources used to develop product lifetimes, as well as the use of Weibull distribution.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present

[52] DOE characterized the geographic distribution into 27 geographic areas to be consistent with the 27 States and group of States reported in RECS 2009.

[53] Edison Electric Institute. Typical Bills and Average Rates Report. Winter 2018 published January 2018, Summer 2018 published July 2018. Available at: *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

[54] U.S. Department of Energy, Energy Information Administration. *Form EIA–861 Annual* Electric Power Industry Database. *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[55] U.S. Department of Energy—Energy Information Administration. Natural Gas Navigator. 2014. (Last accessed September 26, 2016.) *http://eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm.*

[56] EIA. *Annual Energy Outlook 2019 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/.*

value of future operating costs. DOE estimated a distribution of residential discount rates for cooking products based on consumer financing costs and the opportunity cost of consumer funds.

DOE applies weighted-average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[57] DOE notes that the LCC does not analyze the appliance purchase decision, so the implicit discount rate is not relevant in this model. The LCC estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances[58] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.2 percent. See chapter 8 of the TSD for this NOPD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies in the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards). This approach reflects the fact that some consumers may purchase products with efficiencies greater than the baseline levels.

To establish the current efficiency distribution for electric cooking products and conventional gas ovens, DOE developed and implemented a consumer-choice model[59] that assumes most consumers (*i.e.,* home owners[60]) are sensitive to the appliance first cost, and calculates the market share for available efficiency options based on the initial cost of electric cooking products and gas ovens at each efficiency level. DOE used a logit model to characterize historical shipments as a function of purchase price. In order to develop the logit model, DOE utilized shipments data collected by Market Research Magazine[61] and the PPI of household cooking appliance manufacturing[62] in the years 2002–2012, along with the consumer purchase price derived from the engineering analysis, to analyze factors that influence consumer purchasing decisions. Using this model, DOE found that historical shipments show a strong dependence on the first costs for electric cooking products and conventional gas ovens, and developed the best-fit logit parameters to capture this relationship. DOE then used the parameters to derive the market share for available efficiency options for home owners. Given that landlords generally have little incentive to install higher-efficiency products. DOE assigned the purchases of renters in the RECS sample to the baseline efficiency level.

To establish the current efficiency distribution for gas cooking tops, DOE relied on publicly available data on gas cooking top models in the market[63] and their configuration with regard to grates and burner input rates to characterize the efficiency distribution. Given the lack of data on historic efficiency trends, DOE assumed that the estimated current distributions would apply in 2023.

Table IV–42, Table IV–43, and Table IV–44 present the market shares of the efficiency levels in the no-new-standards case for consumer conventional cooking products.[64]

[57] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: Transaction costs, risk premiums and response to uncertainty, time preferences, interest rates at which a consumer is able to borrow or lend.

[58] The Federal Reserve Board, Survey of Consumer Finances 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016. *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[59] DOE developed this consumer choice model for this proposed determination, the details of which are outlined in chapter 8 of the TSD for this NOPD. This consumer choice framework has been used in many rulemakings and is also a key component in EIA's NEMS residential model to simulate appliance purchases over a range of efficiencies.

[60] DOE assumed that landlords would have no economic incentive to purchase higher-efficiency products and renters would have no decision-making power to purchase or replace an electric cooking product or gas oven.

[61] UBM Canon, Market Research Magazine: Appliance Historical Statistical Review, 2014.

[62] U.S. Bureau of Labor Statistics, Producer Price Index Industry Data: Household cooking appliance manufacturing, 2014.

[63] Model data collected from the websites of AJ Madison, Best Buy, and Lowe's.

[64] For the conventional oven product classes, the efficiency levels are based on an oven with a cavity volume of 4.3 ft^3. As discussed in section IV.C.2.c of this document, DOE developed slopes and intercepts to characterize the relationship between IEAC and cavity volume for each efficiency level.

Table IV-42 Conventional Cooking Tops: No-New-Standards Case Efficiency Distribution

Electric Coil Cooking Tops			Electric Smooth Cooking Tops			Gas Cooking Tops		
Standard Level	IAEC *(kWh)*	Market Share	Standard Level	IAEC *(kWh)*	Market Share	Standard Level	IAEC *(kBtu)*	Market Share
Baseline	143.6	100%	Baseline	154.9	54.7%	Baseline	1,443.3	100%
			1	147.6	22.2%			
			2	131.4	21.8%			
			3	118.8	1.2%			

Table IV-43 Conventional Electric Ovens: No-New-Standards Case Efficiency Distribution

Standard Ovens				Self-Clean Ovens			
	IAEC *(kWh)*				IAEC *(kWh)*		
Standard Level	Free-Standing	Built-in/ Slide-in	Market Share	Standard Level	Free-Standing	Built-in/ Slide-in	Market Share
Baseline	315.2	322.3	39.6%	Baseline	354.9	362.0	51.5%
1	306.3	313.3	8.9%	1	346.0	353.0	16.2%
2	291.9	299.0	11.8%	2	327.3	334.3	17.7%
3	278.0	285.0	11.4%	3	277.8	284.7	14.5%
4	273.2	280.3	11.2%				
5	261.7	268.7	9.4%				
6	220.6	227.7	7.7%				

Table IV-44 Conventional Gas Ovens: No-New-Standards Case Efficiency Distribution

Standard Ovens				Self-Clean Ovens			
	IAEC *(kBtu)*				IAEC *(kBtu)*		
Standard Level	Free-Standing	Built-in/ Slide-in	Market Share	Standard Level	Free-Standing	Built-in/ Slide-in	Market Share
Baseline	2,083.1	2,093.0	46.3%	Baseline	1,959.6	1,969.6	55.4%
1	2,052.5	2,062.4	12.4%	1	1,929.0	1,939.0	21.5%
2	1,946.4	1,955.8	14.2%	2	1,830.5	1,839.9	23.1%
3	1,926.6	1,935.9	14.1%				
4	1,832.9	1,841.7	13.0%				

See chapter 8 of the TSD accompanying this NOPD for further information regarding no-new-standards efficiency distribution.

9. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years.

Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the new or amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[65] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. The shipment projections are based on historical data and an analysis of key market drivers for each product. For conventional cooking products, DOE accounted for three market segments: (1) New construction, (2) existing homes (*i.e.,* replacing failed products), and (3) retired but not replaced products.

To determine new construction shipments, DOE used a forecast of new housing coupled with product market saturation data for new housing. For new housing completions and mobile home placements, DOE adopted the projections from EIA's *AEO 2019* through 2052. The market saturation data for new housing came from RECS 2015.

DOE estimated replacements using product retirement functions developed from product lifetimes. DOE used retirement functions based on Weibull distributions.

To reconcile the historical shipments with the model, DOE assumed that every retired unit is not replaced. DOE attributed the reason for this non-replacement to building demolition occurring over the period 2013–2052. The not-replaced rate is distributed across electric and gas cooking products.

DOE allocated shipments to each product class based on the current market share of the class. DOE developed the market shares based on data collected from Appliance Magazine Market Research report[66] and U.S. Appliance Industry Statistical Review.[67] The shares are kept constant over time.

DOE did not estimate any fuel switching for electric and gas cooking products, as no significant switching was observed from historical data.

Table IV–45 summarizes the approach and data DOE used to derive the inputs to the shipments analysis for this NOPD.

[65] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[66] Appliance Magazine Market Research. The U.S. Appliance Industry: Market Value, Life Expectancy & Replacement Picture 2012.

[67] Appliance 2011. U.S. Appliance Industry Statistical Review: 2000 to YTD 2011.

Table IV-45 Approach and Data Used to Derive the Inputs to the Shipments Analysis

Inputs	Approach
New Construction Shipments	Determined by multiplying housing forecasts by forecasted saturation of cooking products for new housing. Housing forecasts based on *AEO 2019* projections. New housing product saturations based on RECS 2015. Saturations maintained at 2015 levels.
Replacements	Determined by tracking total product stock by vintage and establishing the failure of the stock using retirement functions from the LCC and PBP analysis. Retirement functions were based on Weibull lifetime distributions.
Retired but not replaced	Used to calibrate shipments model to historical shipments data to account for a decline in the replacement shipments.
Historical Shipments	Data sources include *U.S. Statistical Review of Appliance Industry*, *Appliance Magazine* and Association of Home Appliance Manufacturers.
Impacts Due to Efficiency Standards	Considered an impact on the replacement market through possible repair of older cooking units to extend their lifetime, in response to an increase in price.

DOE considered the impact of prospective standards on product shipments. DOE concluded that it is unlikely that the price would increase due to the considered standards would impact the decision to install a cooking product in the new construction market. In the replacement market, DOE assumed that, in response to an increased product price, some consumers will choose to repair their old cooking product and extend its lifetime instead of replacing it immediately. DOE estimated the magnitude of such impact through a purchase price elasticity of demand. The estimated price elasticity of –0.367 is based on data for cooking products as described in appendix 9A of the TSD for this NOPD. This elasticity relates the repair or replace decision to the incremental installed cost of higher efficiency cooking products. DOE estimated that the average extension of life of the repaired unit would be 5 years, before the unit would be replaced with a new cooking unit.

AGA and APGA stated that DOE failed to assess the potential for fuel switching from natural gas to electric cooking products as a result of a conservation standard. (AGA and APGA, No. 68 at p. 3) Because DOE is proposing standards for both electric and natural gas appliances, any increase in the price of the appliance would impact cooking products of both fuel types. As switching typically includes additional installation costs for accessing the new fuel source (*e.g.,* installation of a gas line for gas appliances and installation of electrical lines for electrical appliances), which would outweigh the incremental change in equipment price, DOE determined that fuel switching would not occur.

For further details on the shipments analysis, please refer to chapter 9 of the TSD for this NOPD.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[68] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[69] For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of conventional cooking products sold from 2023 through 2052.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

[68] The NIA accounts for impacts in the 50 States and U.S. territories.

[69] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

The NIA calculations are based on the annual energy consumption and total installed cost data from the energy use analysis and the LCC analysis. DOE projected the lifetime energy savings, energy cost savings, equipment costs, and NPV of customer benefits for each product class over the lifetime of equipment sold from 2023 through 2052.

Table IV–46 summarizes the key inputs for the NIA. The sections following provide further details, as does chapter 10 of the TSD for this NOPD.

Table IV-46 Inputs for the National Impact Analysis

Input	Description
Shipments	Annual shipments from shipments model.
Compliance date	May 1, 2023.
No-new-standards-case efficiency	Based on consumer choice model for electric cooking products and gas ovens and model web-based data for gas cooking tops.
Standards-case efficiency	Based on a "roll up" scenario to establish a 2023 shipment-weighted efficiency.
Annual energy consumption per unit	Calculated for each efficiency level and product class based on inputs from the energy use analysis.
Total installed cost per unit	Calculated by efficiency level using manufacturer selling prices and weighted-average overall markup values.
Energy expense per unit	Annual energy use is multiplied by the corresponding average electricity and gas price.
Escalation of electricity and gas prices	*AEO 2019* forecasts (to 2050) and extrapolation beyond 2050 for electricity and gas prices.
Electricity site-to-primary energy conversion	A time series conversion factor; includes electric generation, transmission, and distribution losses.
Discount rates	3% and 7%.
Present year	2019.

1. Product Efficiency Trends

A key component of DOE's estimates of NES and NPV is the energy efficiencies forecasted over time. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment weighted-average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. For the no-new-standards case, DOE utilized the consumer choice model (in combination with the equipment price projection (as described in section IV.F.1 of this document) to determine the efficiencies in each future year, for conventional electric cooking products and gas ovens. For conventional gas cooking tops, DOE relied on manufacturer inputs, model-based market distribution available from retail websites. The approach is further described in chapter 10 of the TSD for this NOPD.

For the standards cases, DOE assumed that equipment efficiencies in the no-new-standards case that do not meet the standard level under consideration would "roll up" to meet the new standard level, and market shares at efficiencies above the standard level under consideration will shift based on the consumer choice model.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (TSL) and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site

energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2019.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to cooking products. The calculated NES at each efficiency level therefore remains unimpacted by rebound effect. DOE does not include the rebound effect in the NPV analysis because it reasons that the increased service from greater use of the product has an economic value that is reflected in the value of the foregone energy savings.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [70] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10A of the TSD for this NOPD.

Table IV–47 through Table IV–51 present the FFC equivalent of IAEC for the considered efficiency levels.

Table IV-47 Conventional Cooking Tops: FFC Equivalent of IAEC*

Electric Coil Cooking Top			Electric Smooth Cooking Top			Gas Cooking Top		
Standard Level	IAEC - Site *(kWh)*	IAEC - FFC *(kWh)*	Standard Level	IAEC - Site *(kWh)*	IAEC - FFC *(kWh)*	Standard Level	IAEC - Site *(kBtu)*	IAEC - FFC *(kBtu)*
Baseline	143.6	439	Baseline	154.9	473	Baseline	1,443.3	1,600
			1	147.6	451			
			2	131.4	402			
			3	118.8	363			

* The FFC equivalent is presented in kWh for electricity to facilitate comparison. The actual upstream energy use is mostly fossil fuels.

Table IV-48 Conventional Electric Standard Ovens: FFC equivalent of IAEC

Standard Level	IAEC - Site *(kWh)*		IAEC - FFC *(kWh)*	
	Free-Standing	Built-in/ Slide-in	Free-Standing	Built-in/ Slide-in
Baseline	315.2	322.3	964	985
1	306.3	313.3	936	958
2	291.9	299.0	892	914
3	278.0	285.0	850	871
4	273.2	280.3	835	857
5	261.7	268.7	800	821
6	220.6	227.7	675	696

[70] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *http://www.eia.gov/forecasts/aeo/index.cfm.*

Table IV-49 Conventional Electric Self-Clean Ovens: FFC equivalent of IAEC

Standard Level	IAEC - Site (kWh)		IAEC - FFC (kWh)	
	Free-Standing	Built-in/ Slide-in	Free-Standing	Built-in/ Slide-in
Baseline	354.9	362.0	1,085	1,107
1	346.0	353.0	1,058	1,079
2	327.3	334.3	1,001	1,022
3	277.8	284.7	849	870

Table IV-50 Conventional Gas Standard Ovens: FFC equivalent of IAEC

Standard Level	IAEC - Site (kBtu)		IAEC - FFC (kBtu)	
	Free-Standing	Built-in/ Slide-in	Free-Standing	Built-in/ Slide-in
Baseline	2,083.1	2,093.0	2,309	2,320
1	2,052.5	2,062.4	2,275	2,286
2	1,946.4	1,955.8	2,157	2,168
3	1,926.6	1,935.9	2,135	2,146
4	1,832.9	1,841.7	2,031	2,041

Table IV-51 Conventional Gas Self-Clean Ovens: FFC equivalent of IAEC

Standard Level	IAEC -Site (kBtu)		IAEC - FFC (kBtu)	
	Free-Standing	Built-in/ Slide-in	Free-Standing	Built-in/ Slide-in
Baseline	1,959.6	1,969.6	2,172	2,183
1	1,929.0	1,939.0	2,138	2,149
2	1,830.5	1,839.9	2,029	2,039

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost, (2) total annual operating costs, and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

DOE assumed that consumer product costs for conventional cooking products would remain unchanged over the analysis period.

The operating cost savings are energy cost savings accounting for associated repair and maintenance costs, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE used projections of annual national-average residential energy price changes from *AEO 2019* (see section IV.F.4 for details). To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2030 through 2050. DOE also analyzed scenarios that used inputs from cases that have lower and higher energy price trends. NIA results based on these cases are presented in appendix 10C of the TSD for this NOPD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPD, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of

regulatory analysis.[71] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Manufacturer Impact Analysis

1. Overview

DOE conducted an MIA for consumer conventional cooking products to estimate the financial impacts of analyzed new and amended energy conservation standards on manufacturers of consumer conventional cooking products. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry cash-flow model customized for the consumer conventional cooking products covered in this proposed determination. The key GRIM inputs are data on the industry cost structure, MPCs, and shipments; as well as assumptions about manufacturer markups and manufacturer conversion costs. The key MIA output is INPV. The GRIM calculates annual cash flows using standard accounting principles. DOE used the GRIM to compare changes in INPV between the no-new-standards case and various TSLs (the standards cases). The difference in INPV between the no-new-standards case and the standards cases represents the financial impact of potential new and amended energy conservation standards on consumer conventional cooking product manufacturers. Different sets of assumptions (manufacturer markup scenarios) produce different INPV results. The qualitative part of the MIA addresses factors such as manufacturing capacity; characteristics of, and impacts on, any particular subgroup of manufacturers, including small manufacturers; the cumulative regulatory burden placed on consumer conventional cooking product manufacturers; and any impacts on competition.

2. GRIM Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash flows over time due to potential new and amended energy conservation standards. These changes in cash flows result in either a higher or lower INPV for the standards cases compared to the no-new-standards case. The GRIM uses a standard annual cash-flow analysis that incorporates MPCs, manufacturer markups, shipments, and industry financial information as inputs. It then models changes in MPCs, investments, and manufacturer margins that may result from analyzed new and amended energy conservation standards. The GRIM uses these inputs to calculate a series of annual cash flows beginning with the reference year of the analysis, 2019, and continuing to the terminal year of the analysis, 2052. DOE computes INPV by summing the stream of annual discounted cash flows during the analysis period. DOE used a real discount rate of 9.1 percent, the same discount rate used in the September 2016 SNOPR, for consumer conventional cooking product manufacturers in this NOPD. Many of the GRIM inputs come from the engineering analysis, the shipments analysis, manufacturer interviews, and other research conducted during the MIA. The major GRIM inputs are described in detail in the following sections.

a. Manufacturer Production Costs

Manufacturing more efficient consumer conventional cooking products is more expensive than manufacturing baseline products due to the need for more complex and costly components. The higher MPCs for these more efficient products can affect the revenues, gross margins, and cash flow of the industry, making these product costs key inputs for the GRIM and the MIA.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C of this document and further detailed in chapter 5 of the TSD for this NOPD. For this NOPD analysis, DOE updated the MPCs used in the September 2016 SNOPR analysis based on comments received from interested parties and additional research. The MIA stated these values in 2018 dollars, as opposed to the September 2016 SNOPR's 2015 dollar values. DOE used these updated MPCs for this NOPD analysis.

b. Shipments Projections

INPV, the key GRIM output, depends on industry revenue, which depends on the quantity and prices of consumer conventional cooking products shipped in each year of the analysis period. Industry revenue calculations require forecasts of: (1) Total annual shipment volume of consumer conventional cooking products, (2) the distribution of shipments across the product classes (because prices vary by product class), and (3) the distribution of shipments across efficiency levels (because prices vary with efficiency).

DOE updated the shipments analysis for this NOPD analysis to reflect new historical statistics, updated AEO 2019 values, and the elimination of certain efficiency levels, due to comments and data provided by interested parties in response to the September 2016 SNOPR. The MIA used these updated shipments for this NOPD analysis. For a complete description of the shipments, see the shipments analysis discussion in section IV.G of this document and chapter 9 of the TSD for this NOPD.

c. Product and Capital Conversion Costs

DOE expects the analyzed new and amended consumer conventional cooking product energy conservation standards would cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance with potential new and amended standards. For the MIA, DOE classified these conversion costs into two groups: (1) Capital conversion costs and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities so new product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, certification, and other non-capitalized costs necessary to make product designs comply with potential new and amended standards.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the potential new and amended standards. Product conversion costs depend on the per-model costs associated with redesigning non-compliant models into compliant ones and then re-testing and marketing those newly compliant models. Product conversion costs also depend on the number of models estimated to require a redesign. DOE used the efficiency distribution of shipments calculated in the shipment analysis as an input to estimate the number of models that would not meet an analyzed efficiency level. As discussed in section IV.I.2.b of this document, shipments were updated as part of this NOPD, and these new shipment efficiency distributions were

[71] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *www.whitehouse.gov/omb/memoranda/m03–21.html.*

used to calculate the product conversion costs used in this NOPD MIA.

The updated efficiency distribution increased the product conversion costs at most efficiency levels for most product classes. Additionally, Felix Storch commented that DOE overlooked a number of consumer conventional cooking product manufacturers that sell products in the United States in its manufacturer list. (Felix Storch, No. 62 at p. 2) DOE revisited the list of potential manufacturers and total number of covered models offered by these manufacturers. As a result, DOE added three manufacturers to its list of manufacturers of covered products. DOE also increased the number of covered models due to this updated manufacturer list. This caused capital and product conversion costs to increase due to the addition of more manufacturers and more covered models.

DOE notes that while the conversion costs for most efficiency levels increased from the September 2016 SNOPR to this NOPD, the TSLs used in this NOPD generally comprise lower efficiency levels than the TSLs used in the September 2016 SNOPR, causing the conversion costs at most TSLs to decrease from the September 2016 SNOPR to this NOPD. DOE also represented these conversion costs in 2018 dollars, as opposed to the September 2016 SNOPR's 2015 dollar values. Overall, although the conversion costs used in this NOPD analysis differ from those used in the September 2016 SNOPR MIA, the methodology, per-model conversion costs, and per-manufacturer conversion costs used to calculate conversion costs remain the same as those used in the September 2016 SNOPR.[72]

The conversion cost estimates used in the GRIM can be found in section V.B.2.a of this document. For additional information on the estimated capital and product conversion costs, see chapter 11 of the TSD for this NOPD.

d. Markup Scenarios

As discussed in section IV.I.2.a of this document, the MPCs for consumer conventional cooking products are the manufacturers' costs for those units. These costs include materials, direct labor, depreciation, and overhead, which are collectively referred to as the cost of goods sold. The MSP is the price received by consumer conventional cooking product manufacturers from the first sale of those products, typically to a distributor, regardless of the downstream distribution channel through which the consumer conventional cooking products are ultimately sold. The MSP is not the price the end-user pays for consumer conventional cooking products because there are typically multiple sales along the distribution chain and various markups applied to each sale. The MSP equals the MPC multiplied by the manufacturer markup. The manufacturer markup covers all the consumer conventional cooking product manufacturer's non-production costs (*i.e.,* selling, general, and administrative expenses; research and development; and interest) as well as profit. Total industry revenue for consumer conventional cooking product manufacturers equals the MSPs at each efficiency level multiplied by the number of shipments at that efficiency level for all product classes.

Modifying the manufacturer markups in the standards cases yields a different set of impacts on consumer conventional cooking product manufacturers than in the no-new-standards case. For the MIA, DOE modeled two standards case manufacturer markup scenarios for consumer conventional cooking products to represent the uncertainty regarding the potential impacts on MSPs and profitability for consumer conventional cooking product manufacturers following the implementation of potential new and amended energy conservation standards. The two manufacturer markup scenarios are: (1) a preservation of gross margin markup scenario and (2) a preservation of operating profit markup scenario. Each scenario leads to different manufacturer markup values, which, when applied to the MPCs derived in the engineering analysis, result in varying revenue and cash-flow impacts on consumer conventional cooking product manufacturers.

