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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2017–0056]

RIN 0579–AE42

Removal of Emerald Ash Borer Domestic Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the domestic quarantine regulations for the plant pest emerald ash borer. This action will discontinue the domestic regulatory component of the emerald ash borer program as a means to more effectively direct available resources toward management and containment of the pest. Funding previously allocated to the implementation and enforcement of these domestic quarantine regulations will instead be directed to nonregulatory options to mitigate and control the pest.

DATES: Effective January 14, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Bolton, National Policy Manager, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1231; (301) 851–3594; Herbert.Bolton@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Emerald ash borer (EAB, *Agrilus planipennis*) is a destructive wood-boring pest of ash (*Fraxinus* spp.) native to China and other areas of East Asia. First discovered in the United States in southeast Michigan in 2002, EAB is well-suited for climatic conditions in the continental United States and is able to attack and kill healthy trees in both natural and urban environments. As a result, EAB infestations have been detected in 35 States and the District of

Columbia, with additional infestations that have not yet been detected likely.¹ The Animal and Plant Health Inspection Service (APHIS), through notice and comment rulemaking, instituted a domestic quarantine program for EAB that has been in place since 2003 (see 68 FR 59082–59091, Docket No. 02–125–1).

The regulations in “Subpart J—Emerald Ash Borer” (7 CFR 301.53–1 through 301.53–9, referred to below as the regulations) list quarantined areas that contain or are suspected to contain EAB. The regulations also identify, among other things, regulated articles and the conditions governing the interstate movement of such regulated articles from quarantined areas in order to prevent the spread of EAB more broadly within the United States.

Since the implementation of the domestic quarantine program, several factors had adversely affected its overall effectiveness in managing the spread of EAB. First, during the Midwestern housing boom that began in the 1990s, ash trees often were planted in new housing developments because of their hardiness and general resistance to drought conditions. Developers frequently sourced these trees from nurseries that were later determined to be heavily infested with EAB and that were subsequently put under quarantine.² It was several years after the issuance of domestic quarantine regulations before a revised survey apparatus, using a lure-based trap, was developed in 2007. This revised survey apparatus identified many long-standing infestations of EAB in residential areas, leading to a substantial increase in the number of counties under quarantine.³

¹ The list of quarantined areas is available at https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/eab-areas-quarantined.pdf.

² That Michigan nurseries shipped infested nursery stock prior to development of the EAB regulations, see Haack, R.A. et al. *Emerald Ash Borer Biology and Invasion History*, pp. 1–14 Chapter 1 in: Van Driesche, R.G. and Reardon, R., Ed. *Biology and Control of Emerald Ash Borer*. USDA, Forest Service, Forest Health Technology Enterprise Team, Morgantown, WV, FHTET–2014–09, March 2015. Referred to below as *Haack et al. https://www.fs.fed.us/foresthealth/technology/pdfs/FHTET-2014-09_Biology_Control_EAB.pdf*.

³ See Abell, K., et al., *Trapping Techniques for Emerald Ash Borer and Its Introduced Parasitoids*, Chapter 7 in: Van Driesche, R.G. and Reardon, R., Ed. *Biology and Control of Emerald Ash Borer*. USDA, Forest Service, Forest Health Technology Enterprise Team, Morgantown, WV, FHTET–2014–09, March 2015.

Second, the regulations did not prevent the spread of EAB throughout its geographical range, which has expanded over time. In fiscal year (FY) 2016 alone, APHIS issued 16 Federal Orders designating additional quarantined areas for EAB, and many of these Federal Orders designated multiple quarantined areas⁴. For example, one of the Federal Orders designated an additional 44 counties as quarantined areas for EAB. From an initial quarantined area of 13 counties in Michigan, now more than one quarter of the geographical area of the conterminous United States is under quarantine for EAB.

In light of these difficulties, on September 19, 2018, we published in the **Federal Register** a proposed rule (83 FR 47310–47312, Docket No. APHIS–2017–0056) to remove the domestic quarantine regulations for EAB in order to direct available resources towards management and containment of the pest.⁵ We solicited comments concerning our proposal for 60 days ending November 19, 2018.

We received 146 comments by the close of the comment period. They were from another Federal agency, State departments of agriculture, State departments of forestry and/or natural resources, Tribal nations, a group representing the wooden pallet industry within the United States, conservation groups, arborists, foresters, and private citizens.

Of the commenters, 25 suggested that we finalize the proposed rule as written. The remaining commenters raised concerns or questions regarding the rule and its supporting documents. We discuss these comments below, by topic.

Basis for the Proposed Rule

Several commenters interpreted the proposed rule to be based on a determination that EAB is not a significant plant pest. Similarly, several commenters interpreted the proposed rule to be based on a desire to provide relief to regulated entities within areas currently quarantined for EAB, or a desire to reduce Federal regulation. One

⁴ To view these Federal Orders, go to https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/emerald-ash-borer/ct_quarantine.

⁵ To view the proposed rule, its supporting documents, and the comments that we received, go to <https://www.regulations.gov/docket?D=APHIS-2017-0056>.

commenter stated that the basis for the rule was a February 2017 Executive Order 13771, which directs Federal agencies to identify two regulations for repeal for each new regulation promulgated.⁶ Another commenter stated that the rule was an effort by Northern and Middle-Atlantic States to deliberately adversely impact Southern and Western States. The commenters cited multiple examples of EAB's destructiveness, and urged us to retain the regulations.

The proposed rule was not based on a determination that EAB is an insignificant plant pest, nor was it based on a desire to reduce or repeal Federal regulations or provide regulatory relief to currently regulated entities, regardless of the efficacy of the regulations, or a desire by Northern and Middle-Atlantic States to deliberately adversely impact other States. Rather, it was based on a determination that the domestic quarantine regulations have been unable to prevent the spread of EAB. This is reflected in the size of the quarantined area for EAB at the time the 2018 proposed rule was issued. At that time, more than 1,100 counties in the United States were under quarantine, comprising an area of almost 880,000 square miles, or more than one quarter of the geographical area of the conterminous United States. Since the proposed rule was issued, three additional States, nine counties, and portions of an additional county were added to the quarantined area for EAB. As we mentioned earlier in this document, this represents an exponential increase from the initial quarantined area, which was comprised of 13 counties in Michigan.

We discuss some of the factors that led to the spread of EAB later in this document, under the section titled "Need to Retain Existing Quarantine Regulations."

Efficacy of Existing Quarantine Regulations

A number of commenters interpreted the rule to be based on our determination that the domestic quarantine regulations have proven ineffective at preventing the spread of EAB, but disagreed with the validity of this determination. The commenters often cited personal experience or anecdotal examples of the efficacy of the current regulations or pointed to the efficacy of other Federal domestic quarantine programs administered by

APHIS, such as that for Asian longhorned beetle (ALB).

We acknowledge the possible validity of the experiences and examples provided by the commenters, but do not consider them to be indicative of the overall efficacy of the domestic quarantine program for EAB. On the whole, the program has been unable to prevent the spread of EAB, as evidenced by the current size of the quarantined area relative to the 13 counties in Michigan that comprised the initial quarantined area.

In that regard, the success of one Federal domestic quarantine program is not indicative of the success of another. For example, as one commenter pointed out, APHIS and State departments of agriculture have been able to eradicate several localized populations of ALB and release areas from quarantine. This has not occurred within the EAB program; not a single area has ever been released from quarantine.

One commenter stated that there was no means for APHIS to ascertain the full effects of the current program at precluding the spread of EAB.

We agree that ascertaining each and every effect of the current program is not possible, but do not consider such an evaluation necessary in order to determine whether the program on the whole has been able to prevent the spread of EAB. The size of the quarantined area for EAB at the time the proposed rule was issued, relative to the size of the initial quarantined area of 13 counties in Michigan, is a reliable indicator that the program was unable to prevent the spread of EAB.

Need To Retain Existing Quarantine Regulations

Many commenters stated that it was necessary to retain the regulations to prevent the further spread of EAB, and that removal of the regulations would place them at a heightened risk of EAB introduction and establishment. Some commenters lived within currently quarantined areas but stated that EAB was not present in their area or was not widely prevalent based on survey results. Other commenters lived in areas that were immediately outside the quarantined areas and were concerned that removing restrictions on the movement of host material could hasten the introduction of EAB into their area. Finally, some of the commenters lived in Western States (States west of the Rocky Mountains) and stated that, because of geographical boundaries between the currently quarantined areas and their State, natural spread was unlikely, at least for the foreseeable future. Those commenters stated that

the only way EAB was likely to be introduced to their State was through human-assisted movement, and that removing the quarantine would increase the likelihood that infested material was moved into their State. A number of these commenters stated that native ash in their State was in riparian or forest environments, and that deforestation as a result of EAB could have significant adverse impacts, such as increased likelihood of flooding.

With regard to those commenters within the currently quarantined areas, we disagree that removing the Federal quarantine regulations places the commenters at a heightened risk of EAB spread or has environmental or economic impacts. This is for two reasons.

The first reason is that, in 2012, APHIS issued a Federal Order⁷ allowing unrestricted interstate movement of host articles within a contiguous quarantined area. This Federal Order is still in effect; thus, finalizing the proposed rule will have no net impact on interstate movement of articles within this area.

The second reason is that, consistent with our statutory limitations under the Plant Protection Act (PPA, 7 U.S.C. 7711 *et seq.*) the Federal quarantine regulations for EAB pertained only to interstate movement of regulated articles in commerce. This did not address noncommercial movement of regulated articles, intrastate movement, or natural spread. With respect to natural spread, research suggests a mated female EAB can fly up to 12.5 miles a day.⁸ Moreover, a female that mates can live up to 6 weeks.⁹ This does not preclude the possibility that some mated female EAB may fly more than 100 miles before mortality.

With regard to those commenters currently immediately outside the quarantined area, we also disagree that removing the Federal quarantine regulations places the commenters at a heightened risk of EAB spread or has environmental or economic impacts. This is also for two reasons. The first is the ability of EAB to naturally and rapidly spread without human assistance. The second is the lack of effective detection methods for EAB. EAB is a cryptic pest and there is not an effective pheromone lure for EAB;

⁷ The Federal Order is available at https://nationalplantboard.org/wp-content/uploads/docs/spro/spro_eab_2012_05_31.pdf.

⁸ Taylor, R.A.J., *et al.* Flight Performance of *Agilus planipennis* (Coleoptera: Buprestidae) on a Flight Mill and in Free Flight. 2010. Journal of Insect Behavior. 23: 128–148.

⁹ Cappaert, David, *et al.* 2005. Emerald Ash Borer in North America: A research and regulatory challenge. American Entomologist. 51: 152–165.

⁶ See <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>.

thus, trap catches are often a lagging indicator of a long-standing and sizable established population for EAB.¹⁰ In general, when EAB is initially detected via survey, we have found that an established population has typically been present in the area a minimum of 3 to 5 years undetected.¹¹

Visual detection of EAB also has significant limitations. Visual detection is almost always based on finding signs or symptoms of EAB infestation in declining ash trees, rather than visual detection of the pest itself. There is thus a lag period between initial establishment and detection, and correspondingly, between initial pest establishment and designation of the area as a quarantined area for EAB. This is also why we do not consider areas of low pest prevalence to exist for EAB—a handful of detections are indicative of a much larger established population.¹²

With regard to commenters in Western States, we disagree that the only way EAB could enter the State is through human-assisted movement. We acknowledge that the presence of geographical barriers, such as the Rocky Mountain range, and the absence of host material along the Great Plains, could significantly impede the rate of natural spread of EAB. We also acknowledge that EAB's feeding patterns in the absence of ash and deciduous hardwood are still being researched and evaluated, and it is, accordingly, possible that EAB does not adapt quickly to the absence of preferred host material. However, it is the Agency's experience that widely prevalent plant pests tend, over time, to spread throughout the geographical range of their hosts, and we have no reason to consider EAB to be biologically unique in this manner.

Nonetheless, we agree that, in the absence of Federal regulations, there could be a higher likelihood that EAB will be introduced into a Western State sooner through the movement of infested host material than would occur through natural spread. However, the degree to which this likelihood is

increased is difficult to quantify. In the absence of Federal regulations, States are free to establish their own regulations governing the movement of EAB host material into their State, and at least one such Western State signaled their intent to do so in their comments on the rule. Additionally, there will still be awareness and outreach efforts, which we discuss later in this document, to dissuade the public from non-commercial movement of EAB host material into Western States. To the extent that we can, we will support communities in these efforts, and we have delayed publication of this final rule to afford States time to develop regulations regarding the movement of EAB host material.

Several commenters stated that the economic analysis that accompanied the proposed rule was flawed insofar as it was based on the same assumption that removing the regulations would not contribute to the spread of EAB. A number of the commenters also stated that the rule should have been accompanied by an environmental assessment or environmental impact statement assessing the likelihood of cumulative impacts of human-assisted spread of EAB that would not otherwise occur if the regulations remained in place.

We agree that there is an economic cost if EAB is introduced into a Western State sooner through the movement of infested host material than would occur through natural spread. For that reason, to the extent that we can, in the economic analysis for this final rule, we list activities that have historically been associated with the new introduction of EAB into a previously unaffected area, along with a range of costs for each activity. However, we also acknowledge a high degree of uncertainty regarding the number of entities that will incur those costs, for the reasons mentioned above.

Finally, we considered the proposed rule to be categorically exempt from preparation of an environmental assessment or environmental impact statement. We did this because the National Environmental Policy Act (NEPA, 42 U.S.C. 4231 *et seq.*) and subsequent agency implementing regulations instruct Agencies to evaluate the environmental impacts of proposed Federal actions. We determined that this action is a class of actions previously determined to meet categorically excludable criteria as established in 7 CFR 372.5. A record of categorical exclusion analysis was prepared to assess and confirm that there would be no adverse environmental impacts as a result of this rulemaking.

We acknowledge that commenters suggested that we consider the impact of human-assisted spread of EAB that would not otherwise occur. However, our experience with EAB has shown that human-assisted spread continued regardless of the regulations, which are limited, and that the natural spread of EAB is rapid, significant, and extremely difficult to control. For the reasons discussed above, this remains our determination.

Two commenters asked if any studies exist that examine the possible ecological and societal impacts of EAB establishment in the Western United States. One of the commenters stated that, if no such studies exist, APHIS should conduct such a study prior to issuing a final rule.

We are not aware of any such studies. For reasons discussed in the section below, we do not consider delays in issuing or making effective this final rule to be in the best long-term interests of the Federal EAB program.

Request for Delay of Final Rule

A number of commenters stated that Federal deregulation of EAB is probably inevitable given the scope of the area under quarantine, but asked for a delay in the publication or effective date of the final rule to allow the commenter's State or community to plan for deregulation. Several of these commenters stated that they were unaware of APHIS' intent to deregulate EAB until the proposed rule was issued and stated that APHIS had done an inadequate job communicating this intent. All commenters urged us to continue regulatory and enforcement activities until the rule became effective.