DOE modeled two manufacturer markup scenarios to represent the upper and lower bounds of MSPs and profitability following potential new and amended standards. The preservation of gross margin markup scenario represents the best-case scenario for manufacturers. DOE recognizes that manufacturers may not be able to mark up the additional cost of production in the standards cases, given the competitive consumer conventional cooking products market. Therefore, DOE also modeled a preservation of operating profit markup scenario to represent a lower bound on profitability for manufacturers. While DOE used the same markup scenarios in this NOPD MIA that were used in the September 2016 SNOPR analysis, the manufacturer markup values of the preservation of operating profit depend on the efficiency distribution of shipments calculated in the shipments analysis. As discussed in section IV.I.2.b of this document, shipments were updated and these new efficiency distributions were used to calculate manufacturer markups in the preservation of operating profit manufacturer markup scenario. Therefore, the manufacturer markups used in the preservation of operating profit scenario in this NOPD analysis differ slightly from those used in the September 2016 SNOPR MIA. However, the methodology used to calculate those manufacturer markup values remains the same.

3. Discussion of Comments

a. Discount Rate

Spire commented that the assumption of low discount rates works against the natural gas-fuel appliance industry and indicates a pattern of bias that does not comport with DOE's statutory obligations. (Spire, No. 61 at p. 7) DOE uses the weighted-average cost of capital in conjunction with the capital asset pricing model to calculate the industry discount rate. DOE calculated an industry discount rate of 9.1 percent using this standard accounting practice and financial data from publicly traded consumer conventional cooking product manufacturers. DOE then verified this estimated industry discount rate with manufacturers during manufacturer interviews. DOE also notes that the industry discount rate used in the GRIM is a real discount rate, as are all other variables in the GRIM. DOE first calculated a nominal industry discount rate of 12.2 percent. DOE then subtracted 3.1 percent from this nominal discount rate to account for the historical inflation rate before arriving at the 9.1 percent real industry discount rate used in the GRIM. For additional information, refer to chapter 11 of the TSD for this NOPD.

DOE requests comment on its use of 12.2 percent as a nominal industry discount rate and its use of 3.1 percent as the historical inflation rate, to arrive at a 9.1 percent real industry discount rate.

b. Changes in Test Procedure and Manufacturer Interviews

AHAM commented that manufacturer interviews were conducted in the earlier stages of the rulemaking before DOE proposed to repeal the oven test procedure and to adopt a different

[72] MIA conversion cost estimates and INPV results from the September 2016 SNOPR can be found at 81 FR 60874, 60851 (Sept. 2, 2016).

cooking top test procedure. AHAM suggested that these developments raise doubt on the relevance of the information received during the interviews. (AHAM, No. 64 at pp. 34, 35) DOE received information during manufacturer interviews dealing with conversion costs and production costs for a variety of different design changes that were analyzed both for this NOPD and for the September 2016 SNOPR. The conversion cost estimates given during manufacturer interviews were primarily based on meeting performance-based energy conservation standards. In this NOPD analysis, DOE estimated the performance characteristics of consumer conventional cooking products at the analyzed prescriptive standard levels. The design options, and costs of meeting those design options, discussed in the manufacturer interviews conducted in the earlier stages of the rulemaking are relevant estimates for manufacturers to meet the analyzed prescriptive standards in this NOPD analysis.

c. Other Comments

Other comments made by interested parties concerned either the cumulative regulatory burden or the small business analysis. The cumulative regulatory burden comments are addressed in section V.B.2.e of this document and the small business comments are addressed in section VI.C of this document.

4. Manufacturer Interviews

DOE conducted manufacturer interviews following publication of the February 2014 RFI in preparation for the June 2015 NOPR analysis. In these interviews, DOE asked manufacturers to describe their major concerns with this consumer conventional cooking products rulemaking. The following section describes the key issues identified by consumer conventional cooking product manufacturers during these manufacturer interviews. DOE conducted additional discussions with select manufacturers to follow up on information received on the June 2015 NOPR, but those discussions focused primarily on the engineering analysis. DOE did not conduct any further interviews with manufacturers between the September 2016 SNOPR and this NOPD because further interviews were not necessary to revise the MIA for this NOPD. Instead DOE, used comments from interested parties to update the MIA.

a. Premium Products Tend To Be Less Efficient

Manufacturers stated that their premium products (*i.e.,* gas cooking tops and ovens marketed as commercial-style) are usually less efficient than products marketed as residential-style. Commercial-style gas cooking tops typically have features such as heavier cast iron grates that decrease efficiency by acting as an additional thermal load. Also, this style of gas cooking top typically has wider spacing between the burner and grate surface, further reducing the efficiency of the cooking top. Conversely, gas cooking tops marketed as residential-style tend to have lighter-weight, lower grates so the cooking vessels resting on them are closer to the heat sources. Commercial-style ovens typically have large, heavier-gauge cavity construction and extension racks that result in inherently lower efficiencies compared to residential-style ovens with comparable cavities sizes when measured according to the DOE test procedure in effect at the time of the interviews, due to the greater thermal mass of the cavity and racks. Manufacturers warned DOE that focusing only on the efficiency of consumer conventional cooking products could cause some manufacturers to redesign their products in a way that reduces consumer satisfaction, as consumers tend to value premium features even though they may be less efficient. As explained in section IV.C.2.b of this document, DOE did not analyze, and is not proposing standards at, higher efficiency levels for gas cooking tops in this NOPD. While DOE agrees that commercial-style ovens would not be able to meet the higher gas oven standards analyzed, DOE is not proposing amended standards for gas ovens in this NOPD.

b. Induction Cooking Products

Some manufacturers stated that induction cooking tops should be considered as a separate product class apart from electric smooth element cooking tops. Manufacturers stated that although induction cooking tops tend to be more efficient that other electric smooth element cooking tops, induction cooking tops could require consumers to replace some or all of their cookware if they are not ferromagnetic. DOE did not evaluate a separate product class for induction cooking tops, as discussed in section IV.A.1.a of this document. Additionally, DOE is not proposing new standards for electric smooth element cooking tops in this NOPD.

c. Product Utility

Manufacturers stated that energy efficiency is not one of the most important attributes that consumers value when purchasing consumer conventional cooking products. Manufacturers stated that there are several other factors, such as performance and durability, which consumers value more when purchasing consumer conventional cooking products. Required improvements to the efficiency of their products could lead some manufacturers to remove premium features that consumers desire from their products, potentially reducing overall consumer utility. As discussed in section V.C.4 of this document, DOE is not proposing new or amended standards for consumer conventional cooking products in this NOPD, and thus the utility or performance of the consumer conventional cooking products under consideration in this proposed determination would not be reduced.

d. Testing and Certification Burdens

Several manufacturers expressed concern about the testing and recertification costs associated with new and amended energy conservation standards for consumer conventional cooking products. Because testing and certification costs are incurred on a per model basis, if a large number of models are required to be redesigned to meet potential new and amended standards, manufacturers would be forced to spend a significant amount of money testing and certifying products that were redesigned. Manufacturers stated that these testing and certification costs associated with consumer conventional cooking products could significantly strain their limited resources if these costs were all incurred in the 3-year period between the publication of a potential final rule and the compliance date of the potential new and amended standards. As part of the MIA, DOE included all certification and re-certification costs that would be required to comply with the evaluated standards. Additionally, DOE is not proposing any new or amended standards in this NOPD, and has withdrawn the conventional cooking products test procedure. Therefore, manufacturers would not incur any testing or certification costs due to this NOPD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for consumer

conventional cooking products. It addresses the TSLs examined by DOE and the projected impacts of each of these levels. Additional details regarding DOE's analyses are contained in the TSD for this NOPD.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of three TSLs for consumer conventional cooking products. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the TSD for this NOPD.

Table V–1 through Table V–3 present the TSLs and the corresponding efficiency levels for consumer conventional cooking products.[73] TSLs developed for the September 2016 SNOPR were updated for this proposed determination to account for updates to the engineering analysis based on additional testing and analysis. Details regarding the updates to the efficiency level analysis are discussed in section IV.C.2 of this document.

TSL 3 represents the max-tech improvements in energy efficiency for all product classes, except for electric open (coil) element cooking tops and gas cooking tops. TSL 2 comprises efficiency levels providing maximum NES with positive NPV. TSL 1 was configured to include a controls based strategy that would not eliminate the utility of a clock display on combined cooking products from the market.

Table V-1 Trial Standard Levels for Cooking Tops

TSL	Electric Open (Coil) Element Cooking Tops		Electric Smooth Element Cooking Tops		Gas Cooking Tops	
	Efficiency Level	IAEC (*kWh/yr*)	Efficiency Level	IAEC (*kWh/yr*)	Efficiency Level	IAEC (*kBtu/yr*)
1	Baseline	143.6	1	147.6	Baseline	1,443.3
2	Baseline	143.6	2	131.4	Baseline	1,443.3
3	Baseline	143.6	3	118.8	Baseline	1,443.3

Table V-2 Trial Standard Levels for Ovens, Electric

TSL	Electric Standard Ovens, Free-Standing		Electric Standard Ovens, Built-In/Slide-In		Electric Self-Cleaning Ovens, Free-Standing		Electric Self-Cleaning Ovens, Built-In/Slide-In	
	Efficiency Level	IAEC (*kWh/yr*)	Efficiency Level	IAEC (*kWh/yr*)	Efficiency Level	IAEC (*kWh/yr*)	Efficiency Level	IAEC (*kWh/yr*)
1	1	306.3	1	313.3	1	346.0	1	353.0
2	4	273.2	4	280.3	1	346.0	1	353.0
3	6	220.6	6	227.7	3	277.8	3	284.7

Table V-3 Trial Standard Levels for Ovens, Gas

TSL	Gas Standard Ovens, Free-Standing		Gas Standard Ovens, Built-In/Slide-In		Gas Self-Clean Ovens, Free-Standing		Gas Self-Clean Ovens, Built-In/Slide-In	
	Efficiency Level	IAEC (*kBtu/yr*)	Efficiency Level	IAEC (*kBtu/yr*)	Efficiency Level	IAEC (*kBtu/yr*)	Efficiency Level	IAEC (*kBtu/yr*)
1	1	2,052.5	1	2,062.4	1	1,929.0	1	1,939.0
2	3	1,926.6	3	1,935.9	1	1,929.0	1	1,939.0
3	4	1,832.9	4	1,841.7	2	1,830.5	2	1,839.9

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumer conventional cooking products consumers by looking at the effects that potential new and amended standards at each TSL would have on the LCC and PBP. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products can affect consumers in two ways: (1) Purchase price increases and (2) annual operating costs decreases. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the TSD for this NOPD provides detailed information on the LCC and PBP analyses.

Table V–4 through Table V–25 show the LCC and PBP results for all efficiency levels considered for each consumer conventional cooking product class (''PC''). In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the LCC savings are measured relative to the no-new-standards case efficiency distribution in

[73] For the conventional oven product classes, the efficiency levels are based on an oven with a cavity volume of 4.3 ft^3. As discussed in section IV.C.2.c of this document, DOE developed slopes and intercepts to characterize the relationship between IEAC and cavity volume for each efficiency level.

the compliance year (see section IV.F.9 of this NOPD). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

Table V-4 Average LCC and PBP Results by Efficiency Level for PC1 Electric Open (Coil) Element Cooking Tops

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-3	Baseline	$283	$18	$385	$668	--	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-5 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC1 Electric Open (Coil) Element Cooking Tops

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1-3	Baseline	0%	$0.00

*The calculation includes households with zero LCC savings (no impact).

Table V-6 Average LCC and PBP Results by Efficiency Level for PC2 Electric Smooth Element Cooking Tops

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1	1	$540	$20	$410	$950	1.1	16.8
2	2	$542	$18	$381	$923	0.9	16.8
3	3	$1,072	$16	$359	$1,432	111.7	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-7 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC2 Electric Smooth Element Cooking Tops

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1	1	0%	$6.50
2	2	0%	$27.63
3	3	99%	($475.28)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-8 Average LCC and PBP Results by Efficiency Level for PC3 Gas Cooking Tops

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1-3	Baseline	$400	$23	$425	$824	--	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-9 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC3 Gas Cooking Tops

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1-3	Baseline	0%	$0.00

*The calculation includes households with zero LCC savings (no impact).

Table V-10 Average LCC and PBP Results by Efficiency Level for PC4 Electric Standard Ovens, Free-Standing

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1	1	$614	$19	$432	$1,047	0.9	16.8
2	4	$628	$17	$408	$1,036	4.8	16.8
3	6	$715	$14	$368	$1,084	16.6	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-11 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC4 Electric Standard Ovens, Free-Standing

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1	1	0%	$6.77
2	4	26%	$12.13
3	6	75%	($29.30)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-12 Average LCC and PBP Results by Efficiency Level for PC5 Electric Standard Ovens, Built-In/Slide-In

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1	1	$642	$20	$446	$1,088	0.9	16.8
2	4	$657	$18	$421	$1,078	4.8	16.8
3	6	$744	$15	$382	$1,126	16.6	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-13 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC5 Electric Standard Ovens, Built-In/Slide-In

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience	Average Savings*
		Net Cost	*2018$*
1	1	0%	$6.77
2	4	26%	$12.14
3	6	75%	($29.32)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-14 Average LCC and PBP Results by Efficiency Level for PC6 Electric Self-Clean Ovens, Free-Standing

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1,2	1	$672	$25	$507	$1,179	0.9	16.8
3	3	$759	$21	$457	$1,216	17.1	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-15 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC6 Electric Self-Clean Ovens, Free-Standing

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1,2	1	0%	$8.99
3	3	66%	($17.37)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-16 Average LCC and PBP Results by Efficiency Level for PC7 Electric Self-Clean Ovens, Built-In/Slide-In

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1,2	1	$700	$26	$521	$1,221	0.9	16.8
3	3	$787	$22	$470	$1,258	17.0	16.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-17 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC7 Electric Self-Clean Ovens, Built-In/Slide-In

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1,2	1	0%	$8.99
3	3	66%	($17.29)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-18 Average LCC and PBP Results by Efficiency Level for PC8 Gas Standard Ovens, Free-Standing

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1	1	$660	$43	$687	$1,347	0.9	14.5
2	3	$671	$42	$676	$1,347	5.7	14.5
3	4	$702	$42	$671	$1,373	16.5	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-19 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC8 Gas Standard Ovens, Free-Standing

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1	1	7%	$6.78
2	3	29%	$6.37
3	4	76%	($15.85)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-20 Average LCC and PBP Results by Efficiency Level for PC9 Gas Standard Ovens, Built-In/Slide-In

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1	1	$688	$43	$692	$1,380	0.9	14.5
2	3	$700	$43	$680	$1,380	5.7	14.5
3	4	$730	$42	$675	$1,405	16.5	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-21 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC9 Gas Standard Ovens, Built-In/Slide-In

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1	1	7%	$6.78
2	3	29%	$6.40
3	4	76%	($15.79)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-22 Average LCC and PBP Results by Efficiency Level for PC10 Gas Self-Clean Ovens, Free-Standing

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1,2	1	$799	$45	$713	$1,512	0.9	14.5
3	2	$830	$45	$707	$1,537	18.1	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-23 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC10 Gas Self-Clean Ovens, Free-Standing

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1,2	1	8%	$8.15
3	2	66%	($11.15)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

Table V-24 Average LCC and PBP Results by Efficiency Level for PC11 Gas Self-Clean Ovens, Built-In/Slide-In

TSL	Efficiency Level	Average Costs *2018$*				Simple Payback *years*	Average Lifetime *years*
		Installed Cost	First Year's Operating Cost	Lifetime Operating Cost	LCC		
1,2	1	$827	$46	$718	$1,545	0.9	14.5
3	2	$858	$45	$712	$1,570	18.1	14.5

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

Table V-25 Average LCC Savings Relative to the No-New-Standards Case Efficiency Distribution for PC11 Gas Self-Clean Ovens, Built-In/Slide-In

TSL	Efficiency Level	Life-Cycle Cost Savings	
		% of Consumers that Experience Net Cost	Average Savings*
			2018$
1,2	1	8%	$8.15
3	2	66%	($11.12)

*The calculation includes households with zero LCC savings (no impact). Numbers in parentheses indicate negative numbers.

b. Rebuttable Presumption Payback

As discussed in section IV.F of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii)) In calculating a rebuttable presumption PBP for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the now-withdrawn DOE test procedures for consumer conventional cooking products. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field. See chapter 8 of the NOPD TSD for more information on the rebuttable presumption payback analysis.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of potential new and amended energy conservation standards on manufacturers of consumer conventional cooking products. The following sections describe the expected impacts on consumer conventional cooking product manufacturers at each TSL. Chapter 11 of the TSD for this NOPD explains the MIA in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that could result from new and amended standards. Table V–26 and Table V–27 depict the estimated financial impacts (represented by changes in INPV) of potential new and amended energy conservation standards on consumer conventional cooking product manufacturers, as well as the conversion costs that DOE estimates manufacturers would incur at each TSL. To evaluate the range of cash flow impacts on the consumer conventional cooking product industry, DOE modeled two manufacturer markup scenarios that correspond to the range of anticipated market responses to new and amended standards. Each manufacturer markup scenario results in a unique set of cash flows and corresponding industry values at each TSL.

In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and the standards cases that result from the sum of discounted cash flows from the reference year (2019) through the end of the analysis period (2052). The results also discuss the difference in cash flows between the no-new-standards case and the standards cases in the year before the analyzed compliance date for potential new and amended energy conservation standards. This figure represents the size of the required conversion costs relative to the cash flow generated by the consumer conventional cooking product industry in the absence of new and amended energy conservation standards. In the engineering analysis, DOE enumerates common technology options that achieve the efficiencies for each of the analyzed product classes. For descriptions of these technology options and the required efficiencies at each TSL, see section IV.C and section V.A, respectively, of this document.

To assess the upper (less severe) end of the range of potential impacts on consumer conventional cooking product manufacturers, DOE modeled a preservation of gross margin markup scenario. This scenario assumes that in the standards cases, manufacturers would be able to pass along all the higher production costs required for more efficient products to their consumers. Specifically, the industry would be able to maintain its average no-new-standards case gross margin (as a percentage of revenue) despite the higher production costs in the standards cases. In general, the larger the product price increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because it is less likely that manufacturers would be able to fully mark up these larger production cost increases.

To assess the lower (more severe) end of the range of potential impacts on the consumer conventional cooking product manufacturers, DOE modeled the preservation of operating profit markup scenario. This scenario represents the lower end of the range of potential impacts on manufacturers because no additional operating profit is earned on the higher production costs, eroding profit margins as a percentage of total revenue.

Table V–26 and Table V–27 present the projected results for consumer conventional cooking products under the preservation of gross margin and preservation of operating profit markup scenarios. DOE examined results for all product classes together since the majority of manufacturers sell products across a variety of the analyzed product classes.

Table V-26 Manufacturer Impact Analysis for Consumer Conventional Cooking Products – Preservation of Gross Margin Markup Scenario

	Units	No-New-Standards Case	Trial Standard Level		
			1	2	3
INPV	(*2018$ millions*)	1,587.7	1,543.4	1,505.1	1,203.1
Change in INPV	(*2018$ millions*)	-	(44.3)	(82.6)	(384.6)
	(%)	-	(2.8)	(5.2)	(24.2)
Product Conversion Costs	(*2018$ millions*)	-	25.2	54.9	362.9
Capital Conversion Costs	(*2018$ millions*)	-	35.1	62.4	413.4
Total Conversion Costs	(*2018$ millions*)	-	60.3	117.3	776.3

* Numbers in parentheses indicate negative numbers

Table V-27 Manufacturer Impact Analysis for Consumer Conventional Cooking Products – Preservation of Operating Profit Markup Scenario

	Units	No-New-Standards Case	Trial Standard Level		
			1	2	3
INPV	(*2018$ millions*)	1,587.7	1,542.1	1,499.5	958.7
Change in INPV	(*2018$ millions*)	-	(45.6)	(88.2)	(629.0)
	(%)	-	(2.9)	(5.6)	(39.6)
Product Conversion Costs	(*2018$ millions*)	-	25.2	54.9	362.9
Capital Conversion Costs	(*2018$ millions*)	-	35.1	62.4	413.4
Total Conversion Costs	(*2018$ millions*)	-	60.3	117.3	776.3

TSL 1 sets the efficiency level at baseline for two product classes (electric open (coil) element cooking tops and gas cooking tops) and at EL 1 for all other product classes (electric smooth element cooking tops, all electric ovens, and all gas ovens). At TSL 1, DOE estimates impacts on INPV to range from −$45.6 million to −$44.3 million, or a change in INPV of −2.9 percent to −2.8 percent. At TSL 1, industry free cash flow (operating cash flow minus capital expenditures) is estimated to decrease to $106.3 million, or a drop of 18.9 percent, compared to the no-new-standards case value of $131.0 million in 2022, the year leading up to the analyzed compliance date of potential new and amended energy conservation standards.

Percentage impacts on INPV are slightly negative at TSL 1. DOE does not anticipate that manufacturers would lose a significant portion of their INPV at this TSL, given the limited conversion costs and number of consumer conventional cooking products projected to comply with the analyzed standards at this TSL. DOE projects that in the analyzed year of compliance (2023), 100 percent of electric open (coil) element cooking top and gas cooking top shipments, 45 percent of electric smooth element cooking top shipments, 60 percent of electric standard oven (free-standing and built-in) shipments, 48 percent of electric self-clean oven (free-standing and built-in) shipments, 54 percent of gas standard oven (free-standing and built-in) shipments, and 45 percent of gas self-clean oven (free-standing and built-in) shipments will meet or exceed the efficiency levels required at TSL 1.

DOE expects conversion costs to be small at TSL 1 because the design changes prescribed at this TSL only affect standby mode power consumption and do not apply to active mode power consumption. DOE expects consumer conventional cooking product manufacturers would incur $25.2 million in product conversion costs for product redesigns that include converting electric smooth element cooking tops and both gas and electric ovens to transition from using linear power supplies to SMPS in order to reduce standby power consumption. DOE expects $35.1 million in capital conversion costs for manufacturers to upgrade production lines and retool equipment associated with achieving this reduction in standby power.

At TSL 1, under the preservation of gross margin markup scenario, the shipment weighted-average MPC increases very slightly by approximately 0.1 percent relative to the no-new-standards case MPC. This slight price increase is outweighed by the $60.3 million in conversion costs estimated at TSL 1, resulting in slightly negative INPV impacts at TSL 1 under the

preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same nominal operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. The slight increase in the shipment weighted-average MPC results in a slightly lower average manufacturer markup (slightly smaller than the 1.20 manufacturer markup used in the no-new-standards case). This slightly lower average manufacturer markup and the $60.3 million in conversion costs result in slightly negative INPV impacts at TSL 1 under the preservation of operating profit.

TSL 2 sets the efficiency level at baseline for two product classes (electric open (coil) element cooking tops and gas cooking tops); EL 1 for four product classes (electric self-clean free-standing ovens, electric self-clean built-in ovens, gas self-clean free-standing ovens, and gas self-clean built-in ovens); EL 2 for electric smooth element cooking tops; EL 3 for two product classes (gas standard free-standing ovens and gas standard built-in ovens); and EL 4 for two product classes (electric standard free-standing ovens and electric standard built-in ovens). At TSL 2, DOE estimates impacts on INPV to range from −$88.2 million to −$82.6 million, or a change in INPV of −5.6 percent to −5.2 percent. At this standard level, industry free cash flow is estimated to decrease to $83.5 million, or a drop of 36.3 percent, compared to the no-new-standards case value of $131.0 million in 2022, the year leading up to the analyzed compliance date of potential new and amended energy conservation standards.

Percentage impacts on INPV are moderately negative at TSL 2. The $117.3 million in industry conversion costs represent a significant investment for manufacturers, and is the primary cause of the potential drop in INPV of up to 5.6 percent and a significant decrease of 36.3 percent in free cash flow in the year leading up to the analyzed compliance date of potential new and amended standards. DOE projects that in 2023, 100 percent of electric open (coil) cooking top and gas cooking top shipments, 23 percent of electric smooth element cooking top shipments, 28 percent of electric standard oven (free-standing and built-in) shipments, 48 percent of electric self-clean oven (free-standing and built-in) shipments, 27 percent of gas standard oven (free-standing and built-in) shipments, and 45 percent of gas self-cleaning oven (free-standing and built-in) shipments will meet or exceed the efficiency levels at TSL 2.

DOE expects that product conversion costs will rise from $25.2 million at TSL 1 to $54.9 million at TSL 2 for extensive product redesigns and testing. Capital conversion costs will also increase from $35.1 million at TSL 1 to $62.4 million at TSL 2 to upgrade production equipment to accommodate added or redesigned features in each product class. The larger conversion costs at TSL 2 are driven by the need to reduce vent rates, improve insulation and door seals, and include forced convection for electric standard ovens; and improve insulation and door seals for gas standard ovens.

At TSL 2, under the preservation of gross margin markup scenario, the shipment weighted-average MPC increases by 0.5 percent, relative to the no-new-standards case MPC. In this scenario, INPV impacts are moderately negative because manufacturers would incur sizable conversion costs ($117.3 million) and would not be able to recover much of those conversion costs through the 0.5 percent increase in the shipment weighted-average MPC at TSL 2.

Under the preservation of operating profit markup scenario, the 0.5 percent shipment weighted-average increase in MPC results in a slightly lower average manufacturer markup. This slightly lower average manufacturer markup and the $117.3 million in conversion costs results in moderately negative INPV impacts at TSL 2.

TSL 3 sets the efficiency level at baseline for two product classes (electric open (coil) element cooking tops and gas cooking tops); EL 2 for two product classes (gas self-clean free-standing ovens and gas self-clean built-in ovens); EL 3 for three product classes (electric smooth element cooking tops, electric self-clean free-standing ovens, and electric self-clean built-in ovens); EL 4 for two product classes (gas standard free-standing ovens and gas standard built-in ovens); and EL 6 for two product classes (electric standard free-standing ovens and electric standard built-in ovens). This represents max-tech for all product classes for which efficiency levels above the baseline were analyzed. At TSL 3, DOE estimates impacts on INPV to range from −$629.0 million to −$384.6 million, or a change in INPV of −39.6 percent to −24.2 percent. At TSL 3, industry free cash flow is estimated to decrease to −$184.0 million, or a drop of 240.4 percent, compared to the no-new-standards case value of $131.0 million in 2022, the year leading up to the analyzed compliance date of potential new and amended energy conservation standards.

At TSL 3 conversion costs significantly increase, causing free cash flow to become significantly negative, −$184.0 million, in the year leading up to the analyzed compliance date of potential new and amended standards and causing manufacturers to lose a substantial amount of INPV. Also, the percent change in INPV at TSL 3 is significantly negative due to the extremely large conversion costs, $776.3 million. Manufacturers at this TSL would have a very difficult time in the short term to make the necessary investments to comply with the analyzed new and amended energy conservation standards prior to the analyzed compliance date.

A high percentage of total shipments would need to be redesigned to meet the efficiency levels prescribed at TSL 3. DOE projects that in 2023, 100 percent of electric open (coil) element cooking top and gas cooking top shipments, 1 percent of electric smooth element cooking top shipments, 8 percent of electric standard oven (free-standing and built-in) shipments, 15 percent of electric self-clean oven (free-standing and built-in) shipments, 13 percent of gas standard oven (free-standing and built-in) shipments, and 23 percent of gas self-clean oven (free-standing and built-in) shipments will meet the efficiency levels at TSL 3.

DOE expects significant conversion costs at TSL 3, which represents max-tech. DOE expects product conversion costs to significantly increase from $54.9 million at TSL 2 to $362.9 million at TSL 3. Large increases in product conversion costs are due to most shipments needing extensive redesign as well as a significant increase in re-certification for re-designed products. DOE estimates that capital conversion costs will also significantly increase from $62.4 million at TSL 2 to $413.4 million at TSL 3. Capital conversion costs are driven by investments in production equipment to switch to induction heating elements for electric smooth element cooking tops; reduce vent rates, improve insulation and door seals, and include forced convection and oven separators for electric standard ovens; include forced convection and oven separators for electric self-clean ovens; improve insulation and door seals and include forced convection for gas standard ovens; and include forced convection in gas self-clean ovens.

At TSL 3, under the preservation of gross margin markup scenario, the shipment weighted-average MPC increases by 18.4 percent relative to the no-new-standards case MPC. In this

scenario, INPV impacts are significantly negative because the $776.3 million in conversion costs outweigh the modest increase in shipment weighted-average MPC, resulting in significantly negative INPV impacts at TSL 3.

Under the preservation of operating profit markup scenario, the 18.4 percent shipment weighted-average increase in MPC results in a lower average manufacturer markup (1.192 compared to the no-new-standards case average manufacturer markup of 1.200). This lower average manufacturer markup and the $776.3 million in conversion costs result in significantly negative INPV impacts at TSL 3.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of new and amended energy conservation standards on direct employment in the conventional cooking products industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and at each TSL from 2023 to 2052. DOE used statistical data from the U.S. Census Bureau's 2016 *Annual Survey of Manufactures* (''*ASM*''), the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures involved with the manufacturing of the products are a function of the labor intensity of the products, the sales volume, and an assumption that wages remain fixed in real terms over time.

In the GRIM, DOE used the labor content of the MPCs to estimate the annual labor expenditures in the industry. DOE used census data and interviews with manufacturers to estimate the portion of the total labor expenditures that is attributable to domestic labor.

The production worker estimates in this section cover only workers up to the line-supervisor level directly involved in fabricating and assembling a product within a manufacturing facility. Workers performing services that are closely associated with production operations, such as material handing with a forklift, are also included as production labor. DOE's estimates account for production workers who manufacture only the specific products covered in this proposed determination.

The employment impacts shown in Table V–28 represent the potential domestic production employment that could result following the analyzed new and amended energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with the analyzed new and amended energy conservation standards when assuming that manufacturers continue to produce the same scope of covered products in the same production facilities. It also assumes that domestic production does not shift to lower labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to the analyzed new and amended energy conservation standards, the lower bound of the employment results includes DOE's estimate of the total number of U.S. production workers in the industry who could lose their jobs if some or all existing domestic production were moved outside of the United States. While the results present a range of domestic employment impacts following 2023, the following sections also include qualitative discussions of the likelihood of negative employment impacts at the various TSLs.

Using 2016 *ASM* data and interviews with manufacturers, DOE estimates that approximately 60 percent of the consumer conventional cooking products sold in the United States are manufactured domestically. With this assumption, DOE estimates that in the absence of any new and amended energy conservation standards, there would be approximately 7,186 domestic production workers involved in manufacturing consumer conventional cooking products in 2023. Table V–28 shows the range of the impacts of the analyzed new and amended energy conservation standards on U.S. production workers in the consumer conventional cooking product industry.

Table V-28 Potential Changes in the Total Number of Domestic Consumer Conventional Cooking Product Production Workers in 2023

	No-New-Standards Case	Trial Standard Level		
		1	2	3
Total Number of Domestic Production Workers in 2023 (without changes in production locations)	7,186	7,192	7,213	7,864
Potential Changes in Domestic Production Workers in 2023*	-	(359) - 6	(1,796) - 27	(3,593) - 678

*DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

At the upper end of the range, all examined TSLs show a slight increase in the number of domestic production workers for consumer conventional cooking products. DOE believes that manufacturers would increase production hiring due to the increase in the labor associated with adding the required components to make consumer conventional cooking products more efficient. However, as previously stated, this assumes that in addition to hiring more production employees, all existing domestic production would remain in the United States and not shift to lower labor-cost countries.

DOE does not expect any significant changes in domestic employment at TSL 1 because standards would only affect standby mode power consumption at this TSL. Most manufacturers stated that this TSL would not require significant design changes and therefore would not have a significant impact on domestic employment decisions.

At TSL 2 and TSL 3, most manufacturers would be required to make at least some modifications to their existing production lines. However, manufacturers stated that due

to the larger size of most consumer conventional cooking products, very few units are manufactured and shipped from far distances such as Asia or Europe. The vast majority of consumer conventional cooking products are currently made in North America. Some manufacturers stated that even significant changes to production lines would not cause them to shift their production to lower labor-cost countries, as several manufacturers either only produce consumer conventional cooking products domestically or have recently made significant investments to continue to produce consumer conventional cooking products domestically.

At TSL 2, manufacturers could alter production locations in response to standards, since most product classes would be required to meet energy conservation standards that would most likely require modifications to more than just standby mode power consumption. DOE estimated that at most 25 percent of the domestic labor for consumer conventional cooking products could move to other countries in response to the analyzed standards at TSL 2.

At TSL 3, manufacturers could alter production locations in response to standards, since all product classes other than electric open (coil) element cooking tops and gas cooking tops would be required to meet max-tech. DOE estimated that at most 50 percent of the domestic labor for consumer conventional cooking products could move to other countries in response to the analyzed standards at TSL 3.

c. Impacts on Manufacturing Capacity

Consumer conventional cooking product manufacturers stated that they did not anticipate any capacity constraints at TSL 1, which would only require modifications to electronic control components. Some manufacturers stated that any standard requiring induction heating technology for all electric smooth element cooking tops would present a very difficult standard to meet since only around 1 percent of the existing electric smooth element cooking tops use induction technology. Manufacturers stated that converting 99 percent of their electric smooth element cooking tops in the 3-year compliance window would present a significant challenge, since the production of induction heating cooking tops differs significantly from current cooking top production.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts on small businesses in section VI.B of this document. DOE also identified the commercial-style manufacturer subgroup as a potential manufacturer subgroup that could be adversely impacted by the considered standards based on the results of the industry characterization.

The commercial-style manufacturer subgroup consists of consumer conventional cooking product manufacturers that primarily sell gas cooking tops, gas ovens, and electric self-clean ovens marketed as commercial-style, either as a stand-alone product or as a component of a conventional range. While no commercial-style manufacturers (*i.e.,* manufacturers that are producing conventional ovens that are primarily marketed as commercial-style) produce electric coil element cooking tops, some commercial-style manufacturers produce electric smooth element cooking tops. Of those commercial-style manufacturers that do produce electric smooth element cooking tops, all have products that use induction technology that would be capable of meeting max-tech for this product class. Commercial-style electric and gas ovens typically have cavities with heavier-gauge cavity walls and heavier racks that result in inherently lower efficiencies compared to residential-style ovens with comparable cavity sizes, due to the greater thermal mass of the cavity and racks, when measured by the earlier DOE test procedure. The vast majority of commercial-style electric and gas ovens already use SMPS in their ovens and would not have difficulty meeting a potential standard level requiring SMPS for ovens. However, there would be significant uncertainty as to whether commercial-style manufacturers would be able to test their conventional ovens, in the absence of a DOE test procedure for these products, to potentially meet the analyzed standards at TSLs that require design options in addition to SMPS for ovens (TSL 2 and TSL 3).

Therefore, these commercial-style manufacturers would likely be forced to exit the conventional oven market as a result of conventional oven standards set above TSL 1.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or the entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts a cumulative regulatory burden analysis as part of its rulemakings for consumer conventional cooking products.

DOE recognizes that cooking products that include both a conventional cooking top and oven (*i.e.,* conventional ranges) may be assembled on a single assembly line in manufacturing production facilities. DOE also notes that some components and parts (*e.g.,* cabinet housing, controls) may be shared between the oven and cooking top portion of a conventional range. Setting standards with different compliance dates for ovens and cooking tops could result in the need for manufacturers to redesign the oven and cooking top portions of conventional ranges (including shared components and assembly lines) separately on different timelines. As discussed in section II.B.2 of this document, DOE combined the rulemakings to consider energy conservation standards for conventional cooking tops and ovens together and has aligned the compliance dates for both product categories to reduce redesign cycles and to mitigate manufacturer costs.

AHAM commented that home appliances are now in a continuous cycle of regulation, where as soon as one compliance effort ends or is near completion, another round of regulation to change the standard begins again. According to AHAM, this puts a continual burden on manufacturers. AHAM also stated that there is no time for DOE, manufacturers, or efficiency

advocates to assess the success of standards or review their impacts on consumers and manufacturers. (AHAM, No. 64 at p. 36) Under EPCA, DOE is required to analyze potential new and amended energy conservation standards for specific products within specific time periods. (*See* 42 U.S.C. 6295(m)) DOE will continue to meet its legal obligations for either amending standards or determining that revised standards are not justified.

DOE acknowledges that some consumer conventional cooking product manufacturers also make appliances that are or could be subject to future energy conservation standards implemented by DOE. DOE is also aware of energy conservation standards that could affect consumer conventional cooking product manufacturers. These energy conservation standards include those for walk-in coolers and freezers with a compliance date in 2020,[74] residential boilers with a compliance date in 2021,[75] residential central air conditioners and heat pumps with a compliance date in 2023,[76] and small, large, and very large commercial package air conditioning and heating equipment with a second compliance date in 2023.[77] The compliance years and expected industry conversion costs of all relevant new and amended energy conservation standards are indicated in Table V–29.

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Table V-29 Compliance Dates and Expected Conversion Expenses of Federal Energy Conservation Standards Affecting Consumer Conventional Cooking Product Manufacturers

Regulation	Number of Manufacturers*	Number of Manufacturers from Today's Rule**	Approximate Standards Year	Industry Conversion Costs (*Millions $*)	Industry Conversion Costs / Revenue†
Commercial and Industrial Pumps 81 FR 4368 (Jan. 26, 2016)	86	1	2020	81.2 (2014$)	4.5%
Walk-in Coolers and Freezers 82 FR 31808 (Jul. 10, 2017)	10	2	2020	18.7 (2015$)	2.0%
Residential Boilers 81 FR 2320 (Jan. 15, 2016)	36	2	2021	2.5 (2014$)	0.1%
Residential Central Air Conditioners and Heat Pumps 82 FR 1786 (Jan. 6, 2017)	30	6	2023	342.6 (2014$)	0.1%
Small, Large, and Very Large Commercial Package Air Conditioning and Heating Equipment 81 FR 2420 (Jan. 15, 2016)	13	2	2023	520.8 (2014$)	4.9%
Portable Air Conditioners 85 FR 1378 (Jan. 10, 2020)	10	1	2025	320.9 (2015$)	6.7%

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.
** This column presents the number of manufacturers producing consumer conventional cooking products that are also listed as manufacturers in the listed energy conservation standard contributing to cumulative regulatory burden.
† This column presents conversion costs as a percentage of cumulative revenue for the industry during the conversion period. The conversion period is the timeframe over which manufacturers must make conversion costs investments and lasts from the announcement year of the final rule to the standards year of the final rule. This period typically ranges from 3 to 5 years, depending on the energy conservation standard.

[74] Energy conservation standards final rule for walk-in coolers and freezers. 82 FR 31808 (July 10, 2017).

[75] Energy conservation standards final rule for residential boilers. 81 FR 2320 (Jan. 15, 2016).

[76] Energy conservation standards final rule for residential central air conditioners and heat pumps. 82 FR 1786 (Jan. 6, 2017).

[77] Energy conservation standards final rule for small, large, and very large commercial package air conditioning and heating equipment. 81 FR 2420 (Jan. 15, 2016).

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When conducting the cumulative regulatory burden analysis, DOE considers other energy conservation standards for products that consumer conventional cooking product manufacturers make, especially if those standards occur either 3 years before or after the anticipated compliance date for consumer conventional cooking products standards, as part of this analysis. DOE discusses these and other requirements and includes the full details of the cumulative regulatory burden analysis in Chapter 11 of the TSD for this NOPD.

AHAM expressed concern about DOE amending test procedures and proposing standards simultaneously. AHAM commented that the time and resources needed to evaluate and respond to both amended test procedures and new and amended energy conservation standards should not be discounted as a source of cumulative regulatory burden. AHAM also stated that manufacturers experience difficulty in determining how their products will perform in relation to the standards when the test procedure has not been finalized, which nearly precluded commenting on the test procedure. (AHAM, No. 64 at pp. 35, 36) DOE understands that responding to test procedure and standards proposals take time and resources from manufacturers. As discussed, DOE published an update to the Process Rule. 85 FR 8626. Pursuant to the update, test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d) of the Process Rule.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential new and amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential new and amended standards for consumer conventional cooking products, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with potential new and amended standards (2023–2052). Table V–30 presents DOE's projections of the NES for each TSL considered for consumer conventional cooking products. The savings were calculated using the approach described in section IV.H of this document.

Table V-30 Consumer Conventional Cooking Products: Cumulative National Energy Savings for Products Shipped in 2023–2052 (quads)

Product Type	Energy Savings	1	2	3
Conventional Cooking Tops	Site energy	0.02	0.10	0.16
	Primary energy	0.06	0.27	0.42
	FFC energy	0.07	0.28	0.44
Conventional Ovens	Site energy	0.08	0.12	0.41
	Primary energy	0.21	0.29	0.99
	FFC energy	0.22	0.30	1.04
TOTAL (All Products)	Site energy	0.10	0.22	0.57
	Primary energy	0.28	0.55	1.41
	FFC energy	0.29	0.58	1.48

OMB Circular A–4 [78] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed determination, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[79] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer conventional cooking products. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V–31. The impacts are counted over the lifetime of conventional cooking products purchased in 2023–2031.

[78] U.S. Office of Management and Budget, Circular A–4: Regulatory Analysis. September 17, 2003. Available at: *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/*.

[79] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

Table V-31 Consumer Conventional Cooking Products: Cumulative National Energy Savings for Products Shipped in 2023–2031 (quads)

Product Type	Energy Savings	Trial Standard Level		
		1	2	3
Conventional Cooking Tops	Site energy	0.01	0.02	0.04
	Primary energy	0.02	0.07	0.12
	FFC energy	0.02	0.07	0.12
Conventional Ovens	Site energy	0.02	0.03	0.11
	Primary energy	0.06	0.08	0.26
	FFC energy	0.06	0.08	0.28
TOTAL (All Products)	Site energy	0.03	0.06	0.15
	Primary energy	0.07	0.14	0.38
	FFC energy	0.08	0.15	0.40

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for consumer conventional cooking products. In accordance with OMB's guidelines on regulatory analysis,[80] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V–32 shows the consumer NPV results for each TSL DOE considered for consumer conventional cooking products. The impacts are counted over the lifetime of products purchased in 2023–2052.

Table V-32 Cumulative Net Present Value of Consumer Benefits for Consumer Conventional Cooking Products; 30 Years of Shipments (2023–2052)

Equipment Type	Discount Rate	Trial Standard Level		
		1	2	3*
		Billion 2018$		
Conventional Cooking Tops	3%	0.5	2.0	(29.1)
	7%	0.2	0.8	(15.8)
Conventional Ovens	3%	1.6	1.7	(3.0)
	7%	0.7	0.7	(2.6)
TOTAL (All Products)	3%	2.1	3.7	(32.1)
	7%	0.9	1.5	(18.4)

*Parentheses indicate negative (-) values.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–33. The impacts are counted over the lifetime of products purchased in 2023–2031. As mentioned previously, such results are presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

[80] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

Table V-33 Cumulative Net Present Value of Consumer Benefits for Consumer Conventional Cooking Products; 9 Years of Shipments (2023–2031)

Equipment Type	Discount Rate	Trial Standard Level		
		1	2	3*
		Billion 2018$		
Conventional Cooking Tops	3%	0.2	0.7	(9.0)
	7%	0.1	0.4	(6.8)
Conventional Ovens	3%	0.6	0.6	(0.9)
	7%	0.3	0.3	(1.2)
TOTAL (All Products)	3%	0.7	1.3	(9.9)
	7%	0.4	0.7	(8.0)

*Parentheses indicate negative (-) values.

The above results reflect the use of a default trend to estimate the change in price for consumer conventional cooking products over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the TSD for this NOPD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

C. Proposed Determination

When considering amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this proposed determination, DOE considered the impacts of amended standards for consumer conventional cooking products at analyzed TSLs, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Because an analysis of potential economic justification and energy savings first requires an evaluation of the relevant technology, in the following sections DOE first discusses the technological feasibility of amended standards. DOE then addresses the energy savings and economic justification associated with potential amended standards.

Table V–34 and Table V–35 summarize the quantitative impacts estimated for each TSL for consumer conventional cooking products. The national impacts are measured over the lifetime of consumer conventional cooking products purchased in the 30-year period that begins in the anticipated year of compliance with potential new and amended standards (2023–2052). The efficiency levels contained in each TSL are described in section V.A of this document.

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Table V-34 Summary of Analytical Results for Consumer Conventional Cooking Products TSLs: National Impacts

Category	TSL 1	TSL 2	TSL 3
Cumulative National Site and FFC Energy Savings (*quads*)			
Site	0.10	0.22	0.57
FFC	0.29	0.58	1.48
NPV of Consumer Costs and Benefits (*billion 2018$*)			
3% discount rate	2.08	3.72	(32.09)
7% discount rate	0.87	1.49	(18.41)

Parentheses indicate negative (-) values.