The proposed rule is a result of several years of public discussions with an increasing number of stakeholders. APHIS began expressing concerns regarding the efficacy of the EAB program in public forums as early as 2012, when the FY 2013 budget submitted to Congress indicated that we had not discovered effective tools to prevent the spread of EAB, and that, as a result, we had not discovered a means to efficiently use resources to prevent the spread of EAB.¹³ In the same budget,

¹³ APHIS continues to face challenges in addressing tree and wood pests such as EAB, and seeks to efficiently use resources to address pests where success is achievable, such as eradicating the ALB. The EAB is an exotic forest pest that has killed millions of ash trees in the United States. First found in Michigan in 2002, it has spread to 14 additional States (Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin) and continues to spread. Due to the lack of tools available, the Agency changed focus

Continued

¹⁰ See Ryall, K., *Detection and Sampling of Emerald Ash Borer (Coleoptera: Buprestidae) Infestations*, 2015. *Can. Entomol.* 147:290–299. Found at <https://www.cambridge.org/core/journals/canadian-entomologist/article/detection-and-sampling-of-emerald-ash-borer-coleoptera-buprestidae-infestations/671D5F7160E19CDA09A4159D4B903A1B>. See also Marshall, J.M., A.J. Storer, I. Fraser, and V.C. Mastro. 2010. *Efficacy of trap and lure types for detection of Agrilus planipennis (Col., Buprestidae) at low density*. *Journal of Applied Entomology*, Vol. 134, 4, pp. 296–302. Found at: <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1439-0418.2009.01455.x>.

¹¹ See Haack *et al.*

¹² See https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/EAB-FieldRelease-Guidelines.pdf.

we also indicated that biocontrol activities could be a more viable long-term strategy than regulatory and enforcement activities.

In 2015, we discussed the possibility of deregulation of EAB to the Continental Dialogue on Non-Native Forest Insects and Diseases, an audience of State and local governments, forestry groups, non-governmental organizations, and other Federal agencies.¹⁴ In 2016, we discussed possibly deregulating EAB, and shifting program resources to biocontrol activities, with the National Association of State Foresters and the National Plant Board, which represents the plant protection division of State departments of agriculture; these discussions continued into 2017.¹⁵ Additionally, throughout the development of the proposed rule, APHIS talked with numerous State, local, and Tribal communities on a regular basis to discuss concerns that the communities had with possible deregulation. This included the ongoing discussion with the National Association of State Foresters and the National Plant Board mentioned above, a Tribal meeting in which nine Tribes who had expressed concerns about the rule were invited to further elaborate on those concerns and discuss possible remediations, several webinars with State departments of agriculture, and discussions with the New York Partnership for Invasive Species Management and The Nature Conservancy.

The proposed rule itself provided notification pursuant to the Administrative Procedure Act (APA, 5 U.S.C. 505 *et seq.*) of APHIS' intent to remove the domestic quarantine regulations for EAB, and APHIS provided notification of the publication of the rule through the APHIS

from an eradication strategy to preventing the human-assisted spread and minimizing the impacts of natural spread of the pest through early detection and quarantine regulations.

With the requested decrease, the Agency would further reduce its role in addressing the EAB and scale back activities to manage an outreach program, provide national coordination and oversight, and continue developing biological control agents. Biological control is the most promising option for managing EAB populations over the long term. In 2013, APHIS proposes to release biological control agents in all States that request releases." Found at: <https://www.usda.gov/obpa/congressional-justifications/fy2013-explanatory-notes>.

¹⁴ For further information regarding the Continental Dialogue on Non-Native Forest Insects and Diseases, go to <https://continentalforestdialogue.org/>.

¹⁵ For further information regarding the National Association of State Foresters, go to <https://www.stateforesters.org/>. For further information regarding the National Plant Board, go to <https://nationalplantboard.org/>.

Stakeholder Registry in accordance with standard Agency practices.

We recognize the damage and impact that EAB can inflict on a community and appreciate the desire of commenters to be afforded additional time to prepare for possible deregulation within their particular State or community. As we mentioned previously, to the extent that we can, we will support communities in these efforts, and we have delayed publication of this final rule to afford States time to develop regulations regarding the movement of EAB host material. However, we do not believe an additional delay in the effective date of the rule to be in the best interests of the Federal EAB program.

As mentioned above, regardless of funding or tactics employed, the EAB domestic quarantine regulations have been, on the whole, ineffective at preventing the spread of EAB, especially given the natural dispersion capabilities of the pest. Continuing to devote program resources to regulatory and enforcement activities that have proven thus far to be ineffective over an ever-expanding quarantined area is an inefficient use of those resources.

Additionally, continuing to devote resources to these activities limits APHIS from reallocating the resources to activities that could be of greater long-term benefit to slowing the spread of EAB or helping affected communities recover from EAB infestation. These include further development and deployment of EAB biological control organisms; further research into integrated pest management of EAB that can be used at the local level to help safeguard an ash population of significant importance to a community; and further research, in tandem with the U.S. Department of Agriculture (USDA) Forest Service and other Federal agencies, into the phenomenon of "lingering ash," or ash trees that are still alive and present in the landscape in areas of otherwise heavy infestation, and integration of the findings of that research into the EAB program.

Several commenters asked for APHIS to provide guidance or best practices in management of EAB to State and local communities prior to issuing this final rule.

To the extent that resources allow, we have provided and intend to continue to provide such assistance. For example, we have an agreement with the North Carolina State University, North Carolina Department of Agriculture and Consumer Services, and the City of Raleigh, NC at their waste-water management location to assist these organizations in investigating EAB

phenology within a watershed environment.

Biological Control for EAB

Several commenters construed the proposed rule to suggest that APHIS has identified biological control (biocontrol) organisms that are effective at preventing the spread of EAB. The commenters asked for the scientific evidence in support of those claims. Other commenters stated that it was their understanding that several of the organisms had limited geographical ranges and could not be used in every area of the United States that is currently infested with EAB. Several commenters stated that the "real world" efficacy of biocontrol within the EAB program had not been proven and all usage to date has been experimental and study based. Commenters also asked for more information regarding the biocontrol agents and asked whether APHIS has evaluated the agents for their interactions with non-target organisms and other effects on the environment prior to authorizing their use within the EAB program.

While we did state in the proposed rule that biocontrol has been a "promising approach" towards mitigating and controlling for EAB, we also clarified that the biocontrol efforts that demonstrated such promising results had been in protecting ash regrowth in areas that had been previously infested with EAB.¹⁶ We did not state that we had discovered a biocontrol organism that would be effective at preventing EAB from spreading into currently unaffected areas. The biocontrol organisms currently used within the EAB program are tiny stingless parasitic wasps that reproduce within EAB. Because of their dependency on an EAB host, these parasitoids cannot be used in an area until it is already infested with EAB.

Four biocontrol organisms are currently used by the EAB program within areas that are infested with EAB. The four organisms currently used are *Spathius agrilli*, *Spathius galinae*, *Tetrastichus planipennisi*, and *Oobius agrilli*. Commenters are correct that the organisms differ in terms of biology and ecological range. Information regarding the biology of the organisms, as well as current parameters for their release within the domestic quarantine program, are found here: https://www.aphis.usda.gov/plant_health/plant_pest_info/emerald_ash_b/downloads/EAB-FieldRelease-Guidelines.pdf. There are no current plans to revise those parameters as a

¹⁶ See 87 FR 47310.

result of this final rule; however, we consistently review emerging research and recovery records to refine our approach.

Pursuant to APHIS' NEPA implementing regulations in 7 CFR part 372, APHIS prepares environmental assessments before the initial release into the environment of any biocontrol organism. Among other things, these assessments evaluate known and possible non-target effects.

Several commenters asked APHIS to provide a specific budgetary allocation or percentage of total program funding that we would commit to allocating to biocontrol research and deployment following removal of the domestic quarantine regulations.

We cannot project a specific budgetary allocation or percentage of total funding to biocontrol efforts following deregulation. As we discuss below, we have already begun to obligate program funds on biocontrol in the coming years, and it is APHIS' current intent to devote a substantial portion of funding for EAB each fiscal year to biocontrol. However, APHIS regularly monitors all EAB program activities for efficacy, including the use of biocontrol. If research into integrated pest management or "lingering ash" suggests that these are more efficient uses of program resources than biocontrol, we will reallocate funds to these activities accordingly. Additionally, we note that funding directed towards any tactic or technique in the EAB program is contingent on the level of Federal appropriations for the program as a whole, which can differ from fiscal year to fiscal year.

Several commenters expressed concern that the rule did not propose a regulatory framework that would specify parameters for APHIS' release of biocontrol organisms. The commenters stated that, in the absence of such a framework, APHIS could divert funds to other tactics within the EAB program or to another domestic quarantine program entirely following removal of the domestic quarantine regulations for EAB.

We do not consider a regulatory framework for the release of biological control to be necessary. As we mentioned above, guidelines regarding the release of biocontrol organisms have already been developed and are publicly available, and APHIS has adhered to them in the absence of a regulatory framework for the release of biological control within the EAB program. Additionally, as we have to date, we will update these guidelines on an ongoing basis to incorporate additional findings or the approval of additional

biocontrol organisms. We will notify the public via the APHIS Stakeholder Registry of any substantive change to the guidelines. A sign-up for the Registry is found here: <https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new>.

Because of the time required to rear, evaluate, and release parasitoid populations, budgeting for EAB biocontrol requires allocating funds in one fiscal year for the development of biocontrol organisms that will be released into the environment in another fiscal year. Accordingly, we do not need to put a regulatory framework in place in order to ensure that funds are obligated for release efforts in the coming years; these funds have already been obligated.

There is a possibility that, in subsequent years, APHIS could divert funding from biocontrol to other tactics and techniques within the EAB program. However, we consider this flexibility to be in the best interest of the EAB program. As we mentioned above, we regularly monitor all EAB program activities for efficacy. If a program activity proves to be a more effective use of Agency funds than biocontrol, it is appropriate for us to reallocate funding accordingly.

Similarly, Federal funding for the EAB program is part of a larger line item Congressional appropriation for Tree and Wood Pests, which also is used to fund our gypsy moth and ALB programs, among others. Each fiscal year, APHIS evaluates how best to allocate the funding among the programs based on program needs and efficacy of the program to date.

Finally, several commenters urged us to increase funding for biocontrol within the EAB program while also maintaining the current level of funding for regulatory and enforcement activities.

This is not possible given current funding levels and existing Agency obligations for the pest programs within the Tree and Wood Pest line item. That being said, regardless of the level of funds available at APHIS' disposal for EAB, we no longer consider regulatory and enforcement activities to be an effective use of program funds.

Alternatives to the Proposed Rule

Several commenters agreed that the EAB quarantine regulations had been unable to prevent the spread of EAB but suggested alternate tactics that they believed could slow the further spread of EAB. Suggested tactics were: Mechanical removal of all ash trees in the United States; mechanical removal of ash in urban environments outside of

the quarantine and replanting with trees that are not a host for EAB; prophylactically treating ash trees to preclude EAB infestation (either as a stand-alone mitigation or in conjunction with restrictions on the movement of host material); safeguarding culturally or environmentally important ash populations, such as those in riparian areas or along watersheds, through integrated pest management; removing the Federal quarantine on contiguously quarantined areas while maintaining it in areas that are adjacent to currently unaffected areas; requiring all EAB host material to be heat treated or debarked prior to movement; providing economic incentives to mills and lumberyards to treat all hardwood lumber prior to interstate movement; requiring all container ships to be fumigated for EAB upon arrival into the United States; devoting all Federal resources to increased surveillance in currently unaffected areas; increasing EAB funding by drawing from other existing Agency funds or establishing an interagency working group to pool funds; or lobbying Congress and encouraging others to lobby Congress for increased appropriations. We discuss these suggestions below in the order in which they are presented in this paragraph.

Removal of all ash trees in the United States, or in areas of the United States in which EAB is not currently known to occur, is impracticable, as is prophylactic treatment of all ash.

Safeguarding culturally or environmentally important local populations of ash through integrated pest management may be possible in some instances, and APHIS has supported and will continue to evaluate requests by Tribal, local, or regional communities for such management; as noted above, we are currently engaged in one such effort with the City of Raleigh, NC. However, integrated pest management for EAB is both cost- and labor-intensive and cannot be done on a national level.

As we mentioned above, in 2012, we issued a Federal Order which relieved restrictions on the interstate movement of host material for EAB within contiguously quarantined areas. This was coupled with reallocating resources to outlying areas within the quarantine. Accordingly, this solution has already been implemented and has not proven effective at preventing the spread of EAB to unaffected areas.

While debarking and heat treatment are effective at addressing those two pathways, as we mentioned previously in this document, there are numerous other pathways that have contributed to

the overall spread of EAB within the United States, many of which are outside the scope of APHIS' statutory authority.

Because of the lack of efficacy of the traps and lures for EAB, as discussed above, we do not consider allocating all funding to increased surveying with traps to be an effective use of Federal resources.

APHIS does not have the legal authority to provide financial incentives for phytosanitary treatments.

Revising import requirements relative to EAB host material is outside the scope of this rulemaking. However, because EAB is established and widespread in the United States, we do not consider mandatory fumigation at ports of entry to be warranted or an effective deterrent to the further spread of EAB within the United States.

As we mentioned previously in this document, APHIS' EAB funding is drawn from a larger line item that addresses Tree and Wood Pests within APHIS' appropriation from Congress. APHIS has some flexibility within the Tree and Wood Pests line item itself to move money between domestic quarantine programs within the line item, which includes funding for ALB, gypsy moth, and other pests, in addition to EAB, but we must consider the best use of the funds to meet our overall goals of using the funds as effectively as possible in order to safeguard American agriculture.

Because of the sheer size of the current quarantined area for EAB, the historic ineffectiveness of quarantine and enforcement measures, and the lack of optimal detection methods, we do not have a sufficient basis for allocating or seeking additional resources through the appropriations process for the EAB program. For these same reasons, while we have partnered and continue to explore partnerships with other Federal agencies on EAB research and methods development, such as USDA's Agricultural Research Service and Forest Service, we do not believe that requesting additional budgetary resources from other Federal agencies to allocate to existing regulatory and enforcement strategies will prevent the spread of EAB or be an effective use of those funds.

Finally, APHIS is prohibited from using appropriated funds to lobby Congress, directly or indirectly, for Federal funding without explicit Congressional authorization to do so (see 18 U.S.C. 1913). For the reasons discussed in the previous paragraph, we do not consider seeking Congressional authorization to do so to be warranted.