Table V-35 Summary of Analytical Results for Consumer Conventional Cooking Products TSLs: Manufacturer and Consumer Impacts

Category	TSL 1	TSL 2	TSL 3
Manufacturer Impacts			
Industry NPV (*million 2018$*) (No-new-standards case INPV = 1,587.7)	1,542.1 – 1,543.4	1,499.5 – 1,505.1	958.7 – 1,203.1
Industry NPV (*% change*)	(2.9) – (2.8)	(5.6) – (5.2)	(39.6) – (24.2)
Consumer Average LCC Savings (*2018$*)			
Electric Open (Coil) Element Cooking Tops	n.a.	n.a.	n.a.
Electric Smooth Element Cooking Tops	$6.50	$27.63	($457.28)
Gas Cooking Tops	n.a.	n.a.	n.a.
Electric Standard Ovens, Free-Standing	$6.77	$12.13	($29.30)
Electric Standard Ovens, Built-In/Slide-In	$6.77	$12.14	($29.32)
Electric Self-Clean Ovens, Free-Standing	$8.99	$8.99	($17.37)
Electric Self-Clean Ovens, Built-In/Slide-In	$8.99	$8.99	($17.29)
Gas Standard Ovens, Free-Standing	$6.78	$6.37	($15.85)
Gas Standard Ovens, Built-In/Slide-In	$6.78	$6.40	($15.79)
Gas Self-Clean Ovens, Free-Standing	$8.15	$8.15	($11.15)
Gas Self-Clean Ovens, Built-In/Slide-In	$8.15	$8.15	($11.12)
Shipment Weighted-Average*	$5.27	$9.10	$(83.41)
Consumer Simple PBP (*years*)			
Electric Open (Coil) Element Cooking Tops	n.a.	n.a.	n.a.
Electric Smooth Element Cooking Tops	1.1	0.9	111.7
Gas Cooking Tops	--	--	--
Electric Standard Ovens, Free-Standing	0.9	4.8	16.6
Electric Standard Ovens, Built-In/Slide-In	0.9	4.8	16.6
Electric Self-Clean Ovens, Free-Standing	0.9	0.9	17.1
Electric Self-Clean Ovens, Built-In/Slide-In	0.9	0.9	17.0
Gas Standard Ovens, Free-Standing	0.9	5.7	16.5
Gas Standard Ovens, Built-In/Slide-In	0.9	5.7	16.5
Gas Self-Clean Ovens, Free-Standing	0.9	0.9	18.1
Gas Self-Clean Ovens, Built-In/Slide-In	0.9	0.9	18.1
Shipment Weighted-Average*	0.6	1.3	27.0
Percent of Consumers that Experience a Net Cost			
Electric Open (Coil) Element Cooking Tops	0%	0%	0%
Electric Smooth Element Cooking Tops	0%	0%	99%
Gas Cooking Tops	0%	0%	0%
Electric Standard Ovens, Free-Standing	0%	26%	75%
Electric Standard Ovens, Built-In/Slide-In	0%	26%	75%
Electric Self-Clean Ovens, Free-Standing	0%	0%	66%
Electric Self-Clean Ovens, Built-In/Slide-In	0%	0%	66%
Gas Standard Ovens, Free-Standing	7%	29%	76%
Gas Standard Ovens, Built-In/Slide-In	7%	29%	76%
Gas Self-Clean Ovens, Free-Standing	8%	8%	66%
Gas Self-Clean Ovens, Built-In/Slide-In	8%	8%	66%
Shipment Weighted-Average*	1%	5%	52%

* Weighted by shares of each product class in total projected shipments in 2023.

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1. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for consumer conventional cooking products would be technologically feasible. (42 U.S.C. 6295(m)(1)(A) and (n)(2)(B)) DOE has tentatively determined that there are technology options that would improve the efficiency of consumer conventional cooking products. These technology options are being used in commercially available consumer conventional cooking products and therefore are technologically feasible. (See section IV.B of this document for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for consumer conventional cooking products are technologically feasible.

2. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for consumer conventional cooking products would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(A)) As discussed in section III.D.2 of this document, to determine whether energy savings are significant, DOE conducts a two-step approach that considers both an absolute site energy savings threshold and a threshold that is a percent reduction in the covered energy use. Section 6(b) of the Process Rule. DOE first evaluates the projected energy savings from a potential max-tech standard over a 30-year period against a 0.3 quads of site energy threshold. Section 6(b)(2) of the Process Rule. If the 0.3 quad-threshold is not met, DOE then compares the max-tech savings to the total energy usage of the covered equipment to calculate a percentage reduction in energy usage. Section 6(b)(3) of the Process Rule. If this comparison does not yield a reduction in site energy use of at least 10 percent over a 30-year period, DOE proposes that no significant energy savings would likely result from setting new or amended standards. Section 6(b)(4) of the Process Rule.

To estimate the energy savings attributable to potential amended standards for consumer conventional cooking products, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each potential standard level. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2023–2052).

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save an estimated 0.57 quads of site energy, an amount DOE considers significant as it exceeds the 0.3 quad-threshold established in section 6(b)(2) of the Process Rule for evaluating the significance of energy savings.

DOE then considered TSL 2, which would save an estimated 0.22 quads of energy over the evaluation period, which represents a 4.9-percent decrease in energy use of the evaluated products. The estimated energy savings does not reach the 0.3 quad-threshold or the 10-percent energy saving threshold established in section 6(b) of the Process Rule, and therefore would not be significant. Because TSL 2 would not achieve significant energy savings, DOE did not consider it further.

Finally, DOE considered TSL 1, which would save an estimated 0.10 quads of energy over the evaluation period, which represents a 2.2-percent decrease in energy use of the evaluated products. The estimated energy savings does not reach the 0.3 quad-threshold or the 10-percent energy saving threshold established in section 6(b) of the Process Rule, and therefore would not be significant. Because TSL 1 would not achieve significant energy savings, DOE did not consider it further.

3. Economic Justification

In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) One of those seven factors includes whether the proposed standard level is cost-effective, as defined under 42 U.S.C. 6295(o)(2)(B)(i)(II). Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard. This factor is assessed using LCC and PBP analysis. DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficiency in the considered consumer conventional cooking products. (See results in Table V–53.) DOE then aggregated the results from the LCC analysis to estimate the NPV of the total costs and benefits experienced by the Nation. (See results in Table V–44 and Table V–45.) As noted, the inputs for determining the NPV are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings.

Under TSL 3, the NPV of consumer benefit would be negative $18.4 billion using a discount rate of 7 percent, and negative $32.1 billion using a discount rate of 3 percent.

At TSL 3, the average LCC impact ranges from a savings of negative $457 for PC2 (Electric Smooth Element Cooking Tops) to negative $11.12 for PC11 (Gas Self-Clean Oven—Built-In/Slide-In). The simple payback period ranges from 16.5 years for PC8 (Gas Standard Oven—Free-Standing) and PC9 (Gas Standard Oven—Built-In/Slide-In) to 111.7 years for PC2 (Electric Smooth Cooking Tops). The fraction of consumers experiencing a net LCC cost ranges from zero percent for PC1 (Electric Open (Coil) Element Cooking Tops) and PC3 (Gas Cooking Tops), to 99 percent for PC2 (Electric Smooth Element Cooking Tops).

DOE is concerned that TSL 3 may result in the unavailability of certain product types for conventional ovens, because there would be significant uncertainty as to whether commercial-style manufacturers would be able to test their products, in the absence of a DOE test procedure for conventional ovens. DOE also notes that the reduction in IAEC at TSL 3 for PC2 (Electric Smooth Cooking Tops) could result in the loss of certain functions that provide utility to consumers, specifically the continuous clock display for combined cooking products. In addition, DOE recognizes that there may be uncertainty in conducting the standards analysis and analyzing energy savings from performance standards for conventional ovens based on efficiency levels using the previous version of the oven test procedure, which DOE has now repealed in the December 2016 TP Final Rule due to concerns whether the test procedure accurately reflects the energy use of all product types.

At TSL 3, the projected change in INPV ranges from a decrease of $629.0 million to a decrease of $384.6 million, which correspond to decreases of 39.6 percent and 24.2 percent, respectively.

Products that meet the efficiency standards specified by TSL 3 are forecast to represent 39 percent of shipments in 2023, the analyzed compliance year of the evaluated standards. As such, manufacturers would have to redesign the majority of

their products by 2023. Redesigning these units to meet max-tech would require considerable investment from manufacturers. At TSL 3, DOE estimates capital conversion costs would total $413.4 million and product conversion costs would total $362.9 million. Total capital and product conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would require significant use of manufacturers' financial reserves and would significantly reduce manufacturer INPV. Additionally, manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, so DOE expects that TSL 3 would yield impacts closer to the most severe range of INPV impacts. If the most severe range of impacts is reached, the max-tech standard could result in a net loss of 39.6 percent in INPV to consumer conventional cooking product manufacturers. As a result, at TSL 3, DOE expects that some companies could be forced to exit the consumer conventional cooking product market. The commercial-style manufacturer subgroup would most likely not be able to meet the conventional ovens standards required at this TSL and would likely be forced to exit the conventional oven market.

Based on the negative NPV of TSL 3, the negative INPV range, and the potential loss of utility resulting from a standard at TSL 3, DOE has tentatively determined that any potential positive impact of the other statutory factors would not outweigh the estimated negative impacts. Hence, DOE has tentatively determined that an amended standard at TSL 3 is not economically justified. Based on this consideration, DOE is not proposing to amend energy conservation standards to adopt TSL 3 for consumer conventional cooking products.

4. Summary of Annualized Benefits and Costs of the Proposed Standards

In this proposed determination, based on the consideration of the significance of energy savings and the factors required for consideration of whether amended standards would be economically justified, and the initial determination that amended standards would not result in significant energy savings and would not be economically justified, DOE has tentatively determined that energy conservation standards for consumer conventional cooking products do not need to be amended. DOE will consider all comments received on this proposed determination in issuing any final determination.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, OMB did not review this proposed determination.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339 (Feb. 3, 2017). E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). E.O. 13771 required the head of each agency designate an agency official as its Regulatory Reform Officer (''RRO''). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(1) Eliminate jobs, or inhibit job creation;

(2) Are outdated, unnecessary, or ineffective;

(3) Impose costs that exceed benefits;

(4) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(5) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(6) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this proposed determination is consistent with the directives set forth in these executive orders.

As discussed in this document, DOE is proposing not to amend energy conservation standards for consumer conventional cooking products. Consistent with E.O. 13771, this proposed determination, if finalized, is not estimated to result in any costs or cost savings. Therefore, if finalized as proposed, this determination is expected to be an E.O. 13771 ''Other Action.''

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is proposing not to amend standards for consumer conventional cooking products, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

Manufacturers of consumer conventional cooking products must certify to DOE that their products comply with any applicable energy conservation standards. DOE has established regulations for the

certification and recordkeeping requirements for all covered consumer products and commercial equipment, consumer conventional cooking products. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling regarding an existing regulation and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

F. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property

Rights,'' 53 FR 8859 (Mar. 18, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (''OIRA'') at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because this proposed determination does not propose amended energy conservation standards for consumer conventional cooking products, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at FR 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[81] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present action.

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=34*. Participants are responsible for ensuring their systems are compatible with the webinar software.

[81] ''Energy Conservation Standards Rulemaking Peer Review Report.'' 2007. Available at *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this NOPD, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notification of proposed determination between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by postal mail or email to the Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B 1000 Independence Avenue SW, Washington, DC 20585–0121, or *ApplianceStandardsQuestions@ee.doe.gov*. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or

prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar/public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPD. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment on both its initial decision to no longer consider intermittent/interrupted or intermittent pilot ignition systems as a technology option, and its initial decision to only evaluate prescriptive standards requiring that conventional ovens not be equipped with a control system that

uses a linear power supply (see section IV.A.2.b of this NOPD).

(2) DOE requests comment on the evaluated baseline and incremental efficiency levels. DOE specifically requests inputs and test data on the baseline efficiency levels and the efficiency improvements associated with the design options identified at each incremental efficiency level that were determined based on either the analysis from the 2009 TSD or updated based on testing and reverse engineering analyses for this NOPD (see section IV.C.2 of this NOPD).

(3) DOE requests input and data on the estimated incremental manufacturing production costs for each efficiency level analyzed that were determined based on either the analysis from the 2009 TSD, adjusted to reflect changes in the PPI, or costs determined based on testing and reverse engineering analyses conducted for this NOPD (see section IV.C.3 of this NOPD).

(4) DOE requests comments on the use of a consumer choice model to establish the no-new-standards case and standards case efficiency distribution for both electric and gas cooking products (see section IV.F.8 of this NOPD)

(5) To estimate the impact on shipments of the price increase for the considered efficiency levels, DOE determined that the new construction market will be inelastic to price changes and will not impact shipments, and any impact of the price increase would be on the replacement market. DOE welcomes input on the effect of potential new and amended standards on impacts across products within the same fuel class and equipment type (see section IV.G of this NOPD).

(6) DOE requests comment on its use of 12.2 percent as a nominal industry discount rate and its use of 3.1 percent as the historical inflation rate, to arrive at a 9.1 percent real industry discount rate (see section IV.I.3.a of this NOPD).

Additionally, DOE welcomes comments on other issues relevant to the conduct of this proposed determination that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE must manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to consumer conventional cooking products while remaining consistent with the requirements of EPCA.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination.

Signing Authority

This document of the Department of Energy was signed on December 2, 2020, by Daniel R Simmons, Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–26874 Filed 12–11–20; 8:45 am]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 Part 705

Section 232 Steel and Aluminum Tariff Exclusions Process; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 201203–0323]

RIN 0694–AH55

Section 232 Steel and Aluminum Tariff Exclusions Process

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in three previous Department of Commerce (''Commerce'') interim final rules implementing the exclusion process authorized by the President under Section 232 of the Trade Expansion Act of 1962, as amended (''232''). These changes are also informed by a notice of inquiry with request for comments on the 232 exclusions process that was published by Commerce on May 26, 2020. Based on public comments on the current process for submissions to Commerce, Commerce is publishing this interim final rule to make additional revisions to the 232 exclusion process, including to the 232 Exclusions Portal.

DATES:

Effective date: This interim final rule is effective December 14, 2020, except for amendatory instructions 3 and 5 that are effective December 29, 2020.

Comments: Comments on this interim final rule must be received by BIS no later than February 12, 2021.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for information on submitting exclusion requests, objections thereto, rebuttals, and surrebuttals. You may submit comments, identified by docket number BIS–2020–0022 or RIN 0694–AH55, through the *Federal eRulemaking website: http://www.regulations.gov.* No other submission methods are being used for submitting comments on this interim final rule. Follow the instructions for submitting comments.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with a ''BC'' or ''P'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this interim final rule, contact Erika Maynard at 202–482–5572 or via email *Erika.Maynard@bis.doc.gov,* or email *Steel232@bis.doc.gov* regarding provisions in this rule specific to steel exclusion requests and *Aluminum232@bis.doc.gov* regarding provisions in this rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not ''produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality'' or should be excluded ''based upon specific national security considerations,'' and provided authority for the Secretary to issue procedures for exclusion requests. On April 30, 2018, Proclamations 9739 and 9740, and on May 31, 2018, Proclamations 9758 and 9759, set quantitative limitations on the import of steel and aluminum from certain countries in lieu of the duties. On August 29, 2018, in Proclamations 9776 and 9777, President Trump also authorized the Secretary to grant exclusions from quantitative limitations based on the same standards applicable to exclusions from the tariffs.

Implementing and Improving the 232 Exclusions Process

On March 19, 2018, Commerce first issued an interim final rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106) (the ''March 19 rule''), laying out procedures for the 232 exclusions process, including one supplement for the procedures for steel and a second supplement for the procedures for aluminum.

On September 11, 2018, Commerce issued a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026) (the ''September 11 rule''), that revised the two supplements added by the March 19 rule with improvements designed to ensure a transparent, fair, and efficient exclusion and objection process.

On June 10, 2019, Commerce issued a third interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751) (the ''June 10 rule''), that revised the two supplements added by the March 19 and September 11 rules to grant the public the ability to submit new exclusion requests through the 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

On May 26, 2020, Commerce issued a notice of inquiry with request for comment, *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (85 FR 31441) (the ''May 26 notice''), that sought public comment on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

Why is Commerce publishing this interim final rule?

Commerce is publishing this interim final rule to implement additional changes the Department has determined will further improve the 232 exclusions process. Commerce believes these changes will make important improvements, but is also requesting public comments to evaluate how effective these changes will be in further improving the 232 exclusions process. This process is consistent with the Department's approach since the

beginning of implementing the 232 exclusion process. The public has supported this approach.

What are some of the key changes included in this interim final rule?

This interim final rule is being published at this time, in particular, to make the following three key changes to the 232 exclusions process.

First, it addresses the need to create a more efficient method for approving exclusions where objections have not been received in the past for certain steel or aluminum articles. Commerce has determined creating general approved exclusions that may be used by any importing entity is warranted. This has been noted by commenters who submit exclusion requests, and by trade associations that represent those companies, as one of the most important changes that could be made to improve the efficiency of the 232 exclusion process. As described in much greater detail below, this interim final rule addresses this issue with the adoption of General Approved Exclusions (GAEs). This change will result in an estimated immediate decrease of 5,000 exclusion requests annually, resulting in a significant improvement in efficiency, with the possibility of more in the future. Unlike exclusion requests, GAEs do not include quantity limits.

Second, it addresses a trend identified by commenters and validated in data reviewed by Commerce—that certain exclusion requesters may have requested more volume than they may have needed for their own business purposes compared to past usage. Submitting large numbers of unneeded exclusion requests decreases the efficiency of the 232 exclusions process for potential objectors and Commerce. It also creates issues for potential objectors. As described in greater detail below, this issue is addressed by adding a new certification requirement for volumes requested. Along the same lines, the rule also adds a note to remind all parties submitting 232 submissions of the prohibition against making false statements to the U.S. Government and the consequences that may occur for such false statements.

Third, the rule addresses an objector concern they were being held to a higher standard than foreign suppliers because of the interpretation that ''immediately'' meant the objector needed to be able to provide the steel or aluminum articles within 8 weeks, even though a foreign supplier may not be able to provide the same steel or aluminum article until much longer than 8 weeks. With this rule the term ''immediately,'' is retained but language has been modified to apply the same time standard to U.S. objectors and foreign suppliers for when the steel or aluminum articles need to be provided to the exclusion requester.

What changes are not being addressed in this interim final rule?

While this rule addresses the remaining comments from the September 11 rule, it also addresses some of the comments received on the 232 Exclusions Portal from the June 10 rule. However, comments requesting changes requiring software modification or involving additional cost and time to implement are still under consideration and not addressed here. Some examples of comments still under consideration include the following. There is a comment to allow confidential business information (CBI) submissions in the 232 Exclusions Portal which would require software changes and additional certifications. Another commenter requested two separate portals for the steel and aluminum exclusion processes. There are also several comments regarding the usability and search functionality of the 232 Exclusions Portal including adding a filter for steel and aluminum on the main portal page; adding product classes to the main portal screen with a filtering function; improving search functionality by adding a simple ''find all'' type of search capability; adding the capability to be able to download individual submissions and all data; making it easier to extract data for queried databases; adding the ability to cross search with multiple criteria; providing an easier way to identify exclusion requests by HTSUS classification and other criteria; including the actual due date for filing submissions, not just days remaining; adding a withdraw feature to the dashboard; adding a notification feature when objections are posted; and adding the ability to refresh without resetting the filters. Commerce is continuing to evaluate these comments and may implement additional changes to further improve the 232 Exclusions Portal at a later date.

This interim final rule does not summarize or respond to the comments included in the May 26 notice. Commerce will address these comments in the next rule. However, as noted below, there is significant overlap in the comments received on the September 11 and June 10 rules, so some of the comments received on the May 26 notice are also being addressed in this interim final rule. For example, the three key changes to the 232 exclusions process described above being made in this interim final rule will also be responsive to comments received on the May 26 notice.

The following are some examples of comments from the May 26 notice that are still being reviewed. Additional changes to the 232 Exclusions Portal were requested by some commenters based on their additional experience, *e.g.,* the portal being programmed to flag for special attention those exclusion requests that have been waiting a certain number of days/months for a determination. Some comments addressed the role of objections in the 232 exclusions process and whether objections have an outsized influence on the process, in particular on how long the Commerce decision-making process takes and whether an exclusion will be granted. Some comments requested creating a process to give preferential treatment for products further manufactured or substantially transformed in the United States, because such producers are an essential part of the U.S. steel and aluminum industry. Other commenters requested a 60-day window for submitting exclusion requests on a bi-annual basis and only product exclusion requests submitted during these bi-annual periods would be considered.

Additional Improvements to the 232 Exclusions Process

As noted above, the interim final rule being published today addresses the remaining comments from the September 11 rule and highlights what comments have been addressed from the June 10 rule. There is some significant overlap among those comments and comments received in response to the May 26 notice, so the revisions to the 232 exclusions process described below will also be responsive to some of the same comments received in response to the May 26 notice. Commerce intends to publish at least one subsequent interim final rule that will describe the unaddressed comments received on the May 26 notice and any additional revisions Commerce will make to the 232 exclusions process as a result of those comments. The comments on the May 26 notice also included various comments on the 232 Exclusions Portal, certain of which are addressed below. Other comments will be summarized and addressed with the remaining comments on the June 10 rule that are not included in today's rule. Because of the programming cost and time involved with making changes to the 232 Exclusions Portal, Commerce requires more time to review and respond to those comments, in particular for comments where Commerce agrees that

changes to the 232 Exclusions Portal may be warranted.

Commerce is focused on improving the 232 exclusions process as quickly as possible. As additional revisions are ready to be made, such as those being made in this rule, Commerce will publish those changes as quickly as possible to improve the 232 exclusions process. This approach of publishing a series of interim final rules has allowed Commerce to improve the 232 exclusions process on an ongoing basis, allowing the public to submit additional comments on whether the most recently made changes have helped to improve the process.

This rule makes various edits to supplement no. 1 to part 705 to improve the 232 exclusions process. This rule also removes the provisions from supplement no. 2 to part 705 and consolidates those into supplement no. 1. This rule also adds new supplements no. 2 and no. 3 for identifying General Approved Exclusions (GAEs) for steel and aluminum articles under the 232 exclusions process and the first approved tranches of GAEs for steel and aluminum articles. GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use. This rule also removes Annex 1 to supplements no. 1 and 2, since this guidance is no longer needed with this rule's removal of references to *www.regulations.gov* from the 232 exclusions process. Finally, this rule makes some non-substantive edits to supplement no. 1 to part 705 to improve readability of the supplement.

Public Comments and BIS Responses

The public comment period on the May 26 notice closed on July 10, 2020. BIS received eighty-two public comments on the notice of inquiry. Many commenters referenced the imposition of duties and quantitative limitations, questioning whether or not such regulations were beneficial. Those comments are outside the scope of the May 26 notice that solicited comments on the 232 exclusions process; thus Commerce is generally not summarizing or providing responses to those general comments on the duties and quantitative limitations. Certain comments described and addressed below are those received in response to the September 11 and June 10 rules. However, some of the comments in responses below address issues that also were raised in some of the comments received in response to the May 26 notice. As a result, the responses below are responsive in part to comments on the May 26 notice, and also are responsive to comments on the September 11 and June 10 rules.

Improving Tracking and Transparency

Comment (a)(1): Develop an adequate tracking system that supplies relevant information (more than is available now) for 232 submissions. Commenters requested that Commerce provide stakeholders a way to more easily review the Harmonized Tariff Schedule of the United States (HTSUS) code and product information, country of origin, volume, and alloys of posted exclusions—preferably, in a searchable database. Commenters indicated that having to open each file to identify this information places a burden on potential objectors, which the commenters suggested could be addressed with a searchable database.