Status of Surveys for EAB

Several commenters asked whether Federal surveys for EAB will continue if EAB is deregulated. A number of these commenters asked, if our intent was to continue surveys, what parameters we would use following deregulation. A few commenters stated that they had heard that "citizen surveys" would be employed following deregulation and asked for further information regarding the meaning of that term.

Federally contracted trapping survey for EAB ceased as of 2019. APHIS will provide traps and lures to State and Tribal cooperators without cost, as requested, out of our existing supply until it is depleted. However, States and Tribes should be aware of some of the limitations of these traps and lures discussed earlier in this document. (For further discussion of these limitations, see the section heading "Need to Retain Existing Quarantine Regulations").

"Citizen surveys" refer to reporting done by the general public of EAB or signs and symptoms of EAB infestation. In recent years, citizen detections have accounted for the vast majority of all new identifications of EAB infestations. Citizens who detect signs or symptoms of EAB have been encouraged to contact their State Plant Regulatory Official, or SPRO. A list of all SPROs is found here: <https://nationalplantboard.org/membership/>.

Status of Outreach

Many commenters stated that the proposed rule undercut communications and outreach efforts in their State or community to warn the public about the severity of EAB. A number of these commenters stated that the rule was in tension with communication efforts to warn the public about the plant pest risk associated with the movement of firewood, in particular. Several commenters requested outreach resources from APHIS following removal of the quarantine regulations or inquired regarding what outreach APHIS had planned. On a related matter, several commenters asked what efforts APHIS would take, following deregulation, to continue outreach and education related to the movement of firewood.

As we discussed previously in this document, the proposed rule was not based on a determination that EAB is an insignificant plant pest, nor did we claim it to be. However, we do acknowledge that local and regional campaigns may have often emphasized the importance of compliance with Federal EAB regulations, and the

proposed rule could have created difficulties with regard to those communication strategies. To that end, we will work with States, through associations such as the National Plant Board, to promote awareness of the dangers of EAB following removal of the domestic quarantine regulations.

APHIS outreach related to the movement of firewood will remain substantially similar or increase following removal of the domestic quarantine regulations for EAB. We will continue to encourage the public to buy firewood where they burn it and to refrain from moving firewood to areas of the United States that are not under Federal quarantine for other pests of firewood.

In that regard, we disagree with commenters that the deregulation of EAB undermines national communications efforts regarding the movement of firewood. The primary national communications tool to warn the public about the plant pest risk associated with the movement of firewood is the Don't Move Firewood campaign, which is administered by The Nature Conservancy with support from APHIS and other Federal agencies.¹⁷ This campaign has consistently stressed that firewood is a high-risk pathway for many pests of national or regional concern, and not just EAB. To the extent that the communication mentioned EAB, it was as an illustrative example of one such pest. We have, however, allocated funds to The Nature Conservancy so that the Don't Move Firewood campaign continues to promote awareness of EAB as a pest of firewood in currently unaffected or recently affected States.

State Regulation of Firewood and Other EAB Host Material

Several commenters stated that, in the absence of Federal regulation of EAB, States would be free to establish their own regulations regarding the movement of EAB host material. A number of these commenters stated that this could result in State regulations that differed significantly from State to State, and that differing State regulations could be difficult for producers and shippers to comply with.

We agree with the commenters that one of the upshots of the rule is the possibility of States developing their own interstate movement requirements for EAB host articles, and, as we noted previously in this document, one State department of agriculture signaled their intent to issue such regulations during the comment period for the proposed

¹⁷ See <https://www.dontmovefirewood.org/>.

rule. While States will be free to set requirements as they see fit, we have taken efforts, in coordination with State departments of agriculture, to develop a template for State regulations regarding the movement of certain EAB host materials. We discuss these efforts below.

Several commenters pointed out that, under the current domestic quarantine regulations for EAB, firewood is a regulated article, and must either be debarked or heat treated prior to interstate movement. The commenters stated that firewood is a pathway for many other plant pests, and that the EAB domestic quarantine regulations serve to preempt what otherwise is a significant number of differing State requirements regarding the movement of firewood. Some commenters urged us to retain firewood as a regulated article for EAB; others urged us to propose a distinct Federal regulation for the interstate movement of firewood; others asked us to coordinate with State departments of agriculture to establish a coordinated framework for State regulations of firewood. One commenter stated that we should monitor and oversee the implementation of such State regulations.

Maintaining the domestic quarantine regulations for EAB but limiting the scope of regulation to firewood would require us to continue to devote program resources to regulatory and enforcement activities. As we mentioned above, this would preclude the resources from being used on other non-regulatory activities and initiatives that we consider to be in the best long-term interest of the Federal EAB program.

In 2010, we prepared a risk assessment regarding the plant pest risks associated with the movement of firewood.¹⁸ While the assessment identified many significant plant pests associated with firewood, the assessment also found that many of these pests were only economically significant if they established in a certain region of the country, and thus did not always warrant official control. Concurrent to the development of the assessment, a National Firewood Task Force was convened by the National Plant Board, composed of Federal, State, and nongovernmental organization representatives.

While both the risk assessment and the Task Force suggested a coordinated national approach to mitigate the risk associated with the movement of

firewood, APHIS encountered several factors that suggested that Federal regulation of firewood itself, independent of any particular domestic quarantine program, would not be operationally feasible. Regulating at the national level for regionally significant pests could result in regulations that were overly restrictive for some States and not commensurate with risk; requiring firewood to be heat treated prior to movement (which was recommended by the Task Force) would not be operationally feasible in the winter for producers in Northern States, and thus a de facto prohibition on interstate commerce; and Federal regulation would not address significant non-commercial pathways, such as campers moving it to campgrounds and national parks.

For all these reasons, APHIS and the National Plant Board ultimately decided that the best national strategy was (1) the development of a standardized template that States may choose to use for their regulation of firewood, in conjunction with (2) a national outreach campaign to alert the public to the plant pest risks associated with the non-commercial movement of firewood.

With regard to the first component of that strategy, the National Plant Board has recently developed this template, with APHIS support, and distributed it to State departments of agriculture to aid in development of State regulations. If a State requests our oversight of the implementation of their State regulations, we will assist to the degree we can; however, such oversight is voluntary, and APHIS cannot compel States to do so. The National Plant Board has also supplemented this template by developing best management practices regarding the interstate movement of firewood for the purposes of heating a home.¹⁹

With regard to the second, as we mentioned previously in this document, APHIS will continue to warn the public about the dangers of moving firewood following deregulation of EAB through the Don't Move Firewood campaign.

One commenter asked how the plant pest risks associated with the interstate movement of ash nursery stock will be addressed following deregulation of EAB. As is the case with all EAB host materials, States will be free to regulate the movement of the nursery stock into their State as they see fit.

Tribal Concerns

A number of Tribal nations commented in opposition to the proposed rule. Many of these Tribes stated that ash was of economic and cultural importance to their Tribe. Several Tribes indicated that ash was also of religious significance to their Tribe, insofar as the Tribe's creation heritage stressed its importance, and two Tribes indicated that their Tribe relied on ash for ecological purposes. Several of the Tribes mentioned that they had raised this concern to APHIS during Tribal consultation and stated that the rule was therefore in violation of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." One of the commenters also suggested the rule was issued in violation of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*).

APHIS is committed to full compliance with Executive Order 13175 and the National Historic Preservation Act. To that end, we engaged in Tribal consultation prior to the issuance of the proposed rule in accordance with Departmental regulations and guidelines regarding the order and the Act.

We acknowledge that several Tribes raised the concerns stated by the commenters during Tribal consultation, and have dialogued with those Tribes throughout the development of this final rule to identify means to remediate these concerns. For example, APHIS partnered with the U.S. Forest Service and University of Vermont to conduct a workshop in May 2019 for nine Tribes that provided training to survey for EAB, identify high value trees to preserve, and develop a best management program including the release of biocontrol organisms.²⁰ APHIS will continue to host similar workshops to help Tribes preserve ash populations of cultural significance to the Tribes.

However, for the reasons discussed above, we have decided that the only viable long-term use of Federal resources within the EAB program entails removing the domestic quarantine for EAB and reallocation of resources currently devoted to regulatory and enforcement activities to other purposes.

In this regard, we disagree with the commenters that the issuance of the proposed rule violated Executive Order 13175 or the National Historic Preservation Act. Neither the order nor the Act precludes a Federal agency from

¹⁸ See https://www.aphis.usda.gov/import_export/plants/plant_imports/firewood/firewood_pathway_assessment.pdf.

¹⁹ Both the template and the recommendations are found in this document: https://nationalplantboard.org/wp-content/uploads/docs/docs_policies/firewood_2020_2.pdf.

²⁰ See <https://www.uvm.edu/rsenr/towards-preservation-cultural-keystone-species-assessing-future-black-ash-following-emerald>.

acting if Tribes raise concerns regarding the action contemplated; rather, the order and the Act dictate sustained and meaningful consultation with Tribes to resolve concerns that are raised. APHIS has engaged and continues to engage in such consultation.

Further information regarding Tribal outreach efforts is contained in the Tribal impact statement that accompanies this final rule.

Comments Regarding International Trade in EAB Host Articles

One commenter asked if we were also removing our regulations regarding the importation of EAB host material from Canada.

We did not propose to do so because the regulations have prohibited the importation of several EAB host articles, most notably ash wood chips and bark chips, and have required phytosanitary treatments for other articles that are effective not only for EAB, but also for other wood-boring pests. As a result, we were uncertain of the plant pest risk associated with the importation of EAB host material from Canada, in the absence of EAB-specific prohibitions and restrictions and considered it prudent to conduct a risk assessment before proposing any revisions to those prohibitions and restrictions. That risk assessment is ongoing.

Another commenter asked if we would still take action at ports of entry if EAB is discovered on an imported host commodity. They pointed out that the family to which EAB belongs is “actionable” in its entirety.

If a pest is found on an imported EAB host commodity and can only be identified taxonomically to family, we would continue to take action on it; if we were able to identify it as EAB, we would not. However, States could petition us using APHIS’ Federally Recognized State Managed Phytosanitary Program, or FR SMP, to prohibit the movement of material found to be infested into their State.²¹

A number of commenters stated that the rule could adversely impact U.S. exports to Canada and Norway; some of the commenters asserted that APHIS had failed to consider these potential impacts in the proposed rule and its supporting documents.

These are potential impacts associated with deregulation of EAB and were evaluated in the economic analysis associated with the proposed rule.

Several commenters asked us if Canada or Mexico had expressed

concerns regarding deregulation of EAB within the United States, particularly as it pertains to a heightened likelihood of possible natural spread of EAB into their countries.

Neither Mexico nor Canada has expressed concerns regarding deregulation of EAB. Canada has indicated that, in accordance with standard policy, they will consider the United States to be generally infested with EAB following deregulation. Possible implications of such a designation are discussed in the final economic analysis.

Coordination With Other Federal Agencies

A commenter suggested we coordinate with the Forest Service to establish a program to sustain and replace native ash trees.

APHIS has long partnered with the U.S. Forest Service to address the spread of EAB within the United States and identify means of protecting native ash trees. As we mentioned previously in this document, these efforts include co-funding research into the phenomenon of “lingering ash,” and co-hosting a May 2019 workshop for Tribal nations to help them identify high value trees to preserve and develop a best management program, including the release of biocontrol.

We intend to continue these efforts following deregulation, as resources allow. However, as we also mentioned previously in this document, a nationwide initiative to protect and/or replace native ash populations is cost-prohibitive.

A commenter asked if APHIS had engaged the National Park Service (NPS) about Federal deregulation of EAB and inquired whether NPS could issue regulations prohibiting the movement of firewood into national parks.

APHIS did not engage NPS prior to issuance of the proposed rule, but we do see merit in increased collaboration between our agency and theirs and will share the commenter’s suggestion with NPS. This collaboration is distinct from the issuance of this final rule, and does not impact the conclusions of this rule.

Compliance With Executive Orders, Statutes, and International Standards

Several commenters stated that APHIS should not have designated the rule not significant under Executive Order 12866 and suggested that the Office of Management and Budget (OMB) should have reviewed the rule.

OMB, rather than APHIS, designated the rule not significant, and thus not subject to their review under Executive Order 12866.

One commenter suggested that the proposed rule should have been reviewed for legal sufficiency and compliance with statutory requirements by USDA’s Office of General Counsel (OGC).

OGC reviewed the proposed rule. One commenter pointed out that the section of the proposed rule beneath the heading, “Paperwork Reduction Act,” indicated that there were no reporting, recordkeeping, or third-party disclosure requirements associated with the proposed rule. The commenter asserted that APHIS had therefore failed to evaluate whether there were such Paperwork Reduction Act implications. Several other commenters stated that the proposed rule should have been evaluated for Paperwork Reduction Act implications.

The statement beneath the heading “Paperwork Reduction Act” in the proposed rule did not mean that APHIS excluded the rule from evaluation under the Paperwork Reduction Act, but rather that we did evaluate the rule under the Paperwork Reduction Act and determined it not to have reporting, recordkeeping, or third-party disclosure requirements.

One commenter stated that the proposed rule was not reviewed for compliance with Executive Order 13777.

The proposed rule was evaluated by the Regulatory Reform Officer for USDA in accordance with Executive Order 13777.

Several commenters expressed concerns regarding the economic analysis that accompanied the proposed rule.

We discuss these comments in the economic analysis that accompanies this final rule.

Several commenters stated that APHIS had not complied with NEPA, and an environmental assessment or environmental impact statement should have accompanied the proposed rule.

For reasons discussed earlier in this document, we considered the proposed rule to be a category of actions exempt under APHIS’ NEPA implementing regulations from preparation of an environmental assessment or environmental impact statement.

One commenter stated that we had violated international standards issued by the International Plant Protection Convention (IPPC), to which the United States is a signatory. The commenter stated that the IPPC definition of a *quarantine pest* requires pests that are established within a country to be under official control in order to continue to be considered of quarantine significance. The commenter pointed

²¹ Information regarding the petition process within FR SMP is found here: https://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/downloads/petition_guidelines.pdf.

out that the proposed rule had not explicitly indicated that one of the practical implications of removing the domestic quarantine regulations for EAB would be that EAB would no longer be a quarantine pest. The commenter asserted that this omission violated IPPC standards.

We agree with the commenter's interpretation of the IPPC definition of *quarantine pest*, as well as the assertion that removing Federal domestic quarantine regulations for EAB would remove its designation as a quarantine pest under IPPC standards.

However, we do not agree that failing to mention this in the proposed rule violates those standards. Insofar as the IPPC definition of *quarantine pest* requires pests already established in a country to be under official control in order to continue to be considered quarantine pests, and the proposed rule proposed to rescind APHIS' official control program for EAB, we consider the implication of that rescission to be sufficiently clear without an explicit statement that EAB will no longer meet the IPPC definition of a *quarantine pest* as a result of this rule.

Miscellaneous

One commenter stated that ash helps reduce the impact of carbon emissions into the atmosphere.

This is true but is not germane to this rulemaking.

One commenter asked if velvet ash was a host of EAB, and, if so, whether it was a preferred host.

Because the geographic range of velvet ash within the United States lies outside of the area of the United States where EAB is known to occur, it is currently unknown how EAB and velvet ash will interact within the environment of the United States. However, velvet ash was a preferred host for EAB in China, and we have no reason to believe it will not be a similar host within the United States.²²

A commenter asked if neonicotinoids were used as treatments within the EAB program, and, if so, whether there were any plans to reduce or eliminate their usage.

Neonicotinoids, particularly imidacloprid, were historically used within the EAB program to treat ash trees. However, such treatments have been almost entirely discontinued within the program, and, on the rare occasion when they still occur, a different insecticide, emamectin

benzoate, which is not a neonicotinoid, is currently used. We have no plans to use neonicotinoids within the context of integrated pest management following deregulation of EAB.

A commenter suggested we prepare a "Lessons Learned" document to evaluate the successes and failures of the domestic EAB program and to determine what factors contributed to the ultimate ineffectiveness of the program.

While we tend to reserve such evaluations for particular procedures or policies in order to limit their scope and thus have greater assurances about the accuracy of their conclusions, we will take the commenter's suggestion into consideration.

Therefore, for the reasons given in the proposed rule and this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. This rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

In accordance with 5 U.S.C. 603, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this final rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is removing the domestic quarantine regulations for the plant pest emerald ash borer (EAB, *Agrilus planipennis*, Fairmaire). This action discontinues the domestic regulatory component of the EAB program. Funding allocated to the implementation and enforcement of these quarantine regulations will instead be directed to a non-regulatory option of assessment of and deployment of biological control agents for EAB. Biological control will be the primary tool used to control the pest and mitigate losses.

There are currently more than 800 active EAB compliance agreements, covering establishments that include sawmills, logging/lumber producers, firewood producers, and pallet manufacturers. The purpose of the compliance agreements is to ensure

observance of the applicable requirements for handling regulated articles. Establishments involved in processing, wholesaling, retailing, shipping, carrying, or other similar actions on regulated articles require a compliance agreement to move regulated articles out of a Federal quarantine area.

Under this rule, establishments operating under EAB compliance agreements will no longer incur costs of complying with Federal EAB quarantine regulations, although States could still impose restrictions. Businesses will forgo the paperwork and recordkeeping costs of managing Federal compliance agreements. However, some businesses may still bear treatment costs, if treatment is for purposes besides prevention of EAB dissemination. Costs avoided under the rule depend on the type of treatment and whether treatment still occurs for purposes other than those related to the Federal EAB regulatory restrictions on interstate movement.

Articles currently regulated for EAB include hardwood firewood, chips, mulch, ash nursery stock, green lumber, logs, and wood packaging material (WPM) containing ash. Articles can be treated by bark removal, kiln sterilization, heat treatment, chipping, composting, or fumigation, depending on the product.

For affected industries, we can estimate the cost savings if treatment were to cease entirely (see table A). Currently, there are 166 active EAB compliance agreements where sawmills and logging/lumber establishments have identified kiln sterilization as a method of treatment. If all of these producers were to stop heat treating ash lumber or logs as a result of this rule, the total cost savings for producers could be between about \$896,600 and \$1.5 million annually.

There are 103 active EAB compliance agreements where heat treatment of firewood is identified as a treatment. If all of these firewood producers were to stop heat treating firewood as a result of this rule, the total cost savings for producers could be between about \$93,400 and \$700,000 annually.

There are 70 active EAB compliance agreements where heat treatment is identified as the pallet treatment. If all of these producers are producing ash pallets and were to stop heat treating as a result of this rule, the total cost savings for producers could be between about \$8.8 million and \$13.3 million annually. If all 349 establishments with compliance agreements where debarking is identified as a treatment were to stop secondary sorting and

²² See Wang et al. *The biology and ecology of the emerald ash borer, Agrilus planipennis, in China. Journal of Insect Science*, Volume 10, Issue 1, 2010, 128.

additional bark removal in the absence of EAB regulations, the total annual labor cost savings for producers could be about \$1.7 million annually. If all 397 establishments with compliance agreements where chipping or grinding is identified as a treatment were to stop

re-grinding regulated materials in the absence of EAB regulations, the total annual cost savings for producers could be about \$10.6 million annually. The annual cost savings for these various entities could total between about \$9.8 million and \$27.8 million annually. (It

should be noted that this range of cost savings does not include compliance costs for any State regulations that may be developed in the absence of Federal regulation of EAB; this is because such costs are conjectural and outside of Federal control.)

TABLE A—POTENTIAL COST SAVINGS IF TREATMENT WERE TO CEASE WITH REMOVAL OF EAB REGULATION

Product	Treatment	Compliance agreements	Treatment costs	
			Low	High
			Value (\$ millions)	
Logs/Lumber	Kiln Sterilization	166	0.9	1.5
	Debarking	349	.....	1.7
Firewood	Heat Treatment	103	0.09	0.7
Pallets	Heat Treatment	70	8.8	13.3
Chips, branches, waste, mulch, etc.	Chipping/Grinding	397	.....	10.6
Total .....	.....	¹ N/A	9.8	27.8

¹ Cannot be summed. Some compliance agreements cover multiple products and treatment methods.

Since no effective quarantine treatments are available for ash nursery stock, there are no compliance agreements issued for interstate movement of that regulated article. According to the latest Census of Horticultural Specialties, there were 316 establishments selling ash trees, 232 with wholesale sales, operating in States that were at least partially quarantined for EAB in 2014. Sales volumes for at least some of these operations could increase if their sales are currently constrained because of the Federal quarantine.

Internationally, deregulation of EAB may affect exports of ash to Norway and Canada, the two countries that have import restrictions with respect to EAB host material. Norway uses pest-free areas in import determinations. With removal of the domestic quarantine regulations, it is unlikely that Norway will recognize any area in the United States as EAB free. All exports of ash logs and lumber to Norway will likely be subject to debarking and additional material removal requirements. From 2014 through 2018, exports to Norway represented less than one-tenth of one percent of U.S. ash exports. We estimate that labor costs for overseeing the debarking on these exports total less than \$500.

The United States also exports to Canada products such as hardwood firewood, ash chips and mulch, ash nursery stock, ash lumber and logs, and WPM with an ash component from areas not now quarantined. Canada has indicated that they will consider the United States generally infested for EAB following Federal deregulation, therefore, ash products from areas

outside the current U.S. quarantine area will be subject to restrictions in order to enter Canada. New Canadian restrictions will likely depend on the product and its destination within Canada. In 2017 and 2018, Canada received about 3 percent of U.S. ash lumber exports, and about 4 percent of U.S. ash log exports. Additionally, of about 98,000 phytosanitary certificates (PCs) issued from January 2012 through June 2019 for propagative materials exported to Canada, a little more than 1 percent was specifically for ash products. Based on available data, we estimate that additional heat treatment costs and labor costs for overseeing debarking of ash lumber and logs exported to Canada could range from about \$55,000 to \$94,400. Because of the absence of a phytosanitary treatment for ash nursery stock for EAB, we anticipate that exports of ash nursery stock to Canada will be prohibited by Canada. From January 2012 through June 2019, ash products comprised a little more than one percent of shipments of propagative material to Canada.

Taking into consideration the expected cost savings shown in table A and these estimated costs of exporting ash to Norway and Canada following deregulation, and in accordance with guidance on complying with Executive Order 13771, the single primary estimate of the annual cost savings of this rule is \$18.8 million in 2016 dollars, the mid-point estimate annualized in perpetuity using a 7 percent discount rate.

EAB has now been found in 35 States and the District of Columbia and it is likely that there are infestations that have not yet been detected. Newly

identified infestations are estimated to be 4 to 5 years or more in age. Known infestations cover more than 27 percent of the native ash range within the conterminous United States.

EAB infestations impose costs on communities typically associated with the treatment or removal and replacement of affected trees. In addition, infestation can result in loss of ecosystem services. Regulatory activities may slow the spread of EAB and delay associated losses by inhibiting human-assisted dispersal of infestations. However, consistent with APHIS' statutory authority, the activities only mitigated one pathway for EAB spread, movement of host material in interstate commerce. They did not address intrastate movement, non-commercial movement, or natural spread, each of which is a known pathway for the spread of EAB. As a result, regardless of funding or tactics employed, the EAB domestic quarantine regulations have been, on the whole, unable to prevent the spread of EAB.

Any delay in EAB spread attributable to the quarantine regulations and associated delay in economic and environmental losses will end with this rule. The domestic quarantine regulations for EAB have not substantially reduced the likelihood of introduction and establishment of the pest in quarantine-adjacent areas. Interstate movement of EAB host articles is unrestricted within areas of contiguous quarantine, and irrespective of human-assisted spread, a mated EAB is capable of flying up to 100 miles in her lifetime, resulting in a high potential for natural spread.

EAB's spread through the United States to date suggests it will become established throughout its entire geographical range irrespective of Federal regulation, as EAB can overcome significant natural barriers during a flight season and, as mentioned above, Federal regulations do not address non-commercial movement of EAB host material. The possibility that the pest could reach EAB-free States more quickly in the absence of Federal regulation of host material is difficult to quantify. For the difference in rates of spread to be significant, quarantine activities must be able to mitigate all or at least most pathways for that spread. As noted above, resources available for quarantine activities have declined while the area under quarantine continues to expand. Human-assisted introduction may be mitigated by State regulations, and at least one State has indicated it will establish its own quarantine program following Federal deregulation.

Continuing to devote resources to regulatory activities would constrain APHIS' allocation of resources to activities that could be of greater long-term benefit in slowing the spread of EAB and helping affected communities recover from EAB infestation. These activities include further development and deployment of EAB biological control organisms; further investigation of integrated pest management of EAB that can be used at the local level to help safeguard an ash population of significant importance to a community; and further research, in tandem with other Federal Agencies, into the phenomenon of "lingering ash," or ash trees that are still alive and present in the landscape in areas of otherwise heavy infestation, and integration of the findings of that research into the EAB program.

Public outreach activities outside the EAB regulatory program will remain substantially similar or increase following removal of the domestic quarantine regulations for EAB. We will continue to work with our State counterparts to encourage the public to buy firewood where they burn it and to refrain from moving firewood to areas of the United States that are not under Federal quarantine for pests of firewood. The primary national communications tool to warn the public about the plant pest risk associated with the movement of firewood is the Don't Move Firewood campaign, which is administered by The Nature Conservancy with support from APHIS and other Federal agencies.

In sum, this rule's elimination of compliance requirements will yield cost savings for affected entities within EAB

quarantined areas. Moreover, sales volumes for at least some of these operations could increase if their sales have been constrained because of the Federal quarantine. Costs avoided will depend on the type of treatment and whether treatment still occurs for non-quarantine purposes. Costs ultimately borne also will depend on whether States decide to establish and enforce their own EAB quarantine programs. We anticipate States will continue to impose movement restrictions on firewood, with the regulatory requirements varying from State to State. The National Plant Board developed a template for State regulation of firewood, as well as best management practices regarding the commercial movement of firewood for the purposes of heating a home or building. Internationally, this rule may affect exports of ash products to Norway and Canada. Longer term, the impact of the rule on ash populations in natural and urban environments within and outside currently quarantined areas—and on businesses that grow, use, or process ash—will depend on how much sooner EAB is introduced into uninfested areas within the continental United States than would have occurred under the existing, decreasingly effective quarantine regulations.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Does not preempt State and local laws and regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

APHIS has assessed the impact of this rule on Native American Tribes and determined that this rule does have Tribal implications that require Tribal consultation under Executive Order 13175. APHIS has engaged in Tribal consultation with Tribes regarding this rule; these consultations are summarized in the Tribal impact statement that accompanies this rule.

Paperwork Reduction Act

This rule contains no reporting, recordkeeping, or third-party disclosure requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 action as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Subpart J—[Removed and Reserved]

■ 2. Subpart J, consisting of §§ 301.53–1 through 301.53–9, is removed and reserved.

Done in Washington, DC, this 1st day of December 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–26734 Filed 12–14–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**[Docket No. FAA-2020-0835; **Airspace**
Docket No. 20-AEA-16]

RIN 2120-AA66

**Establishment of Class E Airspace;
Toughkenamon, PA****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Final rule.**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface for New Garden Airport, Toughkenamon, PA, to accommodate new instrument procedures designed for 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 http://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 Ave, 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 establishes Class E airspace at New Garden Airport, Toughkenamon, PA, to support IFR operations in the area.

HistoryThe FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 60107, September 24, 2020) for Docket No. FAA-2020-0835 to establish Class E airspace extending upward from 700 feet above the surface at New Garden Airport, Toughkenamon, PA.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment supporting the proposal was 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 ReferenceThis 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 7400.11D 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 establishes Class E airspace extending upward from 700 feet above the surface as new instrument approach procedures have been designed for New Garden Airport, Toughkenamon, PA. 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 20, 2020, 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.

* * * * *

AEA PA E5 Toughkenamon, PA [New]

New Garden Airport, PA
(Lat. 39°49'50" N, long. 75°46'11" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of New Garden Airport.

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

Andree C. Davis,

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

[FR Doc. 2020-27442 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9928]

RIN 1545-BP67

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210-AB89

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS-9923-F]

RIN 0938-AT49

Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Final rules.

SUMMARY: This document includes final rules regarding grandfathered group health plans and grandfathered group health insurance coverage that amend current rules to provide greater flexibility for certain grandfathered health plans to make changes to certain types of fixed-amount cost-sharing requirements without causing a loss of grandfather status under the Patient Protection and Affordable Care Act.

DATES:

Effective Date: These regulations are effective January 14, 2021.

Applicability Date: These regulations are applicable June 15, 2021.

FOR FURTHER INFORMATION CONTACT:

William Fischer, Internal Revenue Service, Department of the Treasury, (202) 317-5500.

Matthew Litton and Chelsea Cerio, Employee Benefits Security Administration, Department of Labor, (202) 693-8335.

Cam Clemmons, Centers for Medicare & Medicaid Services, Department of Health and Human Services, (301) 492-4400.