BIS response: Commerce has made changes to allow for easier tracking and searching of information in the 232 Exclusions Portal, as described in greater detail below for the improvements that have been made to the 232 Exclusions Portal (*see* BIS response to Comment (g)(2) below).

Comment (a)(2): Exclusion rejection for incomplete submissions should be more transparent. A commenter noted that, while they do not expect Commerce to customize each individual response, the commenter believes that additional steps can be taken to help U.S. businesses understand the reason for a rejection. This commenter requested that Commerce should include on the rejection form that is posted online a list of common reasons for rejection. The commenter believes this would provide invaluable guidance to the countless small businesses attempting to navigate this difficult process. This commenter believes the current rejection form leaves manufacturers guessing as to why the government rejected their applications, especially when that business for years used the identical HTSUS code accepted by U.S. Customs and Border Protection (CBP) to import that product.

BIS response: Commerce agrees that greater transparency benefits all applicants to the 232 exclusions process. Commerce moved its HTSUS administrability review to the start of the process in early 2019, reducing sharply the number of exclusion denials due to incomplete submissions identified later in the review process. Incomplete submissions now receive a rejection notification that includes the specific reasons for a rejection. Commerce does plan to update the rejection form used in the 232 Exclusions Portal to include a list of common reasons for rejection. Commerce agrees that providing this additional information will make the process more efficient, because those receiving rejections will more easily understand what was wrong with their exclusion request that resulted in a rejection. This may reduce the overall number of 232 exclusion submissions submitted.

Confidential Business Information (CBI)

Comment (b)(1): Supportive of the new CBI provisions. A commenter asserted that one of the most significant changes is the BIS decision to allow companies to submit CBI during the rebuttal and surrebuttal process. This same commenter also believes that further changes can improve the process beyond what BIS has already proposed.

BIS response: Commerce agrees that adding the CBI process has helped to improve the 232 exclusions process. As described below, Commerce is open to improving the CBI process, but that must be done in accordance with the larger purpose of allowing CBI in the 232 exclusion process, as well as the current technical limitations in the 232 Exclusions Portal.

Comment (b)(2): Allow CBI to also be submitted for exclusions and objections. Commenters urged Commerce to expand the CBI provision by allowing companies to submit CBI within their original exclusion request. These commenters asserted that, given the amount of detail required to complete the exclusion request form, companies may be hesitant to submit exclusion requests for fear of sharing CBI with their competitors.

BIS response: Commerce does not agree. The information required on the exclusion request form does not require revealing CBI in order to adequately complete the form, so allowing CBI in support of the initial exclusion request is not needed. Moreover, exclusion requesters can indicate they have CBI, allowing Commerce reviewers to request that CBI if needed for their review of the request and objections.

Comment (b)(3): Allowing CBI in exclusions and objections would alleviate some concerns over short seven-day rebuttal and surrebuttal periods. One commenter asserted that, given the short seven-day window of the rebuttal process, allowing companies to submit CBI at the time of the application would relieve the unnecessary burdens placed on filers by the short rebuttal window.

BIS response: Commerce acknowledges the shortness of the seven-day rebuttal and surrebuttal period, but does not agree with the commenter that allowing CBI in the exclusion request or in objections would alleviate the burden on exclusion requesters or objectors during the rebuttal and surrebuttal period. The most appropriate time in the 232 exclusion review process for CBI is during the rebuttal and surrebuttal phase when information that goes beyond what is included in the exclusion and objection forms may be needed to properly evaluate an exclusion request. Allowing CBI in exclusion requests and objections would slow the Commerce review process without adding any real benefit to the review process. As noted above, exclusion requesters and objectors can indicate they have CBI and Commerce reviewers can request that information if needed for review.

Comment (b)(4): Process to submit CBI needs to be further clarified. A commenter believes the current CBI process is confusing because parties must submit the exclusion request form with a vague, yet somewhat detailed summary of the CBI and then supplement the form by sending a separate email to BIS with the actual confidential information. This same commenter was also concerned that parties risk the possibility that Commerce will reject their exclusion request for being an incomplete submission before Commerce has even received their confidential information.

BIS response: Commerce understands the point being made by the commenter but does not agree that this requirement is unreasonable. Because the 232 Exclusion Process is a public process, there needs to be transparency to allow the other public parties involved in the process (objector(s) and exclusion requesters) to have an idea of the scope and type of CBI information that is being provided to supplement a rebuttal or a surrebuttal.

Comment (b)(5): Section 301 exclusion request process uses a clear and simple method by which parties can submit CBI—Commerce should adopt same process to allow submission of public and private version. A commenter encouraged Commerce to implement a method similar to that of the Section 301 exclusion process for the Section 232 exclusion request process, allowing parties to submit both public and confidential versions of the exclusion request form.

BIS response: Commerce sees the benefit of adopting the same type of approach as used under the Section 301 process. However, the security needed to protect such information in the 232 Exclusions Portal would require additional programming and certifications. Therefore, at the current time Commerce will not be making these changes. If the 232 Exclusions Portal can accommodate CBI at a future date, Commerce will revisit this issue.

Exclusion Requests

Comment (c)(1): Standard Commerce applies to exclusion requests remains unclear—need to specify whether in aggregate or for a specific requester. A commenter was concerned that it is unclear whether a specific requester's lack of availability and quality of material is the relevant consideration, or whether analysis of material quantities in the aggregate U.S. market provides a better metric. The commenter believes the proper standard should be the availability of material to the requesting company in the needed quality and quantity because this is largely in the control of the objecting supplier.

BIS response: Commerce confirms here that exclusion requests are being reviewed based on the availability of material to the requesting company in the needed quality and quantity by U.S. suppliers. This rule clarifies that the standard applied to the review of an exclusion request is a case-by-case review to determine whether the requester has shown that the article is not produced in the United States in a sufficiently and reasonably available amount or of a satisfactory quality, or that there are specific national security considerations to grant the exclusion. In general, if no U.S. supplier submits an objection, absent a national security concern, Commerce approves such exclusion requests because a determination can be made that a U.S. supplier is not available to supply to the exclusion requester the needed quality and quantity of steel or aluminum described in the exclusion request.

Comment (c)(2): Inconsistencies in the posted exclusion requests make it difficult for objectors to adequately review and respond. Commenters in this area are concerned whether exclusion requesters are consistently filling out the forms, and whether Commerce is adequately ensuring that the exclusion forms being posted meet the required standards of the form. For example, one commenter noted that hundreds of exclusion requests include no alloy designation (Question 4.b), but instead reference the HTSUS code or simply leave that field blank. This commenter asserted that an alloy designation is an important identifier for assessing the validity of an exclusion request, so its omission in many exclusion requests makes it difficult for potential objectors. Another commenter noted that many exclusion requests—including those that have already been approved—fail to indicate a volume associated with the included countries of origin.

BIS response: Commerce acknowledges that, in certain cases, there has been some variability in how exclusion requesters or objectors have filled out the respective forms. Commerce has revised its standard operating procedures (SOPs) and conducted training for those reviewing 232 submissions at Commerce to emphasize the importance of ensuring that the exclusion and objection forms are being completed in accordance with the information required on the forms. As a result of this comment, Commerce has highlighted these issues to the Commerce reviewers of the 232 submissions to ensure consistency and warns that submissions that do not meet the standards of the information required on the forms will be rejected.

Comment (c)(3): ''Size ranges'' clarification was helpful in the September 11 rule, but additional clarification needed. A commenter noted that the September 11 rule offers some additional information on acceptable ranges but could be improved. The BIS response to Comment (g)(3) in the September 11 rule states that the exclusion request form allows for a product that may be within a specific range but not for products across a wide range. A permissible range must be within the minimum and maximum range that is specified in the tariff provision and applicable legal notes for the provision. This commenter believes that this suggests that products identical in all aspects, with the exception of a dimensional characteristic, and classified within the same HTSUS statistical reporting number, could be included within a single request. However, the commenter was concerned that the regulatory text under paragraph (c)(2) suggests that separate exclusion requests must be submitted for steel products with ''distinct critical dimensions'' covered by a common HTSUS statistical reporting number, and examples provided in the rule are for specific sizes of products, which does not appear inconsistent with Comment (g)(3) from the September 11 rule.

BIS response: Commerce agrees a clarification to paragraph (c)(2) is warranted. This interim final rule, as described below in the regulatory changes, removes the word ''distinct'' before ''critical'' in the example

provided under paragraph (c)(2). This change is made to avoid any potential confusion on the scope of ranges that are permissible under an exclusion request. Commerce clarifies that products identical in all aspects, with the exception of a dimensional characteristic, and that are classified within the same HTSUS statistical reporting number, may be included within a single request. However, objections that indicate the ability to produce one or more products within the range, even if not the entire range, will be considered to be valid objections to an exclusion request.

Comment (c)(4): Concerned that Commerce is not adequately reviewing exclusion requests. A commenter requested that Commerce fully evaluate all exclusion requests—including those for which no objections are filed—to ensure that the volumes requested are proportional to the U.S. market. This commenter was concerned that, generally, it seems Commerce is not evaluating whether there is actually demand in the market for these large volumes, and has granted requests based simply on the absence of any objections.

BIS response: Commerce recognizes that there are exclusion requests for volumes that exceed prior years' consumption but that often receive no objections. Commerce also recognizes that there are objections that, in total, exceed the objectors' total capacity. Commerce is reviewing this issue to determine whether there is an approach to factor volumes requested and objected to in an objective, transparent, and efficient way. As an initial step to address this issue, this interim final rule makes regulatory changes to the 232 exclusions process, as described below under the 232 exclusion request volume certification heading to require a certification from exclusion requesters for volume requested and, when applicable, a certification for volume requested but unfulfilled due to legitimate circumstances when submitting exclusion requests in the 232 Exclusions Portal.

Comment (c)(5): Does not believe Commerce has implemented an expedited approval process for exclusions that receive no objections—contrary to what was stated in the September 11 rule and in statements by Commerce in other venues that Commerce would adopt such an expedited process. One commenter noted that Commerce does not yet appear to be adjudicating requests faster as a result of the updated exclusion process with some exclusion requests.

BIS response: Commerce believes this comment was likely made as Commerce was working to address the initial backlog of exclusion requests that did receive objections and does not reflect the current status. At this time, the expedited review process for exclusions that do not receive objections is functioning well, with an average response time, as of July 20, 2020, of approximately 60 days, less than half the average processing time for exclusions that receive objections and a significant decrease in overall response times compared to earlier in the process.

Comment (c)(6): Product descriptions in exclusion requests and approval decisions need to be more specific to ensure CBP can determine what is approved. A commenter noted that Commerce has granted a number of exclusion requests where the ''product description'' on both the request and Commerce's decision document is only the name for a general category of products and any detail regarding the size, chemistry, and other characteristics that may indicate that particular product at issue is not available from domestic sources are not carried over from the application. This commenter noted that greater specificity was needed in the approved exclusions.

BIS response: Commerce works closely with CBP. Additional information is provided to CBP to ensure that CBP is able to effectively implement approved exclusions. CBP consults as needed with Commerce if any questions arise regarding the scope of a specific approved exclusion request.

Comment (c)(7): Need to specify when the validity of an approved exclusion request begins. A commenter noted that there has been a number of exclusions granted where shipments were entered after the posting of the request but before the decision. The commenter asked for clarification if the one-year timeframe begins once the decision is made or if some other point is used to start the one-year timeframe.

BIS response: Commerce clarifies that, as specified in paragraph (h)(2)(iii)(A) (*Effective date for approved exclusions*), an approved exclusion will be effective five business days after publication of the Commerce response granting an exclusion in the 232 Exclusions Portal. If granted, exclusions are generally effective for one year from the date of signature on the Decision Memo. Companies may also file Post-Summary Corrections with CBP on unliquidated entries to recoup any tariffs paid on products that made entry between the submission date and the date of signature. Companies are able to receive retroactive relief on granted requests dating back to the date of the request's submission on unliquidated entries. However, requesters should note that where retroactive relief is granted, the quantities granted retroactive relief are still counted against the total quantity granted in the exclusion. The exclusion request expires when either the quantity granted has been exhausted or the exclusion reaches the end of the effective period specified in the decision memo (generally one year from the date of the decision), whichever comes first, and no pro-rata additional quantity is provided for retroactive relief. Given that duties do not apply for countries with quotas, retroactive relief is not applicable for exclusions from quotas.

Once the exclusion becomes effective, the steel or aluminum articles specified in the approved decision memo in entries that have not been liquidated by CBP are those eligible for tariff refunds or tariff exclusions.

Comment (c)(8): Product exclusions should be permanent not temporary (and on a universal basis). A commenter noted that temporary exclusions inject significant uncertainty into the business planning of companies and therefore recommended permanent exclusions.

BIS response: Commerce does not agree that all product exclusions should be permanent and issued on a universal basis because that would defeat the purpose of the duties. Commerce does agree that for certain steel and aluminum articles, a more efficient approval mechanism is warranted and that the approval should be universal. Specifically, for certain steel and aluminum articles, Commerce has created General Approved Exclusions (GAEs) under the new supplements no. 2 and 3 to part 705 being added to this rule, which will be available to all importers.

Comment (c)(9): Create streamlined process to allow one company seeking an exclusion for the same product already approved to a second company to quickly obtain an approved exclusion. A commenter requested that Commerce provide a streamlined process whereby a second company seeking to use an exclusion already granted to a U.S. company can quickly obtain the right to use the same product exclusion.

BIS response: Commerce does not agree. The exclusion process is intended to be specific to each requester and each request must be reviewed on its own merits, allowing for potential objections and permitting rebuttal and surrebuttal process to play out as needed. As referenced in the previous comment, the GAEs are also responsive to some of what this commenter is requesting in

terms of creating a more efficient approval process where Commerce determines that relief is warranted in a particular circumstance for all importers.

Comment (c)(10): Commerce should use its discretion to make exclusions available to all importers. A commenter requested that if a product is not made in the United States or is not made in sufficient quantity or quality, Commerce must grant a broader product exclusion (not just on a company-by-company, product-by-product basis). Another commenter noted that the Secretary and others at Commerce have repeatedly denied associations the ability to submit exclusion requests on behalf of their industries for widely used goods, because Commerce sought to identify those products receiving the most requests. However, the Secretary has yet to exercise this authority to grant general exclusions despite the same HTSUS codes receiving multiple requests.

BIS response: As noted above, in this rule, Commerce is creating GAEs with the additions of supplement no. 2 and 3 to part 705. The creation of GAEs addresses this comment and will create a more efficient 232 exclusion process and reduce the burdens on exclusion requesters.

Comment (c)(11): Explain circumstances under which BIS will approve broader product exclusions and how U.S. companies may request such an exclusion. A commenter noted that Commerce continues to state that it is considering approving broader exclusion requests, which can apply to multiple importers. However, no additional guidance has been provided as to how groups of companies can ask for such a broader exclusion.

BIS response: This rule explains the circumstances when Commerce will approve broader product exclusions. These provisions are described in the new supplements no. 2 and 3 to part 705 with the addition of GAEs. The introductory text of the new supplements explain the process of how Commerce will approve these GAEs. As previously noted, these determinations for what steel or aluminum articles warrant being included in a GAE will be made by Commerce, in consultation with the other agencies referenced in the new supplements. The public will not be involved in requesting new or revised GAEs, but Commerce will use the information provided in exclusion requests to inform its review process for what additional GAE should be added or what revisions should be made to existing GAEs.

Comment (c)(12): Process for making changes to an approved exclusion request. A commenter requested guidance be provided for how to make a correction to an application for exclusion after the exclusion has been approved.

BIS response: This is a feature under consideration, but until that revision can be implemented, a new exclusion request will need to be submitted in the event of such circumstances. Commerce does clarify that BIS will make, when warranted in the 232 Exclusions Portal, technical corrections and a few other forms of ''non-substantive changes'' including: Importer of record (IOR) changes; supplier/manufacturer changes; corrections to match product descriptions with product specifications; and corrections to organization information (*i.e.,* accidental transposition of fields).

Objections

Comment (d)(1): Concerned that Commerce has too much leeway to interpret the criteria ''not produced in the United States in a sufficient and reasonably available amount'' and ''not produced in the United States in a satisfactory quality.'' A commenter was concerned that this broad interpretation by Commerce could lead to the negation of exclusion requests in situations where one company files an objection that claims that it in theory could make that product in sufficient quantity or quality. The commenter noted that rebuttals to these claims are difficult to make without more detailed information from objectors on how they could make products in sufficient quantity or quality.

BIS response: The criteria comes from the underlying Proclamations that authorize the creation of the 232 exclusions process. Therefore, Commerce does not have the discretion to change the criteria. Commerce added the rebuttal process, as well as the surrebuttal process, to allow requesters and objectors to further address the representations made in objections and rebuttals. Ultimately, if an exclusion request is not approved because of an objection, the exclusion requester will be able to determine definitively whether an objector is in fact able to provide the steel or aluminum article in question by attempting to obtain the product from the objector. Should all objectors be unable to produce a requested product as they represented in their objections, the requester may submit a new request with documentation evidencing this refusal. Commerce understands that time is vital to an exclusion requester and seeks to ensure that objectors provide sufficient information for a thorough evaluation of the request and objection. Moreover, objectors must certify their ability to manufacture the products described within their objections.

Comment (d)(2): Objections should be reviewed cumulatively. A commenter is concerned that Commerce is not considering the cumulative impact of objections to exclusions. This commenter noted that U.S. producers that are filing objections to exclusion requests are routinely stating that the objector can and would fill the demand for the subject product. This commenter noted that while it may be true that the objector could reasonably expect to fill the needs of an individual company making an exclusion request, it is possible (or likely) that the objector could not fill the full demand for that product from all companies requesting an exclusion let alone all of the demand from other customers in the U.S.

BIS response: Commerce is aware of this concern and has evaluated statistics on the 232 exclusions process, determining that, although there may be some anecdotal examples of where this occurred, as a general trend, the statistics do not support that this is a significant issue with objections in the 232 exclusions process. In the past year, BIS has received objections to exclusion requests for approximately 19 million metric tons of steel products, or roughly 16% of total U.S. steel production capacity. None of the companies with publicly available capacity figures objected to more than their total capacity. When factoring in that multiple companies often object to the same exclusion request, volume objected to as a percentage of total capacity was significantly lower. Exclusion requesters are encouraged to provide documentation in their requests or rebuttal filings that objectors are unable to supply the products being requested because of insufficient capacity.

Comment (d)(3): Exclusion process guidelines are unclear about the obligations that come with filing an objection. A commenter asked for clarification from Commerce about whether producers should be submitting objections if they have the capability to make a product, but not the immediate capacity, or if they can only produce a fraction of the requested volume for a specific manufacturer. For example, the commenter noted that aluminum producers have expressed a concern that filing an objection will obligate that producer to offer for sale the full scope and volume of imports included in a request—which, if importers are

requesting massive volumes, might be impossible.

BIS response: Commerce agrees this should be clarified in the regulations and makes changes to paragraph (c)(6)(i), as described below, to address this issue. Commerce has the ability to deny a part of an exclusion request when an objector demonstrates sufficiently in the objection and any potential surrebuttal that they are able to produce a portion of the requested quantity of a steel or aluminum article within the required time needed by the importer. Therefore, objectors should not be deterred from submitting objections when they may not be able to fulfill 100% of the requested exclusion. Over time, as more of their domestic capacity comes back online or is added, these same objectors may be able to fulfill larger percentages of the exclusion requests, which would help to better achieve the stated purposes of the duties in helping to support the domestic production capabilities and capacity that are critical to protecting U.S. national security. Commerce is reviewing this issue to determine whether there is an objective, transparent, and efficient approach to take into consideration volumes requested and objected to under the 232 exclusions process.

Comment (d)(4): Modify the objection form (and the rebuttal and surrebuttal form) to clarify whether companies can object on the ostensible grounds that they have the capability to make a product. A commenter requested guidance on how Commerce will consider objections from producers that have the capability to make a product but do not have immediately available capacity to meet the importer's stated needs.

BIS response: Commerce does not agree that the objection form, or the rebuttal or surrebuttal form need to be updated to address this commenter's concern. The information required on rebuttal and surrebuttal forms, as well as the objection criteria specified in paragraph (d), provides a clear standard that Commerce may apply. After reviewing an objection, rebutters may also inform the Commerce review process by evaluating and commenting on whether an objector will be able to provide the needed steel or aluminum article in the quantity and quality and to make that ''immediately available'' from an exclusion requester's perspective. As described below, this rule makes additional changes for what constitutes being ''immediately available,'' and these changes will further clarify the application of this criteria to make sure that U.S. producers are being held to the same standard as potential foreign competitors in meeting the time required for delivery of the steel or aluminum article for which they are requesting an exclusion.

Comment (d)(5): Objecting parties should be required to fill orders. A commenter noted that this would prevent the objection process from becoming a lever for business competition with domestic parties objecting to an exclusion request and then refusing to fill orders or only filling orders at inflated prices. This commenter also asked that companies that were denied an exclusion requested on the basis of an objection be permitted to show evidence of an inability to secure material and gain an exception if the objecting party cannot fill orders.

BIS response: Commerce understands the reasoning behind this comment but is also mindful that it is not the role of Commerce to dictate whether an objector must sell the steel or aluminum article, or whether the exclusion requester must purchase the steel or aluminum article from the objector. For example, as the commenter noted, the objector may be able to provide the steel or aluminum but at a price that is not tenable for the exclusion requester or at a price that does not justify the exclusion requester switching suppliers of the steel or aluminum article. Commerce believes that these types of business decisions should be left to the two companies involved so as to not unduly influence the functioning of the market. As for the request to allow an exclusion requester to subsequently reference in a new exclusion request that an objector was not able to provide the steel or aluminum in a previous exclusion request, the current process already addresses that sufficiently. First, the exclusion requester may submit a new exclusion request. The earlier objector may choose not to object to the new exclusion request based on their past experience of not being able to provide the steel or aluminum article. Assuming no other objector comes forward, the exclusion request will be reviewed under the expedited process. If the same objector objects to the new exclusion request, the rebuttal process allows the exclusion requester to document in the rebuttal the past activity with that objector.

Comment (d)(6): Objections should also be rejected for incompleteness. If Commerce is rejecting requests based on incompleteness, we believe it should extend the same scrutiny to objections.

BIS response: Commerce agrees and does reject objections for incompleteness when warranted. BIS does review objections (and rebuttals/surrebuttals) for completeness, but a rejection is rare for these filings in the 232 Exclusions Portal. The Portal has mandatory fields that ensure most filings are complete. However, there is a different standard of what is necessary for a complete submission of an exclusion request versus an objection. The former generally must meet more specific review criteria. At this time, objectors may list capacity, utilization, manufacturing, or delivery time data as CBI on the objection form. Commerce's International Trade Administration (ITA), on behalf of BIS and Commerce, will then request this information if needed.