Customer Service Information:
Individuals interested in obtaining information from the Department of Labor (DOL) concerning employment-based health coverage laws may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the DOL's website (www.dol.gov/ebsa). In addition, information from the Department of Health and Human Services (HHS) regarding private health insurance coverage and non-federal governmental group health plans can be found on the Centers for Medicare & Medicaid Services (CMS) website (www.cms.gov/ccio), and information on healthcare reform can be found at www.HealthCare.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose

On January 20, 2017, the President issued Executive Order 13765, “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal” (82 FR 8351) “to minimize the unwarranted economic and regulatory burdens of the [Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (collectively, PPACA), as amended].” To meet these objectives, the President directed that the executive departments and agencies with authorities and responsibilities under PPACA, “to the maximum extent permitted by law . . . shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of [PPACA] that would impose a fiscal burden on any state or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”

HHS, DOL, and the Department of the Treasury (collectively, the Departments) share interpretive jurisdiction over section 1251 of PPACA, which generally provides that certain group health plans and health insurance coverage existing as of March 23, 2010, the date of

enactment of PPACA (referred to collectively in the statute as grandfathered health plans), are subject to only certain provisions of PPACA. Consistent with the objectives of Executive Order 13765, on February 25, 2019, the Departments issued a request for information regarding grandfathered group health plans and grandfathered group health insurance coverage (2019 RFI).¹ The purpose of the 2019 RFI was to gather input from the public in order to better understand the challenges that group health plans and group health insurance issuers face in avoiding a loss of grandfather status, and to determine whether there are opportunities for the Departments to assist such plans and issuers, consistent with the law, in preserving the grandfather status of group health plans and group health insurance coverage in ways that would benefit plan participants and beneficiaries, employers, employee organizations, and other stakeholders.

Based on feedback received from stakeholders who submitted comments in response to the 2019 RFI, the Departments issued a notice of proposed rulemaking on July 15, 2020 (referred to as the 2020 proposed rules), that would, if finalized, amend current rules to provide greater flexibility for certain grandfathered health plans to make changes to certain types of cost-sharing requirements without causing a loss of grandfather status.² After careful consideration of the comments received, the Departments are issuing final rules that adopt the proposed amendments without substantive change. In the Departments' view, these amendments are appropriate because they will enable these plans to continue offering affordable coverage while also enhancing their ability to respond to rising healthcare costs. In some cases, the amendments would also ensure that the plans are able to comply with minimum cost-sharing requirements for high deductible health plans (HDHPs) so enrolled individuals are eligible to contribute to health savings accounts (HSAs).

The final rules only address the requirements for grandfathered group health plans and grandfathered group health insurance coverage and do not apply to or otherwise change the current requirements applicable to grandfathered individual health insurance coverage. With respect to individual health insurance coverage, it is the Departments' understanding that the number of individuals with grandfathered individual health

¹ 84 FR 5969 (Feb. 25, 2019).

² 85 FR 42782 (July 15, 2020)

insurance coverage has declined each year since PPACA was enacted. As one comment received in response to the 2019 RFI noted, this decline in enrollment in grandfathered individual health insurance coverage will continue due to natural churn, because most consumers stay in the individual market for less than 5 years.³ Moreover, compared to the number of individuals in grandfathered group health plans and grandfathered group health insurance coverage, only a small number of individuals are enrolled in grandfathered individual health insurance coverage.⁴ The Departments are therefore of the view that any amendments to requirements for grandfathered individual health insurance coverage would be of limited utility.

B. Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage

Section 1251 of PPACA provides that grandfathered health plans are not subject to certain provisions of PPACA for as long as they maintain their status as grandfathered health plans.⁵ For example, grandfathered health plans are subject neither to the requirement to cover certain preventive services without cost sharing under section 2713 of the Public Health Service Act (PHS Act), enacted by section 1001 of PPACA, nor to the annual limitation on cost sharing set forth under section 1302(c) of PPACA and section 2707(b) of the PHS Act, enacted by section 1201 of PPACA. If a plan were to lose its grandfather status, it would be required to comply with both provisions, in addition to several other requirements.

On June 17, 2010, the Departments issued interim final rules with request

³ The cause of this churn varies. For example, beginning a new job that offers group health coverage may result in a transition from the individual market to group coverage. Eligibility for Medicaid or Medicare can also result in a consumer leaving the individual market.

⁴ HHS estimates that less than seven percent of enrollees in grandfathered plans have individual market coverage. This estimate is based on analysis of enrollment data issuers submitted in the HHS Health Insurance and Oversight System (HIOS) and the CMS External Data Gathering Environment (EDGE) for the 2018 plan year, as well as Kaiser Family Foundation estimates regarding the percentage of enrollees with employer-sponsored coverage that are covered by a grandfathered health plan.

⁵ For a list of the market reform provisions applicable to grandfathered health plans under title XXVII of the PHS Act that PPACA added or amended and that were incorporated into the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code), visit <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act-for-employers-and-advisers/grandfathered-health-plans-provisions-summary-chart.pdf>.

for comments implementing section 1251 of PPACA.⁶ On November 17, 2010, the Departments issued an amendment to the interim final rules with request for comments to permit certain changes in policies, certificates, or contracts of insurance without a loss of grandfather status.⁷ Also, over the course of 2010 and 2011, the Departments released Affordable Care Act Implementation Frequently Asked Questions (FAQs) Parts I, II, IV, V, and VI to answer questions related to maintaining a plan's status as a grandfathered health plan.⁸ After consideration of comments and feedback received from stakeholders, the Departments issued regulations on November 18, 2015, which finalized the interim final rules without substantial change and incorporated the clarifications that the Departments had previously provided in other guidance (2015 final rules).⁹

In general, under the 2015 final rules, a group health plan or group health insurance coverage is considered grandfathered if it was in existence, and has continuously provided coverage for someone (not necessarily the same person, but at all times at least one person) since March 23, 2010, provided the plan (or its sponsor) or issuer has not taken certain actions resulting in the plan relinquishing grandfather status.

Under the 2015 final rules, certain changes to a group health plan or coverage do not result in a loss of grandfather status. For example, new employees and their families may enroll in a group health plan or group health

insurance coverage without causing a loss of grandfather status. Further, the addition of a new contributing employer or a new group of employees of an existing contributing employer to a grandfathered multiemployer health plan will not affect the plan's grandfather status. Also, grandfather status is determined separately for each benefit package option available under a group health plan or coverage; thus, if any benefit package under the plan or coverage loses its grandfather status, it will not affect the grandfather status of the other benefit packages, provided that any other changes do not exceed the other standards that cause a plan to relinquish grandfather status, as explained further in this preamble.

The 2015 final rules specify the circumstances under which changes to the terms of a plan or coverage cause the plan or coverage to cease to be a grandfathered health plan. Specifically, the regulations outline certain changes to benefits, cost-sharing requirements, and contribution rates that will cause a plan or coverage to relinquish its grandfather status. There are six types of changes (measured from March 23, 2010) that will cause a group health plan or health insurance coverage to cease to be grandfathered:

1. The elimination of all or substantially all benefits to diagnose or treat a particular condition;
2. Any increase in a percentage cost-sharing requirement (such as coinsurance);
3. Any increase in a fixed-amount cost-sharing requirement (other than a copayment) (such as a deductible or out-of-pocket maximum) that exceeds certain thresholds;
4. Any increase in a fixed-amount copayment that exceeds certain thresholds;
5. A decrease in contribution rate by an employer or employee organization toward the cost of coverage of any tier of coverage for any class of similarly situated individuals by more than five percentage points below the rate for the coverage period that includes March 23, 2010; or
6. The imposition of annual limits on the dollar value of all benefits for group health plans and insurance coverage that did not impose such a limit prior to March 23, 2010.

The 2015 final rules provide different thresholds for the increases to different types of cost-sharing requirements that will cause a loss of grandfather status. The nominal dollar amount of a coinsurance obligation automatically rises when the cost of the healthcare benefit subject to the coinsurance obligation increases, so changes to the

⁶ 75 FR 34538 (June 17, 2010).

⁷ 75 FR 70114 (Nov. 17, 2010).

⁸ See Affordable Care Act Implementation FAQs Part I, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-i.pdf> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs.html; Affordable Care Act Implementation FAQs Part II, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-ii.pdf> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs2.html; Affordable Care Act Implementation FAQs Part IV, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-iv.pdf> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs4.html; Affordable Care Act Implementation FAQs Part V, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-v.pdf> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html; and Affordable Care Act Implementation FAQs Part VI, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-vi.pdf> and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs6.html.

⁹ 80 FR 72192 (Nov. 18, 2015), codified at 26 CFR 54.9815–1251, 29 CFR 2590.715–1251, and 45 CFR 147.140.

level of coinsurance (such as modifying a requirement that the patient pay 20 percent to a requirement that the patient pay 30 percent of inpatient surgery costs) can significantly alter the balance of financial obligations between participants and beneficiaries and a plan or health insurance coverage. On the other hand, fixed-amount cost-sharing requirements (such as copayments and deductibles) do not automatically rise when healthcare costs increase. This means that changes to fixed-amount cost-sharing requirements (for example, modifying a \$35 copayment to a \$40 copayment for outpatient doctor visits) may be reasonable to keep pace with the rising cost of medical items and services. Accordingly, under the 2015 final rules, any increase in a percentage cost-sharing requirement (such as coinsurance) causes a plan or health insurance coverage to cease to be a grandfathered health plan. With respect to fixed-amount cost-sharing requirements, however, there are two standards for permitted increases, one for fixed-amount cost-sharing requirements other than copayments (for example, deductibles and out-of-pocket maximums) and another for copayments.

With respect to fixed-amount cost-sharing requirements other than copayments, a plan or coverage ceases to be a grandfathered health plan if there is an increase, since March 23, 2010, that is greater than the maximum percentage increase. The 2015 final rules define the maximum percentage increase as medical inflation (from March 23, 2010) plus 15 percentage points. For this purpose, medical inflation is defined by reference to the overall medical care component of the Consumer Price Index for All Urban Consumers, unadjusted (CPI-U), published by the DOL using the 1982–1984 base of 100.

For fixed-amount copayments, a plan or coverage ceases to be a grandfathered health plan if there is an increase, since March 23, 2010, in the copayment that exceeds the greater of (1) the maximum percentage increase (calculated in the same manner as for fixed amount cost-sharing requirements other than copayments) or (2) five dollars (as increased by medical inflation).

For any change that causes a loss of grandfather status under the 2015 final rules, the plan or coverage will cease to be a grandfathered plan when the change becomes effective, regardless of when the change is adopted.

In addition, the 2015 final rules require that a grandfathered plan or coverage both include a statement in

any summary of benefits provided under the plan that it believes the plan or coverage is a grandfathered health plan and provide contact information for questions and complaints. Failure to provide this disclosure results in a loss of grandfather status. The 2015 final rules further provide that, once grandfather status is relinquished, there is no opportunity to regain it.

C. 2019 Request for Information

It is the Departments' understanding that the number of grandfathered group health plans and grandfathered group health insurance policies has declined each year since the enactment of PPACA, but many employers continue to maintain grandfathered group health plans and coverage. That a significant number of grandfathered group health plans and coverage remain indicates that some employers and issuers have found value in preserving grandfather status. Accordingly, on February 25, 2019, the Departments published the 2019 RFI to gather input from the public in order to better understand the challenges that group health plans and group health insurance issuers face in avoiding the loss of grandfather status and to determine whether there are opportunities for the Departments to assist such plans and issuers, consistent with the law, in preserving the grandfather status of group health plans and group health insurance coverage in ways that would benefit plan participants and beneficiaries, employers, employee organizations, and other stakeholders.

Comments submitted in response to the 2019 RFI provided information regarding grandfathered health plans that helped inform the 2020 proposed rules. Commenters shared data regarding the prevalence of grandfathered group health plans and grandfathered group health insurance coverage, insights regarding the impact that grandfathered plans have had in terms of delivering benefits to participants and beneficiaries at a lower cost than non-grandfathered plans, and suggestions for potential amendments to the Departments' 2015 final rules that would provide more flexibility for a plan or coverage to retain grandfather status.

Several commenters directed the Departments' attention to a Kaiser Family Foundation survey, which indicates that one out of every five firms that offered health benefits in 2018 offered at least one grandfathered health plan, and 16 percent of covered workers were enrolled in a grandfathered group

health plan that year.¹⁰ One commenter indicated the incidence of grandfathered plan status differs by various types of plan sponsors. Another commenter cited survey data released in 2018 by the International Foundation of Employee Benefit Plans, which indicated that 57 percent of multiemployer plans are grandfathered, compared to 20 percent of other private-sector plans and 30 percent of public-sector plans. However, a professional association with members who work with employer groups on health plan design and administration commented that their members have found far fewer grandfathered plans than survey results suggest exist and suggested that very large employers with self-funded plans may sponsor a disproportionate share of grandfathered plans, as well as that some employers that have “grandmothered” plans or that previously had grandfathered plans may unintentionally be reporting incorrectly in surveys that they still sponsor grandfathered plans.¹¹

Some commenters stated that grandfathered health plans are less comprehensive and provide fewer consumer protections than non-grandfathered plans; thus, these commenters opined that the Departments should not amend the 2015 final rules to provide greater flexibility for a plan or coverage to maintain grandfather status. Other commenters noted, however, that grandfathered

¹⁰ See 2018 *Employer Health Benefits Survey*, Kaiser Family Foundation, available at <https://www.kff.org/report-section/2018-employer-healthbenefits-survey-section-13-grandfathered-healthplans>. On October 8, 2020, the Kaiser Family Foundation issued its 2020 report. According to survey data, 16 percent of offering firms report having at least one grandfathered plan in 2020, and 14 percent of covered workers were enrolled in a grandfathered health plan in 2020. See 2020 *Employer Health Benefits Survey*, Kaiser Family Foundation, available at <http://files.kff.org/attachment/Report-Employer-Health-Benefits-2020-Annual-Survey.pdf>.

¹¹ “Grandmothered” plans, also known as transitional plans, are certain non-grandfathered health insurance coverage in the small group and individual market that meet certain conditions. On November 14, 2013, CMS issued a letter to the State Insurance Commissioners outlining a policy under which, if permitted by the state, non-grandfathered small group and individual market health plans that were in effect on October 1, 2013, could continue and would not be treated as being out of compliance with certain specified PPACA market reforms under certain conditions. CMS has extended this non-enforcement policy each subsequent year, with the most recent extension in effect until policy years beginning on or before October 1, 2021, provided that all such coverage comes into compliance by January 1, 2022. See *Insurance Standards Bulletin Series—INFORMATION—Extension of Limited Non-Enforcement Policy through 2021* (January 31, 2020), available at <https://www.cms.gov/files/document/extension-limited-non-enforcement-policy-through-calendar-year-2021.pdf>.

plans often have lower premiums and cost-sharing requirements than non-grandfathered plans. One commenter gave examples of premium increases ranging from 10 percent to 40 percent that grandfathered plan participants would experience if they transitioned to non-grandfathered group health plans. Several commenters also stated that grandfathered health plans do in fact offer comprehensive benefits and in some cases are even more generous than certain non-grandfathered plans that are subject to all the requirements of PPACA. Some commenters also stated that their grandfathered plans offer more robust provider networks than other coverage options that are available to them or that access to a grandfathered plan ensures that they are able to keep receiving care from current in-network providers.

Commenters who supported allowing greater flexibility for grandfathered health plans offered a range of suggestions regarding how the Departments should amend the 2015 final rules. For example, several commenters requested additional flexibility regarding plan or coverage changes that would constitute an elimination of substantially all benefits to diagnose or treat a condition, stating that it is often difficult to discern what constitutes a benefit reduction given that the regulations apply a “facts and circumstances” standard. Some commenters requested flexibility to make certain changes so long as the grandfathered plan or coverage’s actuarial value is not affected. Some commenters also stated that the 2015 final rules should be amended to permit decreases in contribution rates by employers and employee organizations by more than five percentage points to account for employers experiencing a business change or economic downturn.

Commenters also suggested amendments relating to the permitted changes in cost-sharing requirements for grandfathered plans. These commenters generally argued that the 2015 final rules were too restrictive. Several commenters stated that relying on the medical care component of the CPI-U for purposes of those rules to account for inflation adjustments to the maximum percentage increase was misguided, and the methodology used to calculate the “premium adjustment percentage” (as defined in 45 CFR 156.130) would be more appropriate because it is tied to the increase in premiums for health insurance and, therefore, better reflects the increase in costs for health coverage. These commenters also noted that relying on the premium adjustment percentage

would be consistent with the methodology used to adjust the annual limitation on cost sharing under section 1302(c) of PPACA and section 2707(b) of the PHS Act that applies to non-grandfathered plans. Additionally, one commenter articulated a concern that the 2015 final rules eventually may preclude some grandfathered group health plans or issuers of grandfathered group health insurance coverage from being able to make changes to cost-sharing requirements that are necessary for a plan to maintain its status as an HDHP within the meaning of section 223 of the Code, which would effectively mean that individuals covered by those plans would no longer be eligible to contribute to an HSA.

D. The Premium Adjustment Percentage

Section 1302(c)(4) of PPACA directs the Secretary of HHS to determine an annual premium adjustment percentage, a measure of premium growth that is used to set the rate of increase for three parameters detailed in PPACA: (1) The maximum annual limitation on cost sharing (defined at 45 CFR 156.130(a)); (2) the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code (defined at 45 CFR 155.605(d)(2)); and (3) the employer shared responsibility payment amounts under section 4980H(a) and (b) of the Code (see section 4980H(c)(5) of the Code). Section 1302(c)(4) of PPACA and 45 CFR 156.130(e) provide that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and 45 CFR 156.130(e) provides that this percentage will be published annually by HHS.

To calculate the premium adjustment percentage for a benefit year, HHS calculates the percentage by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds the average per capita premium for health insurance for 2013 and rounds the resulting percentage to 10 significant digits. The resulting premium index reflects cumulative, historic growth in premiums from 2013 through the preceding year. HHS calculates the premium adjustment percentage using as a premium growth measure the most recently available National Health Expenditure Accounts (NHEA) projection of per enrollee premiums for private health insurance (excluding Medigap and property and casualty

insurance) at the time of publication of the premium adjustment percentage.¹²

E. High Deductible Health Plans and HSA-compatibility

Section 223 of the Code permits eligible individuals to establish and contribute to HSAs. HSAs are tax-favored accounts established for the purpose of accumulating funds to pay for qualified medical expenses on behalf of the account beneficiary, his or her spouse, and any claimed dependents. In order for an individual to qualify as an eligible individual under section 223(c)(1) of the Code (and thus to be eligible to make tax-favored contributions to an HSA) the individual must be covered under an HDHP. An HDHP is a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses, which increase annually with cost-of-living adjustments. Generally, except for preventive care, an HDHP may not provide benefits for any year until the deductible for that year is met. Pursuant to section 223(g) of the Code, the minimum deductible for an HDHP is adjusted annually for cost of living based on changes in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U).¹³

F. 2020 Proposed Rules

On July 15, 2020, the Departments issued the 2020 proposed rules that would, if finalized, amend the 2015 final rules to provide greater flexibility for grandfathered group health plans and issuers of grandfathered group health insurance coverage to make certain changes without causing a loss of grandfather status. However, there is no authority for non-grandfathered plans to become grandfathered. Therefore, the 2020 proposed rules did not provide any opportunity for a plan or coverage that has lost its grandfather status under the 2015 final rules to regain that status.

¹² 85 FR 29164, 29228 (May 14, 2020). The series used in the determinations of the adjustment percentages can be found in Table 17 on the CMS website, which can be accessed by clicking the “NHE Projections 2018–2027—Tables” link located in the Downloads section at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>. A detailed description of the NHE projection methodology is available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ProjectionsMethodology.pdf>.

¹³ The Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (Dec. 22, 2017), amended section 1(f)(3) of the Code to use the C-CPI-U rather than CPI-U for certain inflation adjustments for tax years beginning after December 31, 2017.

In issuing the 2020 proposed rules, the Departments considered comments submitted in response to the 2019 RFI regarding ways that the 2015 final rules could be amended. The Departments did not include in the 2020 proposed rules many suggestions outlined in those comments because, in the Departments' view, those suggestions would have allowed for such significant changes that the modified plan or coverage could not reasonably be described as being the same plan or coverage that existed on March 23, 2010, for purposes of grandfather status. The Departments were persuaded, however, by commenters' statements that there are better means of accounting for inflation in the standard for the maximum percentage increase that should be permitted to fixed-amount cost-sharing requirements. The Departments also agreed that, as one commenter on the 2019 RFI highlighted, there is an opportunity to specify that changes to fixed-amount cost-sharing requirements that are necessary for a plan to maintain its status as an HDHP should not cause a loss of grandfather status. Given that the 2015 final rules permit increases that are meant to account for inflation in healthcare costs over time, the Departments were of the view that those suggestions were reasonably narrow and consistent with the intent of the 2015 final rules to permit adjustments in response to inflation without causing a loss of grandfather status.

Accordingly, the Departments proposed to amend the 2015 final rules in two ways. First, the 2020 proposed rules included a new paragraph (g)(3), which specified that grandfathered group health plans and grandfathered group health insurance coverage that are HDHPs may make changes to fixed-amount cost-sharing requirements that would otherwise cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent those changes are necessary to comply with the requirements for HDHPs under section 223(c)(2)(A) of the Code. Second, the 2020 proposed rules included a revised definition of "maximum percentage increase" at redesignated paragraph (g)(4), which provided an alternative method of determining that amount based on the premium adjustment percentage. Under the 2020 proposed rules, this alternative method would be available only for grandfathered group health plans and grandfathered group health insurance coverage with changes that are effective on or after the applicability date of a final rule.

The Departments requested comments on all aspects of the 2020 proposed rules, as well as on specific issues related to the 2020 proposed rules where stakeholder feedback would be particularly useful in evaluating whether to issue final rules, and what the content of any final rules should be.

The comment period for the 2020 proposed rules closed on August 14, 2020. The Departments received 13 comments. After careful consideration of these comments, for the reasons explained further in the preamble, the Departments are issuing the final rules, which finalize the 2020 proposed rules without substantive change.

II. Overview of the Final Rules

A. General Response to Public Comments on the 2020 Proposed Rules

Some commenters expressed support for the 2020 proposed rules because the 2020 proposed rules would allow grandfathered group health plans and issuers offering grandfathered group health insurance coverage to make certain key changes without causing a loss of grandfather status. One commenter noted that providing more flexibility to maintain grandfather status should help both plan sponsors and participants. This commenter highlighted that plan sponsors could continue to avoid the costs and burdens associated with compliance with the additional requirements applicable to non-grandfathered plans while plan participants and beneficiaries could retain their current coverage instead of finding alternate coverage and potentially experiencing greater increases in cost sharing or reductions in benefits.

The final rules will allow grandfathered group health plan sponsors and issuers of grandfathered group health insurance coverage more flexibility to make changes to certain types of cost-sharing requirements without causing a loss of grandfather status. The Departments view this flexibility as a way to enable plan sponsors and issuers to continue to offer quality, affordable coverage to their participants and beneficiaries while appropriately taking into account rising healthcare costs. The Departments also are of the view that providing this flexibility will help participants and beneficiaries in grandfathered group health plans maintain their current coverage, including their provider and service network(s). Further, the final rules will provide participants and beneficiaries with the ability to maintain access to affordable coverage options offered by their employers or

unions by ensuring that employers and other plan sponsors have the ability to more appropriately account for the rising costs of healthcare due to inflation.

Several commenters did not support the 2020 proposed rules and urged the Departments not to finalize them. These commenters generally stated that finalizing the 2020 proposed rules would allow employers to continue to offer plans that do not provide comprehensive benefits while placing an increased financial burden on participants and beneficiaries. The commenters also noted that grandfathered group health plans lack certain essential patient protections, and that the consequences of not having complete information about grandfathered coverage will be especially detrimental for patients with complex medical conditions. These commenters further asserted that ensuring access to robust coverage and benefits such as preventive services and maternity care is especially important and that, in light of the ongoing COVID-19 pandemic, now is not an appropriate time to allow changes that could shift more costs to consumers.

While the Departments appreciate these concerns, the Departments are of the view that finalizing the 2020 proposed rules strikes a proper balance between preserving plans', issuers', participants', and beneficiaries' ability to maintain existing coverage with the goals of expanding access to and improving the quality of health coverage. The Departments are also of the view that the final rules appropriately support the goal of promoting greater choice in coverage, especially in light of rising healthcare costs. While grandfathered health plans are not required to comply with all PPACA market reform provisions, there are many PPACA consumer protections that are applicable to all group health plans and issuers offering group health insurance coverage, regardless of grandfather status, including the prohibition on preexisting condition exclusions, the prohibition on waiting periods that exceed 90 days, the prohibition on lifetime or annual dollar limits, the prohibition on rescissions, and the requirement for plans and issuers that offer dependent coverage of children to do so up to age 26. Further, grandfathered group health plans and issuers of grandfathered group health insurance coverage are not prohibited from providing coverage consistent with any of the PPACA market provisions that apply to non-grandfathered group health plans and may add that coverage without relinquishing grandfather

status, provided these changes are made without exceeding the standards established by paragraph (g)(1) of the grandfather regulations.

Several commenters urged the Departments to not finalize the 2020 proposed rules due to the ongoing coronavirus disease of 2019 (COVID–19) pandemic. These commenters highlighted that the COVID–19 pandemic has created high levels of economic uncertainty for millions of Americans while also posing risks to their health and safety. The commenters voiced concern that the 2020 proposed rules could have a harmful impact on access to care and affordability during the ongoing COVID–19 pandemic.

As evidenced by the Administration's efforts to address the COVID–19 pandemic, the Departments appreciate that the COVID–19 pandemic has created a greater need for affordable healthcare options for consumers and, accordingly, have taken a number of actions to provide relief and promote increased access to benefits during the COVID–19 pandemic.¹⁴ For example,

¹⁴ The Departments continue to work with employers and individuals to help them understand the new laws and regulatory relief and to benefit from them, as intended. On April 11, 2020, the Departments issued FAQs Part 42 regarding implementation of the Families First Coronavirus Response Act (FFCRA), and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and other health coverage issues related to COVID–19 available at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-42.pdf>. In this guidance, the Departments strongly encourage all group health plans and health insurance issuers to promote the use of telehealth and other remote care services. The Departments' guidance also provides enforcement relief that allows plans and issuers to make changes to increase telehealth benefits more quickly than is possible under current law. Specifically, the Departments will not enforce regulations that generally require plans and issuers to provide 60 days' advance notice of certain changes to plan terms and prohibit issuers from making mid-year modifications to health insurance products, with respect to any change that adds benefits or reduces or eliminates cost-sharing requirements for telehealth services and other remote care services. On June 23, 2020, the Departments issued a second round of FAQs, Part 43, providing further guidance regarding requirements of the FFCRA and the CARES Act and related issues available at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf>. In light of the critical need to minimize the risk of exposure to and community spread of COVID–19, the FAQs provide a statement of temporary enforcement relief regarding certain requirements that would otherwise apply in order to allow large employers to offer stand-alone telehealth benefits to employees who are not eligible for the employer's primary group health plan. Furthermore, the Departments of Labor and the Treasury published a Joint Notice—Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries (85 FR 26351) on May 4, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>. The Joint Notice extends timeframes for requesting special enrollment in a group health plan, the COBRA election period, and

the Departments have published regulatory and subregulatory guidance to assist individuals during the COVID–19 pandemic, including those who have lost their health coverage, and have extended a number of deadlines so that participants and beneficiaries in employee benefit plans have additional time to make critical health coverage decisions affecting their benefits during the COVID–19 pandemic.¹⁵ The Departments highlight that the final rules provide flexibility to employers that currently offer health coverage and have consistently done so since 2010, with the aim that their employees will have a greater ability to maintain that coverage, should they so choose. Accordingly, the Departments are of the view that the flexibility afforded by the final rules is unlikely to exacerbate any difficulties employees may experience in obtaining access to care during the COVID–19 pandemic and will potentially enable employers and employees to maintain more affordable coverage than they may otherwise be able to maintain. Notwithstanding these considerations, the Departments are delaying the applicability of the final rules, to be applicable 6 months after publication in the **Federal Register**, as discussed later in this preamble.

One commenter raised concerns that the continued availability of grandfathered plans might contribute to segmentation of the small-group market, causing adverse selection and, in turn, higher premiums for small businesses that offer or want to offer plans subject to the PPACA market reforms. This commenter noted that, because the non-

COBRA premium due dates, and certain timeframes relating to benefit claims appeals. On May 14, 2020, HHS published guidance that announced that HHS concurred with the relief specified in the Joint Notice and would adopt a temporary policy of relaxed enforcement to extend similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants and beneficiaries, under applicable provisions of title XXVII of the PHS Act, available at <https://www.cms.gov/files/document/Temporary-Relaxed-Enforcement-Of-Group-Market-Timeframes.pdf>.

¹⁵ See e.g., Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID–19 Outbreak, 85 FR 26351 (May 4, 2020); FAQs About First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 42 (April 11, 2020) available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-42.pdf> and <https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf>; FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 43 (June 23, 2020), available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf> and <https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf>.

grandfathered small-group market is subject to modified community rating and a “single risk pool,” firms with younger or healthier-than-average employees have incentives to opt out of the small group market single risk pool, at the expense of other firms that may therefore face higher premiums. Commenters also claimed that the Departments do not have sufficient information and data to accurately predict the financial effect that the 2020 proposed rules would have on consumers.

The Departments acknowledge that the existence of grandfathered group health plans potentially creates market segmentation and adverse selection in the small group market. However, the Departments do not anticipate that the additional flexibilities provided in the final rules will materially increase market segmentation, or adverse selection, as the final rules do not provide a mechanism for non-grandfathered plans to become grandfathered. For this reason, the Departments are of the view that the changes allowed by the final rules will not have a measurable impact on premiums for small businesses that offer or want to offer non-grandfathered group health insurance coverage. Moreover, the Departments do not expect the number of plans that maintain grandfather status because of the final rules to be so significant as to exacerbate any market segmentation that may already exist.