Comment (d)(7): Delivery times are getting much longer because of the tariffs and U.S. producers are approaching maximum capacity utilization rates. A commenter noted that prior to the imposition of tariffs for non-specialty metals, many steel users reported roughly six-week to eight-week lead times. Since the steel tariffs took effect, those same members report the doubling of delivery times, creating significant delays and interruptions in the manufacturing supply chain that could lead Original Equipment Manufacturers (OEMs) to source their inputs from non-U.S. sources that experience less volatility due to government interference.

BIS response: To the extent there has been an increase in delivery times related to the tariffs, importers seeking exclusions can always import the article and pay the tariffs while their exclusion requests are pending. In addition, an objector must have the article ''immediately available'' in the needed quantity and quality. As referenced below in the clarifications being made to ''immediately available,'' the previous criteria were holding U.S. producers in many cases to shorter delivery times than foreign competitors, a discrepancy that is being addressed in this rule. Commerce believes that the ''immediately available'' criterion, which is being refined in this rule, provides a reasonable standard that should not result in a lengthening of the time period for delivery of steel and aluminum articles for U.S. users.

Comment (d)(8): Producers should be held accountable. A commenter requested that Commerce hold organizations that file objections to the highest of standards. Commerce should require specificity before considering the objection and should question and verify the assertions made by the objectors or claims made in surrebuttals.

BIS response: Commerce agrees that all parties, both objectors and requesters, should be held to the

standards set forth in the regulations. Accordingly, parties making submissions to Commerce with regard to an exclusion request are required to legally certify the veracity of the submission. These standards are specified on the objection and surrebuttal forms, in the criteria specified in paragraphs (d) and (g), on the exclusion request and rebuttal forms, and in the criteria specified in paragraphs (c) and (f) of supplement no. 1 to part 705.

Comment (d)(9): U.S. steel producers are approaching maximum capacity utilization rates. A commenter noted that one objector reported its facility is currently operating at an 89% capacity utilization rate, well above the 80% target set by Commerce and at levels not seen since prior to the Great Recession. This commenter also noted that the American Iron and Steel Institute reported that for the week ending November 10, 2018, domestic raw steel production saw a capacity utilization rate of 81.7%, also above the 80% threshold.

BIS response: As stated in the 232 report, the 80 percent figure is an ''average'' rate for financial viability of the industry which is ''necessary to sustain adequate profitability and continued capital investment, research, and development, and workforce enhancement in the steel sector.'' The U.S. steel industry's capacity utilization rates have not been sustained. That said, making changes to the duties being imposed and/or quotas implemented are outside the scope of this rule.

Criteria Defining What Is Meant by Available ''immediately''

Comment (e)(1): September 11 rule defining what was meant by available ''immediately'' was a positive step that improved the 232 process. A commenter noted that setting a clear definition of ''available immediately'' at eight weeks is a reasonable timeline and helps provide stability to steel and aluminum-using manufacturers.

BIS response: Commerce agrees that providing a definition of ''immediately available'' was a positive step in providing greater transparency and consistency for the 232 exclusion process. However, defining ''immediately available'' as eight weeks meant that, in certain cases, U.S. producers could be held to a shorter delivery time than foreign competitors and was more restrictive than the timeframe needed by the importer for their business needs. As described below, to address this fairness issue and to create equal treatment, this interim final rule revises the criteria for available ''immediately'' and specifies that if an objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum, the objector must be able to make it available in accordance with the commercial needs of the U.S. user of the steel or aluminum, as described in the exclusion request. Under this revised criteria in paragraph (d)(4), the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester and the objecting producers to provide supplemental evidence supporting their claimed delivery times.

Comment (e)(2): Objections that do not clearly meet the ''immediately'' standard should be rejected. A commenter noted that objections to exclusion requests available on the 232 Exclusions Portal reveal numerous vague assertions that clearly do not meet the available ''immediately'' threshold set forth by Commerce. This commenter recommends that Commerce reject these objections outright.

BIS response: Commerce holds objectors to the standard specified in the regulations under paragraph (d) and requires objectors to complete the objection form, and the surrebuttal form as applicable, fully and accurately. If an objector is not able to meet the available ''immediately'' criteria, Commerce will not deny such an exclusion request. Requesters can provide additional information on the rebuttal form. In reviewing the exclusion request to make a final determination, Commerce takes into account information provided in the rebuttal to evaluate whether the objector can produce the article in sufficient quantity and quality, and within the time specified in the criteria in paragraph (d) of supplement no. 1 to part 705.

Comment (e)(3): Defining eight weeks as ''immediate delivery'' is unrealistic and it would be better to make the standard based on the nature of the product. A commenter noted that it is unrealistic to require domestic producers to supply a requested product in the volume requested within eight weeks as a prerequisite to filing a valid objection and that this requirement appears to reflect a misunderstanding of how both the steel industry and international shipping work. This commenter also noted that in determining that eight weeks is the appropriate timeframe, Commerce regrettably rejected a suggestion that the time frame should depend on the nature of the product—with simpler products subject to a shorter timeframe than more sophisticated products—and in any case, should be no shorter than 12 to 16 weeks.

BIS response: As described above, Commerce agrees that clarification is warranted for use of eight weeks under the available ''immediately'' criteria. The changes this rule makes will also be responsive to this commenter's concerns.

Comment (e)(4): Allowing foreign suppliers one year to supply the steel or aluminum for approved exclusions, but only allowing eight weeks for domestic suppliers creates an unfair playing field. A commenter noted that granted exclusions are valid for one year and will presumably be supplied by foreign producers over the course of that year, not all at once. This commenter noted that requiring a U.S. producer to supply the consumer within eight weeks makes little sense and runs counter to the rationale underlying the adjustments to imports ordered by the President.

BIS response: Commerce agrees and is making changes in the rule for how ''immediately'' is defined to create equal treatment for U.S. and foreign producers.

Comment (e)(5): ''Immediately'' should mean being able to provide the steel or aluminum as quickly as a foreign supplier. A commenter noted that the minimum standard that Commerce should establish for objections is 12 weeks (84 days), which they consider a reasonable and representative time for a foreign producer to make a simple steel item and ship it to the United States. This commenter recommended that Commerce should only determine that the domestic product is not ''immediately'' available when a domestic source cannot provide material before offshore suppliers.

BIS response: Commerce has retained eight weeks as part of the available ''immediately'' criteria under paragraph (d)(4) but, as described elsewhere in this rule, is also making changes to the criteria that are responsive to this commenter's concerns.

Comment (e)(6): Need to specify the quantity that needs to be supplied within the ''immediate delivery'' timeframe. A commenter noted that there is no indication in the current version of the regulations of the quantity that must be supplied within the ''immediate delivery'' timeframe. The commenter noted that the current regulations specify that if an objector is not currently producing the product at

issue, then ''the objector must identify how it will be able to produce the article within eight weeks,'' detailing in writing the timeline to start production. This commenter recommends clarifying whether this means the production must merely start, shipments of commercial quantities must begin, or the total quantity must be delivered within the specified time.

BIS response: Commerce agrees this should be clarified. As described below, this rule revises paragraph (d)(4) of supplement no. 1 to specify the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the date that a named foreign supplier can deliver the entire quantity of the requested product. The addition of the phrase ''and deliver'' after the term ''produce'' will address the concern raised by this commenter.

Comment (e)(7): Production capacity for steel and aluminum producers must be considered during objection and rebuttal process. As Commerce considers objections filed by steel and aluminum companies, Commerce must ask the steel and aluminum producers several probing questions to truly determine the capabilities of suppliers to meet the consuming industries' needs and consider these answers surrounding domestic capacity when making exclusion decisions. The commenter noted that these questions should include at a minimum: ''Do the steel or aluminum companies currently manufacture and supply the product in the United States? If so, have their deliveries to their customers been timely, and is so, for how long? What is the steel or aluminum companies' current manufacturing capacity and timeframe for ramping up if they currently do not have the capacity?''

BIS response: Commerce believes the information required on the objection form, surrebuttal form as applicable, and the criteria in paragraph (d) to supplement no. 1 that is used by Commerce, is sufficiently informative to determine the production capabilities of objectors. This information is also supplemented by the evidence provided through rebuttals and surrebuttals, and through CBI submitted in support of rebuttals and surrebuttals. Commerce does not believe additional questions are required to be added to the objection or surrebuttal forms in order to make determinations on the production capabilities of objectors.

Rebuttals and Surrebuttals

Comment (f)(1): Seven days is not enough time for rebuttals and surrebuttals. A commenter does not agree that allowing only seven days for such comments is appropriate. This commenter noted that considering the volumes of new information being submitted in some rebuttals, one week is not enough time for a domestic producer to analyze the information and offer a meaningful surrebuttal.

BIS response: Commerce does not agree. The length of time for decisions under the 232 exclusions process is a concern for many entities, including Commerce. The inclusion of the rebuttal and surrebuttal comment periods helps to better inform the 232 exclusion process for Commerce, but Commerce is also mindful not to allow these additional comment periods to add any more time to the review process than is needed. Commerce believes that those parties involved in a 232 submission that receives an objection or a rebuttal should place a priority on reviewing the objection or rebuttal in a timely fashion, submitting any warranted rebuttal or surrebuttal. Commerce believes a one-week period is sufficient for the review of an objection or rebuttal, and allows for the party to conduct any needed follow up conversations and to prepare and submit a rebuttal or surrebuttal as applicable.

Comment (f)(2): Allowing unlimited number of refilings of exclusions undermines the usefulness of objections, and the rebuttal/surrebuttal process. A commenter questioned whether rebuttals and surrebuttals are a worthwhile use of resources if requesters remain free to submit unlimited numbers of exemption requests. This commenter noted that a requester could, in lieu of a rebuttal, file a revised request addressing whatever deficiencies were identified in the objection. This commenter noted that this would alleviate some of the unfairness of requiring domestic producers to respond to untold volumes of new information in just a few days and would aid Commerce's analysis by promoting thoughtful and complete original application requests instead of reviews of hurried rebuttal and surrebuttal comments.

BIS response: As a general matter, Commerce believes that it is important to allow an unlimited number of exclusion requests to be submitted. As described above, the ability to submit a successive exclusion request is a key way that the 232 exclusion process addresses cases where an objection may have resulted in the denial of an exclusion request, but then subsequently no objector was able to deliver the steel or aluminum in the quantity and quality needed ''immediately.'' Therefore, Commerce does not agree that a restriction should be added to restrict the number of exclusion requests that may be submitted.

Comment (f)(3): Allowing unlimited refilings of exclusions allows for the potential to overwhelm potential objectors. A commenter noted that if Commerce continues the rebuttal and surrebuttal process, it should consider limiting a party's ability to file multiple exclusion requests for the same product. This commenter noted that the current system provides an incentive for entities seeking exclusions to submit them over and over again with only minor modifications in an attempt to overwhelm domestic producers so that domestic interests fail to file objections because there are simply too many requests or they believe an objection to have already been filed.

BIS response: As noted above, Commerce is reviewing the issue of the volume of articles subject to exclusion requests and objections and will address this issue in a subsequent IFR.

232 Exclusions Portal

Since the launch of the 232 Exclusions Portal, Commerce has implemented a number of enhancements that address some of the key comments received in response to the June 10 and May 26 rule. Commerce has highlighted the changes made to the 232 Exclusions Portal, which are responsive to these comments received in response to the June 10 rule, as well as some of the comments received on the May 26 notice. There are additional requested changes to the 232 Exclusions Portal in response to the June 10 rule and the May 26 notice that Commerce is still reviewing. Commerce will summarize and address those comments in at least one subsequent rule, although enhancements in the functionality of the 232 Exclusions Portal, similar to the enhancements described below, will likely be implemented on an ongoing basis as they are ready to be implemented.

Comment (g)(1): Ability to import previously-filed submissions. A commenter noted that allowing the ability to import previously-filed submissions would be extremely beneficial for exclusion requesters and objectors, reducing the time burdens on repeat users of the 232 Exclusions Portal. Another commenter noted that the nature of manual entry in the new 232 Exclusions Portal is likely to create

significant opportunity for errors and requires significantly more time and resource allocation than under the previous system. The ability to reuse information included in previously submitted 232 submission forms would be very beneficial. A commenter acknowledged that the user guide for the 232 Exclusions Portal provides information on creating a profile within web-browsers, but a simplified system for importing previously-filed submissions by users through their dashboard would be immensely beneficial for all users of the system.

BIS response: Commerce clarifies here that the AutoFill Feature of the 232 Exclusions Portal addresses these comments. The AutoFill Feature that launched with the 232 Exclusions Portal addresses several of the comments submitted in response to the June 10 rule. AutoFill enables users to effectively *import previous filings* by allowing them to fill out a filing once and then save that template for reuse in future filings. It also allows users to *save their in-progress filings* as templates. A native save/share feature is still under discussion.

Comment (g)(2): Increasing the search functionality in the 232 Exclusions Portal. Commerce received a number of comments requesting improvements to various aspects of the search functionality in the 232 Exclusions Portal. A commenter requested that product class should be a searchable field, and that product class should be added to the main portal screen with a filtering function. Another commenter noted that the search functionality needs to be improved by adding a simple ''find all'' type of search capability in the 232 Exclusions Portal. One commenter noted that the search functionality is not as good as it is in *www.regulations.gov.* Another commenter requested a change be made to allow the download of individual submissions and all data in the new portal. Specifically, this commenter noted that it is extremely important that all users can download both individual submissions (exclusion requests, objections, rebuttal, and surrebuttal filings) and the information found in the portal in its entirety, as can be done currently in *www.regulations.gov.* Another commenter noted that it is difficult to extract data for queried databases, particularly from the volume and origin fields. Another commenter requested allowing users to refresh the portal without resetting the filters.

BIS response: Commerce had addressed a number of these concerns with the 232 Exclusions Portal by improving the Public Data Extract functionality of the portal. The Public Data Extract tool allows users to *download a filterable and searchable set of all filed data* in the 232 Exclusions Portal, effectively functioning as an *advanced search feature.* Commerce will continue to consider additional measures to improve the Public Data Extract tool.

Comment (g)(3): Improving Dashboard functionality. A commenter requested that the dashboard allow organizations to allow others in their organizations to view submissions made by others in the same organization.

BIS response: Commerce has made changes under the Dashboard Limit to address these types of requests for additional Dashboard functionality. Commerce expanded the Dashboard View in the 232 Exclusions Portal in 2020, improving dashboard functionality by allowing users to see all of their filings in one location on the front page of their Dashboard.

Comment (g)(4): Allow extensions of time when 232 Exclusions Portal is not accessible. A commenter expressed concern about technical issues with accessing the new 232 Exclusions Portal. This commenter requested that if documented information technology issues with the portal occur, Commerce should be able to extend the time for companies to file exclusion requests or objections.

BIS response: Commerce has taken steps to address technical extensions for timelines for 232 submission. Specifically, BIS works with users on a case-by-case basis to address any technical issues encountered and take necessary corrective action. Occasionally these corrective measures may include reopening filing windows during periods in which they were inaccessible.

Changes Made in This Interim Final Rule To Improve the 232 Exclusions Process

Simplification of the Text

As described further below, this rule makes three changes to simplify the text for the 232 exclusions process by removing one of the supplements, and making conforming changes to add references to aluminum in the steel supplement; removing references to *www.regulations.gov*; and, as a conforming change, removing the Annex that provided steps for using *www.regulations.gov*.

When Commerce added supplements nos. 1 and 2 to part 705, the objective was to create two parallel supplements with one specific to the 232 exclusion process for steel under supplement no. 1, and a second one specific to the 232 exclusion process for aluminum under supplement no. 2. Commerce has reevaluated whether this parallel structure is needed because the vast majority of the text is identical between the two supplements and, when making updates to improve the regulatory provisions, it creates the potential for unintended differences between the two supplements and makes updating the two supplements more burdensome than necessary. For these reasons, in this rule Commerce is removing supplement no. 2 to part 705 and is making conforming changes to supplement no. 1 where information that is specific to aluminum needs to be added because of the removal of supplement no. 2.

This interim final rule updates and simplifies the text in supplement no. 1 by removing various references to *www.regulations.gov* and all text that was previously needed in supplement no. 1 to describe the previous process of using *www.regulations.gov* for submitting 232 submissions. At this time, there are no longer any more pending 232 exclusion requests in *www.regulations.gov*. Therefore, Commerce is removing those references to *www.regulations.gov* from supplement no. 1 in this rule, thus simplifying and shortening the text in supplement no. 1 considerably.

As an additional conforming change related to the removal of references to *www.regulations.gov,* this rule removes Annex 1 to Supplements No. 1 and 2 to Part 705—Steps for Using *Regulations.gov* to File Rebuttals and Surrebuttals. The additional guidance included in this Annex is no longer needed because *www.regulations.gov* is no longer being used for the 232 exclusions process. The 232 Exclusions Portal does not require guidance on the steps to be included in the regulations.

Adding Reminder Regarding Consequences for False Statements or Representations

This interim final rule adds a new Note 2 to Paragraph (b) to remind all parties submitting 232 submissions under supplement no. 1 to part 705 that it is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction [18 U.S.C. 1001(2018)]. As a conforming change, this interim final rule redesignates the existing Note to Paragraph (b) as Note 1 to Paragraph (b).

Improving the Fairness and Efficiency of the Review Process

In order to improve the efficiency of the review process, this interim final rule reduces the page limit for exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals. In paragraph (e), this rule removes the 25-page limit for exclusions and objections to submitted exclusions requests, and replaces that with a 5,000-word limit. In paragraph (f)(2), this rule removes the ten-page limit for rebuttals and replaces that with a 2,500-word limit. In paragraph (g)(2), this rule removes the ten-page limit for surrebuttals and replaces that with a 2,500-word limit.

232 Exclusion Request Volume Certification

This interim final rule makes changes to ensure that the volume request in exclusion requests is consistent with the past use of steel or aluminum by an exclusion requester. This interim final rule revises paragraph (c)(5) (*Substance of exclusion requests*) by redesignating the existing text of paragraph (c)(5) as a new paragraph (c)(5)(i). This interim final rule adds a new paragraph (c)(5)(ii) (*Certification for volume requested).*

New paragraph (c)(5)(i) specifies that in order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.,* imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, a certification needs to be made in the 232 Exclusions Portal when completing the submission of a 232 exclusion request. The 232 Exclusions Portal will include the text specified in paragraphs (c)(5)(ii)(A)–(E), and this exclusion request certification for volume requested must be signed in the 232 Exclusions Portal by an organization official specifically authorized to certify the document as being accurate and complete to the best of his/her knowledge.

The person signing the certification under paragraph (c)(5)(ii)(A) must attest that the exclusion requester intends to manufacture, process, or otherwise transform the imported product for which they have filed an exclusion request, or has a purchase order or orders for such products.

Under paragraph (c)(5)(ii)(B), the exclusion requester must certify that they do not intend to use the requested exclusion, if granted, solely to hedge or arbitrage the price.

Under paragraph (c)(5)(ii)(C), the exclusion requester must certify that they expect to consume, sell, or otherwise use the total volume of product across all their active exclusions and pending exclusion requests in the course of their organization's business activities within the next calendar year.

Under new paragraph (c)(5)(ii)(D), the exclusion requester is submitting an exclusion request for a product for which they previously received an exclusion, they must certify that they either imported the full amount of their approved exclusion(s) last year, or intended to import the full amount but could not due to one of the reasons specified in new paragraphs (c)(5)(ii)(D)(*1*)–(*3*). The criteria included in new paragraphs (c)(5)(ii)(D)(*1*)–(*3*) that must be attested to, if applicable, are intended to ensure that, if a requester did not import the full amount, there were legitimate business reasons justifying that outcome. These legitimate business reasons are loss of contract(s); business downturns; or other factors that were beyond the organization's control that directly resulted in less need for steel or aluminum articles.

Under new paragraph (c)(5)(ii)(E), the exclusion requester certifies that the exclusion amount requested this year is in line with what their organization expects to import based on their current business outlook. Lastly, paragraph (c)(5)(ii)(E) requires the exclusion requester to certify that, if contacted by Commerce, their organization will provide documentation that justifies the assertions in the certification regarding past imports of steel or aluminum articles and projections for the current year, as it relates to past and current calendar year exclusion requests.

This interim final rule adds a new Note 2 to paragraphs (c)(5)(i) and (ii) to make the public aware that an exclusion request that does not include a certification made in accordance with (c)(5)(i) and (ii) will be treated as an incomplete submission and will therefore be rejected.

Clarification of Eight Weeks and Available ''Immediately''

This rule makes changes to clarify when an objector would be required to be able to provide the steel or aluminum in the quantity and quality to which they were objecting on the basis that they could provide that steel or aluminum ''immediately.''

In the introductory text of paragraph (c)(6), this rule revises the criteria to clarify that an objector must be able to provide the steel or aluminum ''by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier,'' instead of being strictly limited to producing it within eight weeks.

In paragraph (c)(6)(i), this rule retains the term ''immediately,'' but clarifies that the aluminum or steel does not need to be produced within eight weeks in certain cases. This interim final rule clarifies that ''immediately'' now means produced and delivered within eight weeks or, if not possible, then produced and delivered within a time frame that is equal to or earlier than that needed by the requester as demonstrated by the time required to obtain the product from the requester's foreign supplier. This change is made to create a more equal playing field between U.S. objectors and foreign producers, and to ensure that U.S. producers are not given less time to be able to meet the steel or aluminum demand being requested in an exclusion request. For example, if a requester can obtain foreign-produced steel described in an exclusion request in 12 weeks, there is no reason to arbitrarily limit the U.S. producer to having to produce the steel within eight weeks. The change this interim final rule makes to the term ''immediately'' addresses this issue.

This interim final rule also revises paragraph (c)(6)(i) to address the scenario where an objector can produce and deliver a portion of the steel or aluminum that is being requested in the exclusion request. This new sentence clarifies that, consistent with current practice, Commerce may partially approve an exclusion request when an objector can produce and deliver a portion, which is less than 100 percent but 10 percent or more, of the amount of steel or aluminum being requested in the exclusion request. In such cases, Commerce may partially approve a requested exclusion for that percentage of imported steel or aluminum that the objector has demonstrated it can produce and deliver.

This interim final rule revises paragraph (d)(4) to clarify that, if an objector is not currently producing the steel or aluminum but can produce the aluminum or steel and make it available ''immediately,'' the objector still has ground to object to the exclusion request. This rule defines the term ''immediately'' to mean that the objector must be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier. It is incumbent upon both the exclusion requester and objecting producers to

provide supplemental evidence supporting their claimed delivery times.

General Approved Exclusions (GAEs)

This rule adds a new Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the 232 Exclusions Process, and a new Supplement No. 3 to Part 705—General Approved Exclusions (GAEs) for Aluminum Articles under the 232 Exclusions Process. These two supplements identify the steel and aluminum articles that have been approved for import under a GAE. This rule adds 108 GAEs for steel articles under supplement no. 2 part 705 and 15 GAEs for aluminum articles under supplement no. 3 to part 705. Each GAE is identified under the GAE identifier column, *e.g.,* GAE.1.S: 7304592030 (for the first approved GAE for steel) or GAE.1.A: 7609000000 (for the first approved GAE for aluminum).