The Departments also received comments stating that consumers risk being confused or having difficulty with the term “grandfathered.” One commenter noted it may be difficult to know whether grandfathered plan participants and beneficiaries are actively choosing to remain in such plans, whether they typically have other non-grandfathered options that they could select, whether they even know a plan is grandfathered, or whether they understand which PPACA consumer protections might be missing when they enroll in grandfathered coverage. Other commenters suggested the addition of greater transparency requirements for employers that offer grandfathered plans as a means to avoid confusion.

The Departments note that these concerns relate to grandfathered plans generally and are not specific to the limited changes made in the proposed or final rules. Under the 2015 final rules, to maintain status as a grandfathered plan, a group health plan or health insurance coverage must include a statement in any summary of benefits that the plan or coverage believes it is a grandfathered plan. It

must also provide contact information for questions and complaints. The 2015 final rules provide model language that the plan or coverage can use to satisfy the disclosure requirement. That language specifically highlights that grandfathered plans are subject to some, but not all, of the PPACA consumer protections that apply to non-grandfathered plans, such as not being subject to the requirement to provide certain preventive health services without cost sharing. This required disclosure of grandfather status is intended to alleviate confusion consumers may face regarding the term “grandfathered” and what benefits and protections are offered under such coverage. The disclosure language is model language, and plans and issuers may include additional disclosure elements, such as the entire list of market reform provisions that do not apply to the specific grandfathered health plan.

Moreover, group health plans, including grandfathered plans, are subject to a number of disclosure requirements under which participants and beneficiaries are entitled to comprehensive information about their benefits. For example, group health plans that are subject to ERISA are required to distribute a summary plan description (SPD) to participants and beneficiaries that provides a comprehensive description of the benefits offered by the plan.¹⁶ In addition, group health plans and issuers of group health insurance coverage, including grandfathered plans, are required to provide a summary of benefits and coverage (SBC) that provides information about benefits and cost sharing in connection with enrollment and renewal.¹⁷ Furthermore, typically, if a plan or issuer makes a material modification to any term that affects the content of the SBC and that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, notice of the change must be provided no later than 60 days prior to the date the modification is effective.¹⁸

The Departments have concluded that existing disclosure requirements are sufficient to ensure that participants and beneficiaries have access to relevant information, including information regarding cost sharing, to help them understand the implications of

grandfathered coverage. The information included in the model grandfather notice—in particular the language highlighting that certain consumer protections under PPACA do not apply to grandfathered coverage, alongside the information available to individuals in their plan’s SPD and SBC—provides ample disclosure to participants and beneficiaries regarding their benefits to help them decide whether to enroll or remain in such a plan. Therefore, the Departments are declining to include any additional disclosure requirements in the final rules.

a. Special Rule for Certain Grandfathered HDHPs

As explained above, paragraph (g)(1) of the 2015 final rules identifies certain types of changes that will cause a plan or coverage to cease to be a grandfathered health plan, including increases in cost-sharing requirements that exceed certain thresholds. However, cost-sharing requirements for a grandfathered group health plan or group health insurance coverage that is an HDHP must satisfy the minimum annual deductible requirement and maximum out-of-pocket expenses requirement under section 223(c)(2)(A) of the Code in order to remain an HDHP. The Internal Revenue Service updates these amounts annually to reflect a cost-of-living adjustment.

The annual cost-of-living adjustment to the required minimum deductible for an HDHP has not yet exceeded the maximum percentage increase that would cause an HDHP to lose grandfather status.¹⁹ Nevertheless, the Departments are of the view that there is value in specifying that if a grandfathered group health plan or group health insurance coverage that is an HDHP increases its fixed-amount cost-sharing requirements to meet a future adjusted minimum annual deductible requirement under section 223(c)(2)(A) of the Code that is greater

than the increase that would be permitted under paragraph (g)(1) of the 2015 final rules, such an increase would not cause the plan or coverage to relinquish its grandfather status. Otherwise, if such a conflict were to occur, the plan sponsor or issuer would have to decide whether to preserve the plan’s grandfather status or its status as an HDHP, potentially causing participants and beneficiaries to experience either substantial changes to their coverage (and likely premium increases) or a loss of eligibility to contribute to an HSA.

To address this potential conflict, the 2020 proposed rules included a new paragraph (g)(3), which provided that, with respect to a grandfathered group health plan or group health insurance coverage that is an HDHP, increases to fixed-amount cost-sharing requirements that otherwise would cause a loss of grandfather status would not cause the plan or coverage to relinquish its grandfather status, but only to the extent the increases are necessary to maintain its status as an HDHP under section 223(c)(2)(A) of the Code.²⁰ Thus, increases with respect to such a plan or coverage that would otherwise cause a loss of grandfather status and that exceed the amount necessary to satisfy the minimum annual deductible requirement under section 223(c)(2)(A) of the Code would still cause a loss of grandfather status. The 2020 proposed rules also added a new example 11 under paragraph (g)(5) to illustrate how this special rule would apply.

Several commenters supported the 2020 proposed rules to allow a grandfathered HDHP to make changes to fixed-amount cost-sharing requirements without causing a loss of grandfather status to the extent the increases are necessary to maintain the plan’s status as an HDHP. One commenter highlighted that without this regulatory change, HDHPs could be forced out of their grandfather status if the annual cost-of-living adjustment to the required minimum deductible for an HDHP exceeds the maximum percentage increase allowed under the 2015 final rules. Another commenter articulated that without this provision, participants and beneficiaries who are covered under a grandfathered HDHP and eligible to contribute to an HSA may lose their eligibility to contribute to an HSA if their plan chooses to relinquish its HDHP status to maintain its grandfather

¹⁹ For calendar year 2020, a “high deductible health plan” is defined under Code section 223(c)(2)(A) as a health plan with an annual deductible that is not less than \$1,400 for self-only coverage or \$2,800 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) for which do not exceed \$6,900 for self-only coverage or \$13,800 for family coverage. Rev. Proc. 2019–25 (2019–22 I.R.B. 1261). For calendar year 2021, a “high deductible health plan” is defined under Code section 223(c)(2)(A) as a health plan with an annual deductible that is not less than \$1,400 for self-only coverage or \$2,800 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) for which do not exceed \$7,000 for self-only coverage or \$14,000 for family coverage. Rev. Proc. 2020–32 (2020–24 I.R.B. 930).

²⁰ Paragraph (g)(3) of the 2015 final rules would be renumbered as paragraph (g)(4), and subsequent paragraphs would be renumbered accordingly. Additionally, the 2020 proposed rules included conforming amendments to other paragraphs to update all cross-references to those subparagraphs.

¹⁶ ERISA Section 102.

¹⁷ 26 CFR 54.9815–2715, 29 CFR 2590.715–2715, 45 CFR 147.200.

¹⁸ 26 CFR 54.9815–2715(b), 29 CFR 2590.715–2715(b), 45 CFR 147.200(b).

status. The commenter also raised the concern of facing substantial premium increases as a result of having to choose other health coverage in the event of an HDHP failing to maintain its HDHP status.

The Departments agree that the special rule for grandfathered HDHPs could help participants and beneficiaries enrolled in these plans. The Departments are of the view that there is value in specifying that grandfathered HDHPs will not be forced to choose whether to preserve their grandfather status or their status as an HDHP and that they can continue to provide the coverage with which their participants and beneficiaries are familiar and comfortable. The Departments also agree that this special rule will help ensure that plans are able to comply with minimum cost-sharing requirements for HDHPs so participants and beneficiaries covered under HDHPs can continue to be eligible to contribute to HSAs. In adopting the final rules, the Departments specifically intend to ensure that participants and beneficiaries enrolled in HDHPs with grandfather status are able to maintain their eligibility to contribute to HSAs.

Other commenters expressed concerns that allowing grandfathered HDHPs to preserve both their grandfather status and HDHP status by implementing fixed dollar cost-sharing increases that exceed the standards established under the 2015 final rules might result in increased costs for consumers enrolled in HDHPs. These commenters stated that the proposed changes would further exacerbate existing affordability issues, in particular by raising deductibles to potentially unaffordable levels and subjecting consumers to increased cost sharing. Several commenters noted that increased cost sharing for HDHPs may discourage consumers from seeking medical care or cause consumers to forego treatment if the necessary services became unaffordable. Moreover, commenters noted that high out-of-pocket costs for medical care related to the diagnosis and/or treatment of COVID-19 may deter individuals from seeking care, potentially contributing to increased transmission of COVID-19.

The Departments acknowledge commenters' concerns related to potential increased cost and affordability issues, but the Departments do not anticipate significant cost increases for consumers enrolled in grandfathered HDHPs. In addition, this special rule is narrowly tailored, as it permits flexibility only to the extent necessary to maintain a plan's status as

an HDHP under section 223(c)(2)(A) of the Code. Without this regulatory change, grandfathered HDHPs could be forced to choose between maintaining grandfather status and remaining HDHPs. The flexibility offered by the special rule for grandfathered HDHPs will benefit participants and beneficiaries covered under these plans as it balances potential affordability issues with safeguards. Specifically, the final rules allow plan sponsors to continue offering grandfathered coverage, thereby enabling participants and beneficiaries to maintain existing coverage, while only permitting plan sponsors to make certain cost-sharing increases to the extent necessary to maintain HDHP status. Moreover, the Departments expect that the impact of the special rule will be modest: Sponsors of grandfathered HDHPs will have greater flexibility to continue offering their plans as grandfathered, protecting those enrolled in these plans from the disruption and potentially increased out-of-pocket costs associated with changing to a different plan or coverage that may not be an HDHP or grandfathered. This consideration carries particular weight because of the COVID-19 pandemic, during which losing access to a plan or coverage, potentially including losing access to a specific provider network, could be particularly disruptive.

b. Definition of Maximum Percentage Increase

Under the 2015 final rules, medical inflation means the increase since March 2010 in the overall medical care component of the CPI-U published by the DOL using the 1982-1984 base of 100. The medical care component of the CPI-U is a measure of the average change over time in the prices paid by urban consumers for medical care. Although the Departments continue to be of the view that this is an appropriate measure for medical inflation in this context, the Departments recognize that the medical care component of CPI-U reflects not only changes in price for private insurance, but also for self-pay patients and Medicare, neither of which are reflected in the underlying costs for grandfathered group health plans and grandfathered group health insurance coverage. In contrast, the premium adjustment percentage reflects the cumulative, historic growth from 2013 through the preceding calendar year in premiums for only private health insurance, excluding Medigap and property and casualty insurance. Therefore, the Departments agreed with comments received in response to the 2019 RFI that the premium adjustment

percentage may better reflect the increase in underlying costs for grandfathered group health plans and grandfathered group health insurance coverage.²¹

Accordingly, the 2020 proposed rules included an amended definition of the maximum percentage increase with an alternative standard that relies on the premium adjustment percentage, rather than medical inflation (which continues to be defined, for purposes of these rules, as the overall medical care component of the CPI-U, unadjusted), to account for changes in healthcare costs over time. Under the 2020 proposed rules, this alternative standard would not supplant the current standard; rather, it would be available to the extent it yields a higher-dollar value than the current standard, and it would apply only with respect to increases in fixed-amount cost-sharing requirements that are made effective on or after the applicability date of the final rules. With respect to increases for group health plans and group health insurance coverage made effective on or after March 23, 2010, but before the applicability date of the final rules, the maximum percentage increase would still be defined as medical inflation expressed as a percentage, plus 15 percentage points.²²

Thus, under the 2020 proposed rules, increases to fixed-amount cost-sharing requirements for grandfathered group health plans and grandfathered group health insurance coverage that are made applicable on or after the applicability date of the final rules would cause the plan or coverage to cease to be a grandfathered health plan if the total percentage increase in the cost-sharing requirement measured from March 23,

²¹ The Departments acknowledge that the premium adjustment percentage does not capture premium growth from 2010 to 2013, and that it reflects increases in premiums not only in the group market, but also in the individual market, which have increased more rapidly than premiums for group health plans and group health insurance. However, the Departments have concluded that the premium adjustment percentage may be the best alternative existing measure to reflect the increase in underlying costs for grandfathered group health plans and grandfathered group health insurance coverage. Additionally, the Departments are of the view that using a measure with which plans and issuers are already familiar will promote administrative simplicity.

²² The amendments included in the 2020 proposed rules would apply only with respect to grandfathered group health plans and grandfathered group health insurance coverage. Because HHS regulations at 45 CFR 147.140 apply to both grandfathered individual and group health coverage, the amended definition of the maximum percentage increase in the HHS proposed rules would also add a separate provision for individual health insurance coverage to make clear that the definition applicable to individual coverage remains unchanged.

2010 exceeds the greater of (1) medical inflation, expressed as a percentage, plus 15 percentage points; or (2) the portion of the premium adjustment percentage, as defined in 45 CFR 156.130(e), that reflects the relative change between 2013 and the calendar year prior to the effective date of the increase (that is, the premium adjustment percentage minus 1), expressed as a percentage, plus 15 percentage points.²³ The 2020 proposed rules also added a new example 5 under paragraph (g)(5) to demonstrate how this alternative measure for determining the maximum percentage increase might apply in practice. Similar to other examples in paragraph (g)(5), the proposed new example 5 included hypothetical numbers with respect to both the overall medical care component of the CPI-U and the premium adjustment percentage that do not relate to any specific time period and are used for illustrative purposes only. The 2020 proposed rules also renumbered examples 5 through 9 in paragraph (g)(5) to allow the inclusion of new example 5 and revised examples 3 through 6 to clarify that these examples involve plan changes that became effective before the applicability date of these final rules. These proposed revisions would ensure that the examples accurately reflect the other provisions of the 2015 final rules.

In support of this provision in the 2020 proposed rules, one commenter pointed out that the ability to use a premium adjustment percentage for permitted changes in fixed cost-sharing amounts would be helpful to multiemployer plan sponsors wishing to maintain grandfather status. Another commenter said that the premium adjustment percentage is an amount very familiar to group health plan sponsors, and it is based on factors related to group plan premiums, making it a natural complement to the grandfathered plan cost-sharing requirements.

Some commenters stated that the 2020 proposed rules should have provided even greater flexibility. One commenter suggested that instead of examining changes to healthcare costs over cumulative years since March 23, 2010, the Departments should consider allowing a set percentage of allowable increase annually. Another commenter urged the Departments to make additional changes in the final rules to

provide more flexibility, allowing plan design changes specifically to encourage cost-effective quality care, such as greater ability to change cost sharing for brand drugs and out-of-network benefits.