The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain aluminum and steel articles may be authorized under a GAE consistent with the objectives of the 232 exclusions process as outlined in supplement no. 1 to this part. The GAEs described in these supplements may be used by any importer. The two new supplements specify that, in order to use a GAE, the importer must reference the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel or aluminum articles being imported. GAEs do not include quantity limits. The effective date for each GAE will be fifteen calendar days after the date of publication of a **Federal Register** notice either adding or revising a specific GAE identifier in supplement no. 1 to this part. There will be no retroactive relief for GAEs. This interim final rule also specifies that relief is only available to steel or aluminum articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 1 to this part. These GAEs are indefinite in length, but Commerce may at any time issue a **Federal Register** notice removing, revising, or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions, or additions to this supplement.

Other Changes and Clarifications to the 232 Exclusions Process

In paragraph (b)(5)(iii), this interim final rule adds a new paragraph (b)(5)(iii)(A) and redesignates existing paragraphs (b)(5)(iii)(A)–(C) as paragraphs (B) to (D). New paragraph (b)(5)(iii)(A) clarifies the process for handling CBI related to exclusion requests or objections by directing exclusion requesters and objectors to check the appropriate box in the 232 Exclusions Portal to indicate that the filer has relevant CBI for consideration when applicable. This new paragraph also clarifies the existing practice that if Commerce determines after review that the CBI is needed, Commerce will directly request the CBI.

In paragraph (c)(2) (*Identification of exclusion requests*), this rule removes the word ''distinct'' in the phrase ''distinct critical dimensions.'' This change is being made to avoid any potential confusion on the scope of ranges that are permissible under an exclusion request. This change will make clear that, provided the range being requested in an exclusion request is within the minimum and maximum range that is specified in the HTSUS statistical reporting number and applicable notes for the provision, a single exclusion request may be requested for that steel or aluminum article. Objections that indicate the ability to produce one or more products within the range, even if not the entire range, will be considered to be valid objections to an exclusion request.

Also in paragraph (c)(2), this rule removes the Note to paragraph (c)(2) because it is no longer needed. The exclusions form on the 232 Exclusions Portal does not include that block for countries subject to a quantitative limitation, so the instructions in the Note to paragraph (c)(2) are no longer needed.

In paragraph (c)(6) (*Criteria used to review exclusion requests*) introductory text, this interim final rule adds one sentence at the end for clarification and to alert the public that items for which a broader determination has been made will be identified in supplements no. 2 or 3 to part 705.

In paragraph (d)(3) (*Time limit for submitting objections to submitted exclusions requests*), this interim final rule makes revisions to specify that the 30-day clock starts at 11:59 p.m. Eastern Time on the calendar day an exclusion request is posted in the 232 Exclusions Portal.

In paragraph (h)(1)(i), this interim final rule adds the term ''rejected'' before the phrase ''or denied'' to clarify that exclusion requests that do not satisfy the requirements specified in paragraphs (b) and (c) of this supplement may be rejected or denied.

In paragraph (h)(2)(iv) (*Validity period for exclusion requests*), this interim final rule makes revisions to add the phrase ''from the date of the signature on the decision memo'' to clarify that exclusions will generally be approved for one year from the date of the signature on the decision memo.

Types of Comments Commerce Is Requesting on This Rule

Commerce is not seeking comments regarding the duties or quantitative limitations themselves or the exclusion and objection process overall. Rather, Commerce seeks comments on whether the specific changes included in this fourth interim final rule have addressed earlier concerns with the 232 exclusions process. Specifically, Commerce encourages comments on these 232 exclusions process changes and on which features are an improvement and comments highlighting any areas of concern or suggestions for improvement.

Commerce will continue to make improvements to the 232 exclusions process, including improvements based on comments received on this rule, and parties will be notified of any additional changes to the 232 exclusions process and of any new features to the 232 Exclusions Portal.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to Proclamations 9704 and 9705 of March 8, 2018, and Proclamations 9776 and 9777 of August 29, 2018, the establishment of procedures for an exclusions process under each Proclamation shall be published in the

Federal Register and are exempt from Executive Order 13771.

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This final regulation involves four collections currently approved by OMB with the following control numbers

- Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0139).
- Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0138).
- Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum (OMB control number 0694–0141).
- Procedures for Submitting Requests for Expedited Relief from Quantitative Limits—Existing Contract: Section 232 National Security Investigations of Steel Imports (OMB control number 0694–0140).

This rule is expected to reduce the burden hours for one of the collections associated with this rule, OMB control number 0694–0139. This reduction is expected because of the addition of 108 GAEs for steel and 15 GAEs for aluminum, which is expected to result in a decrease of 5,000 exclusion request per year. This is expected to be a reduction in 5,000 burden hours for a total savings of 740,000 dollars to the public. This is also expected to be a reduction in 30,000 burden hours for a total savings of 1,170,000 dollars to the U.S. Government. The steel and aluminum articles that have been identified as being eligible for GAEs have typically not received any objections, so the addition of these new GAEs is not estimated to result in a decrease in the number of objections, rebuttals, or surrebuttals received by BIS. This rule is not expected to increase the burden hours for two of the collections associated with this rule, OMB control numbers 0694–0138, 0694–0141 as minimal changes are anticipated. BIS is making a change to the collection for OMB control number 0694–0140 to account for certification that needs to be made in the 232 Exclusions Portal under paragraph (c)(5)(ii). Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to *https://www.reginfo.gov/public/do/PRAMain*.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). As explained in the reports submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States, and therefore the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests ''based upon specific national security considerations.'' Commerce started this process with the publication of the March 19 rule and refined the process with the publication of the September 11 and June 10 rules and is continuing this process with the publication of today's interim final rule. The revisions to the exclusion request process are informed by the comments received in response to the March 19 rule and Commerce's experience with managing the 232 exclusions process. Commenters on the past rules (March 19, September 11 and June 10 rules) were generally supportive and welcomed the idea of creating an exclusion process, but most of the commenters believe the exclusion process, although improving over time, still could be significantly improved in order for it to achieve the intended purpose. The commenters identified a number of areas where transparency, effectiveness, and fairness of the process could be improved. Commerce understands the importance of having a transparent, fair, and efficient product exclusion request process, consistent with the directive provided by the President to create this type of process to mitigate any unintended consequences of imposing the tariffs on steel and aluminum in order to protect critical U.S. national security interests. The publication of today's rule should make further improvements in all three respects, but because of the scope of this new process, BIS is publishing today's rule as an interim final rule with a request for comments.

In addition, Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment, and that there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effective date, because such delays would be either impracticable or contrary to the public interest. In order to ensure that the actions taken to adjust imports do not undermine users of steel or aluminum that are subject to the remedial actions instituted by the Proclamations and that are critical to protecting the national security of the United States, the Presidential Proclamations authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, to grant exclusions for the import of goods not currently available in the United States in a sufficient quantity or satisfactory quality, or for other specific national security reasons. The Presidential Proclamations further directed the Secretary to, within ten days, issue procedures for submitting and granting these requests for exclusions—this interim final rule fulfills that direction. As described above, the Secretary complied with the direction from the President with the publication of the March 19 rule, as well as in the improvements made in the September 11 and June 10 rules, and is taking the next step in improving the 232 exclusions process by making needed changes with the publication of today's rule. The immediate implementation of an effective exclusion request process, consistent with the intent of the Presidential Proclamations, also required creating a process to allow any individual or organization in the United States to submit objections to submitted exclusion requests. The objection process was created with the publication of the March 19 rule, and the rebuttal and surrebuttal process was added in the publication of the September 11 rule to further improve the 232 exclusions process. The publication of today's rule makes needed changes in the 232 exclusions process to create the type of fair, transparent, and efficient process that

was intended in the March 19, September 11 and June 10 rules, but was still found lacking by commenters in several key respects. Today's rule makes critical changes to ensure a fair, transparent, and efficient exclusion process.

If this interim final rule were to be delayed to allow for public comment or to provide for a thirty day delay in the date of effectiveness, companies in the United States would be unable to immediately benefit from the improvements made in the exclusion, objection, rebuttal, and surrebuttal process and could face significant economic hardship, which could potentially create a detrimental effect on the general U.S. economy. Whether they were supportive of tariffs or against tariffs, the comments received on the March 19, September 11 and June 10 rules were clear that an efficient exclusion request, objection, rebuttal, and surrebuttal process was needed, that the March 19 rule had not sufficiently created such a process, and that, although substantial improvements were made with the publications of the September 11 and June 10 rules, additional improvements were needed. Commenters noted that, if specific improvements are not made, significant economic consequences could occur. Commenters also thought the inefficiencies of the process could undermine other critical U.S. national security interests. Likewise, our national security could be impacted if Commerce lacked adequate information to make a fair, transparent and efficient determination for all parties involved and to ensure the critical national security considerations are being protected.

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

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. Supplement No. 1 to part 705 is revised to read as follows:

Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Adjustment of Imports of Aluminum and Steel Imposed Pursuant to Section 232 of the Trade Expansion Act of 1962, as Amended

On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the January 11, 2018 reports of the Secretary of Commerce on the effects of imports of aluminum and steel mill articles (steel articles) on the national security and determining that adjusting aluminum and steel imports through the imposition of duties is necessary so that their imports will no longer threaten to impair the national security. Clause 3 of Proclamations 9704 and 9705 also authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, to grant exclusions from the duties at the request of directly affected parties located in the United States if the requested steel or aluminum article is determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations. On August 29, 2018, the President issued Proclamation 9776. Clause 1 of Proclamation 9776, authorizes the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and such other senior Executive Branch officials as the Secretary deems appropriate, to provide relief from the applicable quantitative limitations set forth in Proclamation 9740 and Proclamation 9759 for steel articles and as set forth in Proclamation 9739 and 9758 for aluminum articles and their accompanying annexes, as amended, at the request of a directly affected party located in the United States for any steel or aluminum article determined by the Secretary to not be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality. The Secretary is also authorized to provide such relief based upon specific national security considerations.

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the duties and quantitative limitations imposed by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President and the process for rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the methods of submission, and the information that must be included in such submissions.

(b) *Required forms.* The 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) includes four web-based forms that are to be used for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On the 232 Exclusions Portal, each web-based form is available on the portal at the bottom of the preceding filing. For example, a party submitting an objection will access the objection form by scrolling to the bottom of the exclusion request, a rebuttal filer will access the rebuttal form by scrolling to the bottom of the objection form, and a surrebuttal filer would access the surrebuttal form by scrolling to the bottom of the rebuttal form. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests and the forms specified under paragraphs (b)(3) and (4) of this supplement for submitting rebuttals and surrebuttals. In addition, submitters of exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals to the 232 Exclusions Portal will be required to complete a web-based registration on the 232 Exclusions Portal prior to submitting any

documents. In order to register, submitters will be required to provide an email and establish a password for the account. After completing the registration, submitters will be able to login to an account on the 232 Exclusions Portal and submit exclusion requests, objections, rebuttals, and surrebuttal documents.

(1) *Form required for submitting exclusion requests.* The full name of the form used for submitting steel exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports.* The full name of the form used for submitting aluminum exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Exclusion Request.*

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted steel exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Steel.* The name of the form used for submitting objections to submitted aluminum exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Objection.*

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to steel objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Steel.* The name of the form used for submitting rebuttals to aluminum objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Rebuttal.*

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to steel objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Steel.* The name of the form used for submitting surrebuttals to aluminum objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Aluminum.* The Title of the web-based fillable form for both steel and aluminum in the 232 Exclusions Portal is *Surrebuttal.*

Note to Paragraphs (b)(1) Through (4): On the 232 Exclusions Portal, each exclusion request is assigned a distinct ID #, which is also used with its associated 232 submissions, but preceded with an acronym indicating the file type: Exclusion Requests (ER ID #), Objection (OF ID #), Rebuttals (RB ID #) and Surrebuttals (SR ID #). For an example of the four possible types of 232 submissions associated with a single exclusion request, you could have ER ID 237, OF ID 237, RB ID 237 and SR ID 237. The 232 Exclusions Portal will automatically assign the two letter designator depending on the type of web-based form being submitted in the portal and will assign an ID number to the original exclusion request and that ID number will be common to any objection, rebuttal, or surrebuttal submitted pertaining to the same exclusion request.

(5) *Public disclosure and information protected from public disclosure.* (i) Information submitted in 232 submissions will be subject to public review and made available for public inspection and copying, except for the information described in paragraph (b)(5)(iii) of this supplement. Individuals and organizations must fully complete the relevant forms.

(ii) *Information not subject to public disclosure should not be submitted.* Personally identifiable information, including social security numbers and employer identification numbers, should not be provided. Information that is subject to government-imposed access and dissemination or other specific national security controls, *e.g.,* classified information or information that has U.S. Government restrictions on dissemination to non-U.S. citizens or other categories of persons that would prohibit public disclosure of the information, may not be included in 232 submissions. Individuals and organizations that have confidential business information (''CBI'') that they believe relevant to the Secretary's consideration of the 232 submission should so indicate in the appropriate field of the relevant form, or on the rebuttal or surrebuttal submission, following the procedures in paragraph (b)(5)(iii) of this supplement.

(iii) *Procedures for identifying, but not disclosing confidential or proprietary business information (CBI) in the public version, and procedures for submitting CBI.* For persons seeking to submit confidential or proprietary business information (CBI), the 232 submission available to the public must contain a summary of the CBI in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within ten percent of the actual figure. If an individual portion of the numerical data is voluminous (*e.g.,* five pages of numerical data), at least one percent of the numerical data, representative of that portion, must be summarized. In order to submit CBI that is not for public release as a separate email submission to the U.S. Department of Commerce, you must follow the procedures in paragraphs (b)(3)(iii)(A)–(D) of this supplement to assist the U.S. Department of Commerce in identifying these submissions and associating these submissions with the respective 232 submission in the 232 Exclusions Portal. Submitters with classified information should contact the U.S. Department of Commerce for instructions on the appropriate methods to send this type of information.

(A) For CBI related to exclusion requests or objections, check the appropriate box in the 232 Exclusions Portal indicating that the filer has relevant CBI for consideration. If Commerce determines after review that the CBI is needed, Commerce will directly request the CBI from the exclusion requester or objector as warranted.

(B) For CBI related to rebuttals or surrebuttals, on the same day that you submit your 232 submission in the 232 Exclusions Portal, submit the CBI via email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBI is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov;* and CBI for surrebuttals use *232surrebuttals@doc.gov.*

(C) For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests the email subject line must only include the original 232 Exclusions Portal Exclusion Request (ER) ID # and the body of the email must include the 232 Exclusions Portal Rebuttal (RB) ID #, or Surrebuttal (SR) ID # you received from the 232 Exclusions Portal when you successfully submitted your rebuttal or surrebuttal. These naming conventions used in the 232 Exclusions Portal, respectively, will assist the U.S. Department of Commerce to associate the CBI that will not be posted in the 232 Exclusions Portal with the information included in the public submission.

(D) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of five pages per rebuttal or surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission in the 232

Exclusions Portal following the procedures identified in this supplement, as appropriate.

Note 1 to Paragraph (b) for Submissions of Supporting Documents (Attachments): Supporting attachments must be emailed as PDF documents.

Note 2 to Paragraph (b): It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction [18 U.S.C. 1001(2018)].

(c) *Exclusion requests.* (1) *Who may submit an exclusion request?* Only directly affected individuals or organizations located in the United States may submit an exclusion request. An individual or organization is ''directly affected'' if they are using steel in business activities (*e.g.,* construction, manufacturing, or supplying steel product to users) in the United States.

(2) *Identification of exclusion requests.* Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (*e.g.,* galvanized, coated), and critical dimensions covered by a common HTSUS statistical reporting number. Separate exclusion requests must be submitted for aluminum products with critical dimensions covered by a common HTSUS statistical reporting number. The exclusion request forms allow for minimum and maximum dimensions. A permissible range must be within the minimum and maximum range that is specified in the HTSUS statistical reporting number and applicable notes. Separate exclusion requests must also be submitted for products falling in more than one ten-digit HTSUS statistical reporting number. The U.S. Department of Commerce will approve exclusions on a product basis, and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product-based exclusion request to apply to additional importers. Other directly-affected individuals or organizations located in the United States that wish to submit an exclusion request for a steel or aluminum product that has already been the subject of an approved exclusion request may submit an exclusion request under this supplement. These additional exclusion requests by other directly-affected individuals or organizations in the United States are not required to reference the previously approved exclusion but are advised to do so, if they want Commerce to take that exclusion into account when reviewing a subsequent exclusion request. Directly affected individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

(3) *Where to submit exclusion requests?* All exclusion requests must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(4) *No time limit for submitting exclusion requests.* Exclusion requests may be submitted at any time.

(5)(i) *Substance of exclusion requests.* An exclusion request must specify the business activities in the United States within which the requester is engaged that qualify the individual or organization to be directly affected and thus eligible to submit an exclusion request. The request should clearly identify, and provide support for, the basis upon which the exclusion is sought. An exclusion will only be granted if an article is not produced in the United States in a sufficient, reasonably available amount, and of a satisfactory quality, or for specific national security considerations.

(ii) *Certification for volume requested.* In order to ensure that the volume requested in an exclusion request is consistent with legitimate business needs for the same steel or aluminum articles obtained (*i.e.,* imported from abroad either directly by the requester or indirectly by purchasing from distributors) by the entity requesting an exclusion, the following certification in paragraphs (c)(5)(ii)(A)–(E) must be acknowledged in the 232 Exclusions Portal when completing the submission of a 232 exclusion request. The exclusion request certification for volume requested must be signed by an organization official specifically authorized to certify the document (the certification being made in the 232 Exclusions Portal) as being accurate and complete. The undersigned certifies in the 232 Exclusions Portal that the information herein supplied in response to this paragraph is complete and correct to the best of his/her knowledge. By signing the certification below, I attest that:

(A) My organization intends to manufacture, process, or otherwise transform the imported product for which I have filed an exclusion request or I have a purchase order or orders for such products;

(B) My organization does not intend to use the exclusion for which I have filed an exclusion request, if granted, solely to hedge or arbitrage the price;

(C) My organization expects to consume, sell, or otherwise use the total volume of product across all my active exclusions and pending exclusion requests in the course of my organization's business activities within the next calendar year;

(D) If my organization is submitting an exclusion request for a product for which we previously received an exclusion, I certify that my organization either imported the full amount of our approved exclusion(s) last year or intended to import the full amount but could not due to one of the following reasons:

(1) Loss of contract(s);

(2) Unanticipated business downturns; or

(3) Other factors that were beyond my organization's control that directly resulted in less need for steel or aluminum articles; and

(E) I certify that the exclusion amount requested this year is in line with what my organization expects to import based on our current business outlook. If requested by the Department of Commerce, my organization shall provide documentation that justifies its assertions in this certification regarding its past imports of steel or aluminum articles and its projections for the current year, as it relates to past and current calendar year exclusion requests.

Note to Paragraphs (c)(5)(i) and (ii): Any exclusion request that does not include a certification made in accordance with (c)(5)(ii) will be treated as an incomplete submission and will therefore be rejected.

(6) *Criteria used to review exclusion requests.* The U.S. Department of Commerce will review each exclusion request to determine whether an article described in an exclusion request meets any of the following three criteria: The article is not produced in the United States in an amount which can be delivered in a time period equal to or less than the time needed for the requester to obtain the product from their foreign supplier, is not produced in the United States in a satisfactory quality, or for specific national security considerations. The reviews will be made on a case-by-case basis to determine whether the requester has shown that the article is not produced in the United States in sufficient and reasonably available amount or of a satisfactory quality, or that there are specific national security considerations to grant the exclusion. To provide

additional context on the meaning and application of the criteria, paragraphs (c)(6)(i)–(iii) of this supplement define keys terms used in the review criteria and provide illustrative application examples. The U.S. Department of Commerce will use the same criteria identified in paragraphs (c)(6)(i)–(iii) of this supplement when determining whether it is warranted to approve broader product-based exclusions based on trends the Department may see over time with 232 submissions. The public is not permitted to request broader product-based exclusions that would apply to all importers, because the Department makes these determinations over time by evaluating the macro trends in 232 submissions. Items for which a broader determination has been made will be identified in supplements no. 2 or 3 to part 705.

(i) *Not produced in the United States in a sufficient and reasonably available amount.* The exclusion review criterion ''Not produced in the United States in a sufficient and reasonably available amount'' means that the amount that is needed by the end user requesting the exclusion is not available immediately in the United States to meet its specified business activities. Available ''immediately'' means that a product (whether it is currently being produced in the United States, or could be produced in the United States) can be delivered by a U.S. producer ''within eight weeks'', or, if that is not possible, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester's foreign supplier. Furthermore, to the extent that an objector can produce and deliver a portion, which is less than 100 percent, but ten percent or more, of the amount of steel or aluminum needed in the business activities of the user in the United States described in the exclusion request, the Department of Commerce may deny a requested exclusion for that percentage of imported steel or aluminum. It is incumbent upon both the exclusion requester, and objecting producers, to provide supplemental evidence supporting their claimed delivery times.

(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion ''not produced in the United States in a satisfactory quality'' does not mean the steel or aluminum needs to be identical, but it does need to be equivalent as a substitute product. ''Substitute product'' for purposes of this review criterion means that the steel or aluminum being produced by an objector can meet ''immediately'' (*see* paragraph (c)(6)(i) of this supplement) the quality (*e.g.,* industry specs or internal company quality controls or standards), regulatory, or testing standards, in order for the U.S.-produced steel to be used in that business activity in the United States by that end user.

(A) *Steel application examples.* For a steel example, if a U.S. business activity requires that steel plates to be provided must meet certain military testing and military specification standards in order to be used in military combat vehicles, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. As another steel example, if a U.S. business activity requires that steel tubing to be provided must meet certain Food and Drug Administration (FDA) approvals to be used in medical devices, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another steel example would be a food manufacturer that requires tin-plate approval from the U.S. Department of Agriculture (USDA) to make any changes in the tin-plate it uses to make cans for fruit juices. An objector would not have to make steel for use in making the cans that was identical, but it would have to be a ''substitute product,'' meaning it could meet the USDA certification standards.

(B) *Aluminum application examples.* For an aluminum example, if a U.S. business activity requires that aluminum to be provided must meet certain military testing and military specification standards in order to be used in military aircraft, that requirement would be taken into account when reviewing the exclusion request and any objections, rebuttals, and surrebuttals submitted. Another aluminum example would be a U.S. pharmaceutical manufacturer that requires approval from the Food and Drug Administration (FDA) to make any changes in its aluminum product pill bottle covers. An objector would not have to make aluminum for use in making the product covers that was identical, but it would have to be a ''substitute product,'' meaning it could meet the FDA certification standards.

(iii) *For specific national security considerations.* The exclusion review criterion ''or for specific national security considerations'' is intended to allow the U.S. Department of Commerce, in consultation with other parts of the U.S. Government as warranted, to make determinations whether a particular exclusion request should be approved based on specific national security considerations.

(A) *Steel application examples.* For example, if the steel included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using steel, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(B) *Aluminum application examples.* For example, if the aluminum included in an exclusion request is needed by a U.S. defense contractor for making critical items for use in a military weapons platform for the U.S. Department of Defense, and the duty or quantitative limitation will prevent the military weapons platform from being produced, the exclusion will likely be granted. The U.S. Department of Commerce, in consultation with the other parts of the U.S. Government as warranted, can consider other impacts to U.S. national security that may result from not approving an exclusion, *e.g.,* the unintended impacts that may occur in other downstream industries using aluminum, but in such cases the demonstrated concern with U.S. national security would need to be tangible and clearly explained and ultimately determined by the U.S. Government.

(d) *Objections to submitted exclusion requests.* (1) *Who may submit an objection to a submitted exclusion request*? Any individual or organization that manufactures steel or aluminum articles in the United States may file objections to steel exclusion requests, but the U.S. Department of Commerce will only consider information directly related to the submitted exclusion request that is the subject of the objection.

(2) *Identification of objections to submitted exclusion requests.* When submitting an objection to a submitted exclusion request, the objector must locate the exclusion request and submit the objection in response to the request directly in the 232 Exclusions Portal. Once the relevant exclusion request has

been located, an individual or organization that would like to submit an objection will access the objection form by scrolling to the bottom of the exclusion request form and then fill out the web-based form for submitting their objection to the exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) no later than 30 days after the related exclusion request is posted, with the 30-day clock starting at 11:59 p.m. Eastern Time on the calendar day an exclusion request is posted.

(4) *Substance of objections to submitted exclusion requests.* The objection should clearly identify, and provide support for, its opposition to the proposed exclusion, with reference to the specific basis identified in, and the support provided for, the submitted exclusion request. If the objector is asserting that it is not currently producing the steel or aluminum identified in an exclusion request but can produce the steel or aluminum and make that steel or aluminum available ''immediately'' in accordance with the time required for the user of steel or aluminum in the United States to obtain the product from its foreign suppliers, the objector must identify how it will be able to produce and deliver the quantity of steel or aluminum needed either within eight weeks, or if after eight weeks, by a date which is earlier than the named foreign supplier would deliver the entire quantity of the requested product. It is incumbent on both the exclusion requester, and objecting producers, to provide supplemental evidence supporting their claimed delivery times. This requirement includes specifying in writing to Department of Commerce as part of the objection, the timeline the objector anticipates in order to start or restart production of the steel included in the exclusion request to which it is objecting. For example, a summary timeline that specifies the steps that will occur over the weeks needed to produce that steel or aluminum would be helpful to include, not only for the Department of Commerce review of the objection, but also for the requester of the exclusion and its determination whether to file a rebuttal to the objection. The U.S. Department of Commerce understands that, in certain cases, regulatory approvals, such as from the Environmental Protection Agency (EPA) or some approvals at the state or local level, may be required to start or restart production and that some of these types of approvals may be outside the control of an objector.

(e) *Limitations on the size of submissions.* Each exclusion request and each objection to a submitted exclusion request is to be limited to a maximum of 5,000 words, inclusive of all exhibits and attachments, but exclusive of the respective forms and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this supplement may submit a rebuttal to any objection(s) posted in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). The objections to submitted exclusion requests process identified under paragraph (d) of this supplement already establish a formal response process for steel and aluminum manufacturers in the United States.

(1) *Identification of rebuttals.* When submitting a rebuttal, the individual or organization that submitted the exclusion request will access the rebuttal form by scrolling to the bottom of the objection form and then filling out the web-based form for submitting their rebuttal to the objection in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for rebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement and the objection process identified under paragraph (d) of this supplement, the rebuttal process requires the submission of a government form as specified in paragraph (b)(3) of this supplement. Each rebuttal is to be limited to a maximum of 2,500 words, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of rebuttals.* Rebuttals must address an objection to the exclusion request made by the requester. If multiple objections were received on a particular exclusion, the requester may submit a rebuttal to each objector. The most effective rebuttals will be those that aim to correct factual errors or misunderstandings in the objection(s).

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after the posting of the last objection in the 232 Exclusions Portal. The rebuttal period ends seven days after the rebuttal comment period is opened. This seven-day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f) of this supplement) posted to their objection to an exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(1) *Identification of surrebuttals.* When submitting a surrebuttal, the individual or organization that submitted the objection will access the surrebuttal form by scrolling to the bottom of the rebuttal form and then filling out the web-based form for submitting their surrebuttal to the rebuttal in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for surrebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d) of this supplement, and the rebuttal process identified under paragraph (f) of this supplement, the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4) of this supplement. The surrebuttal must be submitted in the 232 Exclusions Portal. Each surrebuttal is to be limited to a maximum of 2,500 words, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

(3) *Substance of surrebuttals.* Surrebuttals must address a rebuttal to an objection to the exclusion request made by the requester. The most effective surrebuttals will be those that aim to correct factual errors or misunderstandings in the rebuttal to an objection.

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal comment period after the posting of the last rebuttal to an objection to an exclusion request in

the 232 Exclusions Portal. The surrebuttal period ends seven days after the surrebuttal comment period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) *Disposition of 232 submissions*—(1) *Disposition of incomplete submissions.* (i) Exclusion requests that do *not* satisfy the requirements specified in paragraphs (b) and (c) of this supplement will be rejected.

(ii) Objection filings that do not satisfy the requirements specified in paragraphs (b) and (d) will not be considered.

(iii) Rebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (f) will not be considered.

(iv) Surrebuttal filings that do not satisfy the requirements specified in paragraphs (b) and (g) will not be considered.

(2) *Disposition of complete submissions*—(i) *Posting of responses in the 232 Exclusions Portal.* The U.S. Department of Commerce will post responses (decision memos) in the 232 Exclusions Portal to each exclusion request. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted through the 232 Exclusions Portal.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period in the 232 Exclusions Portal has expired and no objections have been submitted, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will post a decision granting the exclusion request in the 232 Exclusions Portal.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds*—(A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in the 232 Exclusions Portal. Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request. Companies are able to receive retroactive relief on granted requests dating back to the date of the request's submission on unliquidated entries.

(B) *Contact for obtaining duty refunds.* The U.S. Department of Commerce does not provide refunds on tariffs. Any questions on the refund of duties should be directed to CBP.

(iv) *Validity period for exclusion requests.* Exclusions will generally be approved for one year from the date of the signature on the decision memo, but may be valid for shorter or longer than one year depending on the specifics of the exclusion request; any objections filed; and analysis by the U.S. Department of Commerce and other parts of the U.S. Government, as warranted, of the current supply and demand in the United States, including any limitations or other factors that the Department determines should be considered in order to achieve the national security objectives of the duties and quantitative limitations.

(A) *Examples of what fact patterns may warrant a longer exclusion validity period.* Individuals or organizations submitting exclusion requests or objections may, and are encouraged to specify how long they believe an exclusion may be warranted and specify the rationale for that recommended time period. For example, an individual or organization submitting an exclusion request may request a longer validity period if there are factors outside of their control that may make it warranted to grant a longer period. These factors may include regulatory requirements that make a longer validity period justified, *e.g.,* for an aircraft manufacturer that would require a certain number of years to make a change to an FAA-approved type certificate or for a manufacturer of medical items to obtain FDA approval. Business considerations, such as the need for a multi-year contract for steel with strict delivery schedules in order to complete a significant U.S. project by an established deadline, *e.g.,* a large scale oil and gas exploration project, is another illustrative example of the types of considerations that a person submitting an exclusion request may reference.

(B) *Examples of what criteria may warrant a shorter exclusion validity period.* Objectors are encouraged to provide their suggestions for how long they believe an appropriate validity period should be for an exclusion request. In certain cases, this may be an objector indicating it has committed to adding new capacity that will be coming online within six months, so a shorter six-month period is warranted. Conversely, if an objector knows it will take two years to obtain appropriate regulatory approvals, financing and/or completing construction to add new capacity, the objector may, in responding to an exclusion that requests a longer validity period, *e.g.,* three years, indicate that although they agree a longer validity period than one year may be warranted in this case, that two years is sufficient.

(C) None of the illustrative fact patterns identified in paragraphs (h)(2)(iv)(A) or (B) of this supplement will be determinative in and of themselves for establishing the appropriate validity period, but this type of information is helpful for the U.S. Department of Commerce to receive, when warranted, to help determine the appropriate validity period if a period other than one year is requested.

(3) *Review period and implementation of any needed conforming changes*—(i) *Review period.* The review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals. The estimated 106-day period begins on the day the exclusion request is posted in the 232 Exclusions Portal, and ends once a decision to grant or deny is made on the exclusion request.

(ii) *Coordination with other agencies on approval and implementation.* Other agencies of the U.S. Government, such as CBP, will take any additional steps needed to implement an approved exclusion request. These additional steps needed to implement an approved exclusion request are not part of the review criteria used by the U.S. Department of Commerce to determine whether to approve an exclusion request, but are an important component in ensuring the approved exclusion request can be properly implemented. The U.S. Department of Commerce will provide CBP with information that will identify each approved exclusion request pursuant to this supplement. Individuals or organizations whose exclusion requests are approved must report information concerning any applicable exclusion in such form as CBP may require. These exclusion identifiers will be used by importers in the data collected by CBP in order for CBP to determine whether an import is within the scope of an approved exclusion request.

(i) *For further information.* If you have questions on this supplement, you may contact the Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–5642 or *Steel232@bis.doc.gov* regarding steel exclusion requests, or at (202) 482–4757 or *Aluminum232@bis.doc.gov* regarding aluminum exclusion requests. The U.S. Department of Commerce website includes FAQs, best practices other companies have used for submitting exclusion requests and objections, and helpful checklists. The U.S. Department of Commerce has also included a manual providing instruction on the 232 Exclusions Portal for exclusion requests submitted on or after June 13, 2019, titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') and posted online at (*https://www.commerce.gov/page/section-232-investigations*) to assist your understanding when making 232 submissions in the 232 Exclusions Portal.

■ 3. Effective December 29, 2020 Supplement No. 2 to part 705 is revised to read as follows:

Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the 232 Exclusions Process

This supplement identifies steel articles that have been approved for import under a General Approved Exclusion (GAE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain steel articles may be authorized under a GAE consistent with the objectives of the 232 Exclusions Process as outlined in supplement no. 1 to this part. The GAEs described in this supplement may be used by any importer. GAEs do not include quantity limits. Each GAE identifier will be effective fifteen calendar days after publication of a **Federal Register** notice either adding or revising a specific GAE identifier. There is no retroactive relief for GAEs. Relief is only available to steel articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 2 to this part. In order to use a GAE, the importer must include the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel articles being imported. These GAEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a **Federal Register** notice removing, revising or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions or additions to this supplement.

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.1.S: 7304592030	7304592030. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, HEAT-RESISTING STL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.2.S: 7304592080	7304592080. TUBES/PIPES/H PRFLS ALLOY STL, SMLSS, CIRC CS, NOT COLD-TRTD, SUIT FOR BOILERS ETC, NOT HT-RSST STL, OS DIAM >406.4MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.3.S: 7220900060	7220900060. OTHER FLAT-ROLLED STAINLESS STL, WDTH <600MM, FURTH WRKD THAN COLD-RLD, </=0.5% OR >/=24% NICKEL, <15% CHROMIUM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.4.S: 7222406000	7222406000. ANGLES SHAPES AND SECTIONS STAINLESS STEEL, OTHER THAN HOT ROLLED, NOT DRILLED, NOT PUNCHED, AND NOT OTHERWISE ADVANCED.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.5.S: 7306901000	7306901000. OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, RIVETED/SIMILARLY CLOSED (NOT WELDED).		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.6.S: 7212600000	7212600000. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, CLAD.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.7.S: 7227901060	7227901060. BARS/RODS TOOL STL (NOT HIGH-SPEED), HOT-RLD, IRR COILS, NOT TEMPRD/TREATD/PARTLY MFTD, NOT BALL BEARING STEEL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.8.S: 7220207060	7220207060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THICKNESS >0.25MM BUT </=1.25MM, </=0.5% NICKEL, <15% CHROMIUM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.9.S: 7223005000	7223005000. FLAT WIRE OF STAINLESS STEEL		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.10.S: 7220208000	7220208000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK </=0.25MM, RAZOR BLADE STL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.11.S: 7217108060	7217108060. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, NOT HEAT-TREATED, DIAM <1.0MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.12.S: 7226923060	7226923060. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, OTHER THAN BALL-BEARING STEEL.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.13.S: 7229905016	7229905016. ROUND WIRE OTHER ALLOY STL, DIAM <1.0MM		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.14.S: 7215500018	7215500018. OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, <0.25% CARBON, DIAMETER OR CROSS-SECTN >/=76MM BUT <228MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.15.S: 7304598060	7304598060. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, OS DIAMETER >285.8MM BUT <406.4MM, WALL THK<12.7MM.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.16.S: 7228501040	7228501040. OTHER BARS/RODS TOOL STL (NOT HIGH-SPEED), COLD-FRMD/FNSHD, MAX CS <18MM, OTHER THAN OF ROUND OR RECTANGULAR CROSS SECTION WITH SURFACES GROUND, MILLED, OR POLISHED.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.17.S: 7304246030	7304246030. TUBING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, OUTSIDE DIAM </=114.3MM, WALL THK >9.5 MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.18.S: 7229905031	7229905031. ROUND WIRE OTHER ALLOY STL, WITH DIAMETER >/=1.0MM BUT <1.5MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.19.S: 7304598010	7304598010. TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, NOT COLD-TREATED, NOT HEAT-RESISTANT, OUTSIDE DIAM <38.1MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.20.S: 7219310010	7219310010. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, COLD-RLD, THK >/=4.75MM, COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.21.S: 7304598045	7304598045. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, NOT CLD-TRTD, NOT HEAT-RESISTANT, OS DIAMETER >190.5MM BUT <285.8MM, WALL THK<12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.22.S: 7306401090	7306401090. OTH TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, WELDED, CIRC CS, WALL THK <1.65MM, </=0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.23.S: 7220206010	7220206010. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK >1.25MM, >0.5% NICKEL, >1.5% BUT <5% BY WEIGHT OF MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.24.S: 7211296080	7211296080. FLAT-ROLLED IRON/NONALLOY STL, WIDTH >300MM BUT <600MM, NOT CLAD/PLATED/COATED, COLD-RLD, >/=0.25% CRBN, THK </=1.25MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.25.S: 7217201500	7217201500. FLAT WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.26.S: 7219120026	7219120026. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >6.8MM BUT <10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.27.S: 7219320020	7219320020. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >3MM BUT <4.75MM, COILS, >0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.28.S: 7304243010	7304243010. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OUTSIDE DIAM <215.9MM, WALL THK <12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.29.S: 7219220035	7219220035. FLAT-ROLLED STAINLESS STL, THICKNESS >/=4.75MM BUT <10MM, WIDTH >/=600MM BUT <1575MM, HOT-RLD, NOT COILS, THK 4.75-10MM, >0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.30.S: 7222403085	7222403085. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CROSS SECTION <80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.31.S: 7222403045	7222403045. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CS >/=80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.32.S: 7219110060	7219110060. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.33.S: 7304515005	7304515005. TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.34.S: 7219330025	7219330025. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >1MM BUT <3MM, COILS, </=0.5% NICKEL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.35.S: 7217901000	7217901000. WIRE, IRON OR NONALLOY STEEL, COATED WITH PLASTICS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.36.S: 7219110030	7219110030. FLAT-ROLLED STAINLESS STL, WIDTH >/=600MM BUT <1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.37.S: 7217108030	7217108030. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAMETER >/=1.0MM BUT <1.5MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.38.S: 7212200000	7212200000. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, ELECTROLYTICALLY PLATED/COATED WITH ZINC.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.39.S: 7217204560	7217204560. ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, DIAMETER >/=1.0MM BUT <1.5MM, >/=0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.40.S: 7220206060	7220206060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, COLD-RLD, THK >1.25MM, </=0.5% NICKEL, <15% CHROMIUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.41.S: 7217108025	7217108025. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, DIAM <1.0MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.42.S: 7220121000	7220121000. FLAT-ROLLED STAINLESS STL, WIDTH >/=300MM BUT <600MM, HOT-RLD, THK <4.75MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.43.S: 7209900000	7209900000. FLAT-ROLLED IRON/NONALLOY STL, WDTH >/=600MM, COLD-RLD, NOT CLAD/PLATED/COATED, WHETHER OR NOT IN COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.44.S: 7213913020	7213913020. BARS/RODS IRON/NA STL, IRR COILS, HOT-RLD, CIRC CS<14MM DIAM, NOT TEMPRD/TREATD/PARTLY MFTD, WELDING QUALITY WIRE ROD.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.45.S: 7306617060	7306617060. OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, SQ/RECT CS, WALL THK <4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.46.S: 7216330090	7216330090. H SECTIONS IRON/NONALLOY STL, HOT-RLD/DRWN/EXTRD, HEIGHT >/=80MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

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GAE.47.S: 7217905030	7217905030. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, <0.25% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.48.S: 7226923030	7226923030. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, TOOL STEEL OTH THAN HIGH-SPEED, BALL-BEARING STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.49.S: 7219120051	7219120051. FLAT-ROLLED STAINLESS STL, WIDTH >/=1370MM BUT <1575MM, HOT-RLD, COILS, THICKNESS >/=4.75MM BUT <6.8MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.50.S: 7227906020	7227906020. BARS/RODS OTHER ALLOY STL, IRR COILS, HOT-RLD, NOT TOOL STL, WELDING QUALITY WIRE RODS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.51.S: 7217905090	7217905090. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, >/=0.6% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.52.S: 7219220040	7219220040. FLAT-ROLLED STAINLESS STL, HOT-RLD, NOT COILS, THK >/=4.75 MM BUT <10MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM, WIDTH >1575MM BUT <1880MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.53.S: 7219320038	7219320038. FLAT-ROLLED STAINLESS STL, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, COILS, WIDTH >600MM BUT <1370MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.54.S: 7219320045	7219320045. FLAT-ROLLED STAINLESS STL, WDTH >/=1370MM, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, NOT COILS.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.55.S: 7219350005	7219350005. FLAT-ROLLED STAINLESS STL, WDTH >/=600MM, COLD-RLD, THK <0.5MM, COILS, >0.5% BUT <24% NICKEL, >1.5% BUT <5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.56.S: 7219320036	7219320036. FLAT-ROLLED STAINLESS STL, COLD-RLD, THICKNESS >/=3MM BUT <4.75MM, COILS, WIDTH >600MM BUT <1370MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, >1.5% BUT <5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.57.S: 7304901000	7304901000. TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NONCIRCULAR CROSS SECTION, WALL THK >/=4MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.58.S: 7304390002	7304390002. TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, NOT COLD-TRTD, SUITABLE FOR BOILERS ETC, OS DIAM <38.1MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.59.S: 7219120071	7219120071. FLAT-ROLLED STAINLESS STL, WDTH >600MM BUT <1370MM, HOT-RLD, COILS, THICKNESS >/=4.75MM BUT <10MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </=1.5% OR >/=5% MOLYBDENUM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.60.S: 7225501110	7225501110. FLAT-ROLLED OTH ALLOY STL, WDTH >/=600MM, COLD-RLD, TOOL STEEL, HIGH-SPEED STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
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GAE.62.S: 7220125000	7220125000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, HOT-RLD, THK <4.75MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.63.S: 7226928005	7226928005. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, COLD-RLD, NOT TOOL STL, THK >0.25MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.64.S: 7217106000	7217106000. OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.65.S: 7219120021	7219120021. FLAT-ROLLED STAINLESS STL, WIDTH >/=1370MM BUT </=1575MM, HOT-RLD, COILS, THICKNESS >6.8MM BUT </=10MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
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GAE.67.S: 7304244040	7304244040. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAMETER >/=215.9MM BUT </=285.8MM, WALL THK >/=12.7MM.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.68.S: 7302101015	7302101015. OTHER RAILS IRON/NONALLOY STL, NEW, NOT HEAT TREATED, >30KG/M.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.69.S: 7304413005	7304413005. TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD, EXT DIAM <19MM, HIGH-NICKEL ALLOY STL.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
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Annex 1 to Supplements No. 1 and 2 to part 705 [Removed]

■ 4. Annex 1 to Supplements No. 1 and 2 to part 705 is removed.

■ 5. Effective December 29, 2020. add Supplement No. 3 to part 705 to read as follows:

Supplement No. 3 to Part 705—General Approved Exclusions (GAEs) for Aluminum Articles Under the 232 Exclusions Process

This supplement identifies aluminum articles that have been approved for import under a General Approved Exclusion (GAE). The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, makes these determinations that certain aluminum articles may be authorized under a GAE consistent with the objectives of the 232 exclusions process as outlined in supplement no. 1 to this part. The GAEs described in this supplement may be used by any importer. GAEs do not include quantity limits. Each GAE identifier will be effective fifteen calendar days after publication of a **Federal Register** notice either adding or revising a specific GAE identifier. There is no retroactive relief for GAEs. Relief is only available to aluminum articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplement no. 2 to this part. In order to use a GAE, the importer must reference the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the aluminum articles being imported. These GAEs are indefinite in length, but the Department of Commerce on behalf of the Secretary of Commerce may at any time issue a **Federal Register** notice removing, revising or adding to an existing GAE in this supplement as warranted to align with the objectives of the 232 exclusions process as described in supplement no. 1 to this part. The Department of Commerce on behalf of the Secretary of Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions or additions to this supplement.

GAE identifier	Description of aluminum that may be imported (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
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GAE.3.A: 7607196000	7607196000. ALUMINUM FOIL OF THICKNESS	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
GAE.4.A: 7604210010	7604210010. ALUMINUM ALLOY HOLLOW PROFILES OF HEAT-TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTE 6 TO THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
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GAE.13.A: 7604295090	7604295090. ALUMINUM ALLOY BARS AND RODS, OTHER THAN ROUND CROSS SECTION, OTHER THAN HEAT-TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTES 5 & 6 OF THIS CHAPTER.	.....	85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].

GAE identifier	Description of aluminum that may be imported (at 10-digit Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.14.A: 7601209095	7601209095. UNWROUGHT ALUMINUM ALLOY, OTHER THAN COILS OF UNIFORM CROSS-SECTION </=9.5 MM, CONTAINING <25% SILICON, OTHER THAN ALLUMINUM VANADIUM MASTER ALLOY, OTHER THAN REMELT SCRAP INGOT, OTHER THAN SHEET INGOT, OTHER THAN FOUNDRY INGOT.		85 FR [INSERT FR PAGE NUMBER AND 12/14/2020].
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Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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