One commenter stated that the Departments' intent to allow grandfathered plans to increase out-of-pocket costs at a rate that is the greater of the medical inflation adjustment or the premium adjustment percentage (plus 15 percentage points) would, by design, result in increased out-of-pocket costs for participants and beneficiaries. This commenter stated that using the premium adjustment percentage for this calculation would leave patients vulnerable to financial hardship. Another commenter asserted that the proposed amendment to the definition of maximum percentage increase would likely result in increased cost sharing, and in turn, less favorable coverage for individuals enrolled in grandfathered coverage, to the detriment of many consumers who rely on employment-based health coverage and who may not have an option to enroll in coverage that complies with the generally applicable market reforms made by PPACA.

As stated earlier in this preamble, the Departments have concluded that the proposed and final rules strike the right balance between allowing grandfathered health plans the flexibility to design their health plans to meet their changing needs and ensuring that affordable healthcare options for participants and beneficiaries remain available. The Departments are unpersuaded that the final rules will result in significant financial hardship due to the additional permitted increases in out-of-pocket costs for participants and beneficiaries. As noted earlier in this preamble, providing an alternative inflation adjustment for fixed-amount cost-sharing increases will help plans and issuers better account for changes in the costs of health coverage over time, potentially allowing them to maintain the grandfathered coverage for those participants and beneficiaries. Therefore, the Departments are of the view that allowing plans and issuers to use this measure is appropriate and it may capture changes in healthcare costs at least as accurately as the medical inflation standard. Accordingly, the Departments are finalizing this change, as proposed.

III. Effective Date

In the 2020 proposed rules, the Departments proposed an effective date of 30 days after publication of the final rules. The Departments are finalizing as

proposed an effective date of 30 days after publication of the final rules, which would be January 14, 2021. However, in response to comments, the Departments are including an applicability date which will make the final rules applicable to grandfathered group health plans and grandfathered group health insurance coverage beginning on June 15, 2021. While the Departments did not receive any comments specifically requesting that the applicability date of the final rules be delayed to 6 months after publication, the Departments did receive a number of comments related to the COVID-19 pandemic and the timing of the final rules, as discussed earlier in this preamble. Commenters expressed concern that it is not appropriate to potentially place a greater financial burden related to healthcare on patients while the COVID-19 pandemic is ongoing.

As explained above, in the Departments' view, the final rules will allow employers to continue to offer affordable coverage to those who are eligible for grandfathered employer-sponsored plans. However, the Departments acknowledge commenters' reasonable concerns regarding the timing of the final rules and the uncertainty created by the COVID-19 pandemic. The Departments are therefore delaying the applicability date of the final rules to 6 months after publication in the **Federal Register**. The Departments are of the view that this delay is appropriate, as the Departments do not expect the delay to have a significant short-term impact on plans' and issuers' ability to make use of the cost-sharing flexibilities afforded under the final rules; instead, a short delay will reduce uncertainty by allowing plans, issuers, and those covered by grandfathered plans more time to understand and plan for the increased flexibility provided by the final rules.

IV. Economic Impact Analysis and Paperwork Burden

A. Summary/Statement of Need

Section 1251 of PPACA generally provides that certain group health plans and health insurance coverage existing on March 23, 2010, are not subject to certain provisions of PPACA as long as they maintain grandfather status. On February 25, 2019, the Departments published an RFI to gather information on grandfathered group health plans and grandfathered group health insurance coverage. Comments received from stakeholders in response to the 2019 RFI suggested that issuers and plan sponsors, as well as participants and

²³ Stakeholders should look to official publications from the Bureau of Labor Statistics and HHS to identify the relevant overall medical care component of the CPI-U amount or premium adjustment percentage with respect to a change being considered by a grandfathered health plan.

beneficiaries, continue to value grandfathered group health plan and grandfathered group health insurance coverage. The Departments issued a notice of proposed rulemaking on July 15, 2020, to amend the 2015 final rules to provide greater flexibility for certain grandfathered health plans to make changes to certain types of cost-sharing requirements without causing a loss of grandfather status. The Departments are of the view that these final rules are appropriate to provide certain grandfathered health plans greater flexibility while appropriately taking into account rising healthcare costs. Additionally, the final rules will ensure that grandfathered plans are able to make changes to comply with minimum cost-sharing requirements for HDHPs without losing grandfather status, so enrolled individuals continue to be eligible to contribute to HSAs. These changes will allow certain grandfathered group health plans and grandfathered group health insurance coverage to continue to be exempt from certain provisions of PPACA and allow those plans' participants and beneficiaries to maintain their current coverage.

In drafting the final rules, the Departments attempted to balance a number of competing interests. The Departments sought to balance providing greater flexibility to grandfathered group health plans and grandfathered group health insurance coverage that will enable these plans and coverage to continue offering quality, affordable coverage to participants and beneficiaries while ensuring that the final rules will not allow for such significant changes that the plan or coverage could not reasonably be described as being the same plan or coverage that was offered on March 23, 2010. Additionally, the Departments sought to allow grandfathered group health plans and grandfathered group health insurance coverage to better account for rising healthcare costs, including ensuring that grandfathered group HDHPs are able to maintain their grandfather status, while continuing to comply with minimum cost-sharing requirements for HDHPs, so that the individuals enrolled in the HDHPs are eligible to contribute to an HSA. In previous rulemaking, the Departments recognized that many group health plans and issuers make changes to the terms of plans or health insurance coverage on an annual basis: Premiums fluctuate, provider networks and drug formularies change, employer and employee contributions and cost-sharing requirements change, and

covered items and services may vary. Without some flexibility to make adjustments while retaining grandfather status, the ability of many individuals to maintain their current coverage would be frustrated, because much of the grandfathered group health plan coverage would quickly cease to be regarded as the same health plan or health insurance coverage in existence on March 23, 2010. At the same time, allowing grandfathered health plans and grandfathered group health insurance coverage to make unfettered changes while retaining grandfather status would be inconsistent with Congress's intent in enacting PPACA.²⁴

The final rules amend the 2015 final rules to provide greater flexibility for grandfathered group health plans and issuers of grandfathered group health insurance coverage in two ways. First, the final rules specify that any grandfathered group health plan and grandfathered group health insurance coverage that is an HDHP may make changes to fixed-amount cost-sharing requirements that would otherwise cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent those changes are necessary to comply with the requirements for HDHPs under section 223(c)(2)(A) of the Code. Second, the final rules include a revised definition of maximum percentage increase, which provides an alternative standard that relies on the premium adjustment percentage, rather than medical inflation, to account for changes in healthcare costs over time, providing for an alternative inflation adjustment for fixed-amount cost-sharing increases.

B. Overall Impact

The Departments have examined the impacts of the final rules 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 (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (SSA), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

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. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects (\$100 million or more in any 1 year).

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.

An RIA must be prepared for major rules with economically significant effects (\$100 million or more in any one year), and a “significant” regulatory action is subject to Office of Management and Budget (OMB) review. The final rules are not likely to have economic impacts of \$100 million or more in any 1 year, and therefore do not meet the definition of “economically significant” within the meaning of section 3(f)(1) of Executive Order 12866. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, OMB has reviewed the final rules, and the Departments have provided the following assessment of their impact.

Some commenters stated that the rules should not be finalized because the Departments had insufficient information and data to estimate the effects of the 2020 proposed rules on grandfathered group health plans and coverage as well as those enrolled in such coverage. The Departments acknowledge that, given the lack of information and data, the Departments are not able to precisely estimate the

²⁴ 75 FR 34538, 34546 (June 17, 2010).

overall impact of the final rules. As discussed later in the impact analysis, the Departments note the inability to predict what changes each grandfathered group health plan will make in response to the final rules. The Departments recognize that some grandfathered group health plans may take advantage of flexibilities provided by the final rules to change certain types of cost-sharing requirements in amounts greater than the current rules allow, potentially increasing out-of-pocket costs at a higher rate for some participants and beneficiaries, while potentially reducing premiums for others. However, other grandfathered group health plans may make relatively minor, or no, changes. As discussed previously in this preamble, the Departments note that the fact that a significant number of grandfathered group health plans and coverage remain indicates that some employers and issuers have found value in preserving grandfather status. The Departments are of the view that preserving grandfather status will enable participants to retain their current coverage, including their

provider network(s), maintain access to affordable coverage options, and ensure that employers and other grandfathered group health plan sponsors can more appropriately account for the rising costs of healthcare due to inflation. The Departments have also concluded that the final rules appropriately support the goal of promoting greater choices in coverage, especially in light of rising healthcare costs.

C. Impact Estimates of Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage Provisions and Accounting Table

The final rules amend the 2015 final rules to provide greater flexibility for grandfathered group health plan sponsors and issuers of grandfathered group health insurance coverage to make certain changes to cost-sharing requirements without causing a loss of grandfather status. The final rules specify that issuers or sponsors of any grandfathered group health plan and grandfathered group health insurance coverage that is an HDHP may make changes to fixed-amount cost-sharing requirements that would otherwise

cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent those changes are necessary to comply with the requirements for HDHPs under section 223(c)(2)(A) of the Code. The final rules also revise the definition of maximum percentage increase to provide an alternative standard that relies on the premium adjustment percentage, rather than medical inflation, to account for changes in healthcare costs over time. In accordance with OMB Circular A-4, Table 1 depicts an accounting statement summarizing the Departments' assessment of the benefits, costs, and transfers associated with this regulatory action.

The Departments are unable to quantify all benefits, costs, and transfers of the final rules. The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs and transfers resulting from the provisions of the final rules for grandfathered group health plans, issuers of grandfathered group health coverage, participants, and beneficiaries.

TABLE 1—ACCOUNTING TABLE

Benefits				
Non-Quantified:				
<ul style="list-style-type: none"> Increases flexibility for plan sponsors and issuers of grandfathered group health plans and grandfathered group health insurance coverage to make changes to certain fixed-amount cost-sharing requirements without losing grandfather status. If there is uptake of this flexibility: <ul style="list-style-type: none"> Allows participants and beneficiaries in grandfathered group health plans and grandfathered group health insurance coverage to maintain coverage they are familiar with and potentially provides continuity of care by not requiring them to change their health plan to one that may not include their current provider(s). Ensures plan sponsors are able to comply with minimum cost-sharing requirements for HDHPs and allows participants and beneficiaries to maintain their coverage and eligibility to contribute to an HSA. Decreases the likelihood that plan sponsors would cease offering health benefits due to a lack of flexibility to make changes to certain fixed cost-sharing amounts without losing grandfather status. Potential reduction in adverse health outcomes if there is a decrease in the uninsured rate if participants and beneficiaries choose to obtain coverage due to potential premium reductions for grandfathered group health plans and grandfathered group health insurance coverage and seek needed healthcare. 				
Costs:	Primary estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized (\$/year)	\$6.09	2020	7	2021–2025
	\$5.67	2020	3	2021–2025

Quantitative:

- Regulatory review costs of \$26.73 million, incurred in 2021, by grandfathered group health plan coverage sponsors and issuers.

Non-Quantified:

- Potential increase in adverse health outcomes if a participant or beneficiary foregoes treatment because the necessary services became unaffordable due to an increase in cost-sharing.
- Potential increase in adverse health outcomes if there is an increase in the uninsured rate if participants and beneficiaries choose to cancel their coverage or decline to enroll because of the increases in cost-sharing requirements associated with grandfathered group health plans and grandfathered group health insurance coverage.
- If an employer would have otherwise switched to a non-grandfathered plan, potential increase in adverse health outcomes if a participant or beneficiary foregoes treatment for medical conditions that are not covered by their grandfathered group health plan and grandfathered group health insurance coverage, but that would have been covered by non-grandfathered health plan coverage subject to all PPACA market reforms.

Transfers

Non-Quantified:

- For grandfathered group health plans and grandfathered group health insurance coverage that utilize the expanded flexibilities to increase fixed-amount cost-sharing requirements, potential transfers occur from participants and beneficiaries with resulting higher out-of-pocket costs to participants and beneficiaries with no or low out-of-pocket costs and nonparticipants through potentially lower premiums and correspondingly smaller wage adjustments to pay for the premiums.
- If an employer would have otherwise switched to a non-grandfathered plan with expanded benefits, potential transfers occur from participants and beneficiaries who would have benefited from these expanded benefits to others in the plan who would not have benefited from these expanded benefits through lower premiums and correspondingly smaller wage adjustments.

Table 1 provides the anticipated benefits, costs, and transfers (quantitative and non-quantified) to sponsors and issuers of grandfathered health plan coverage, participants and beneficiaries enrolled in grandfathered plans, as well as nonparticipants. The following section describes the benefits, costs, and transfers to grandfathered group health plan sponsors, issuers of grandfathered group health insurance coverage, and those individuals enrolled in such plans.

Economic Impacts of Retaining or Relinquishing Grandfather Status and Affected Entities and Individuals

The Departments estimate that there are 2.5 million ERISA-covered plans offered by private employers that cover an estimated 136.2 million participants and beneficiaries in those private employer-sponsored plans.²⁵ Similarly, the Departments estimate that there are 84,087 state and local governments that offer health coverage to their employees, with an estimated 32.8 million participants and beneficiaries in those employer-sponsored plans.²⁶

The Kaiser Family Foundation 2020 Employer Health Benefits Survey reports that 16 percent of firms offering health benefits have at least one health plan or benefit package option that is a grandfathered plan, and 14 percent of covered workers are enrolled in grandfathered plans.²⁷ Using this

information, the Departments estimate that, of those firms offering health benefits, 400,000 sponsor ERISA-covered plans (2.5 million * 0.16) that are grandfathered (or include a grandfathered benefit package option) and cover 19.1 million participants and beneficiaries (136.2 million * 0.14). The Departments further estimate there are 13,454 state and local governments (84,087 * 0.16) offering at least one grandfathered health plan and 4.6 million participants and beneficiaries (32.8 million * 0.14) covered by a grandfathered state or local government plan.

Although the Kaiser Family Foundation 2020 Employer Health Benefits Survey reports that 20 percent of firms offering health benefits offered an HDHP and 24 percent of covered workers were enrolled in HDHPs, the Departments are of the view that the 2010 Employer Health Benefits Survey provides a better estimate of the prevalence of HDHPs in the grandfathered group market as it provides an estimate for the number of potential HDHPs that would have been able to obtain and maintain grandfather status. The 2010 Employer Health Benefits Survey reported that 12 percent of firms offering health benefits offered an HDHP, and 6 percent of covered workers were enrolled in HDHPs.²⁸

Benefits

The Departments are of the view that the economic effects of the final rules will ultimately depend on decisions made by grandfathered plan sponsors (including sponsors of grandfathered HDHPs) and the preferences of plan participants and beneficiaries. To determine the value of retaining a health plan's grandfather status, each group plan sponsor must determine whether the plan, under the rules applicable to grandfathered health plan coverage, will continue to be more or less favorable than the plan as it would exist under the rules applicable to non-grandfathered group health plans. This determination will depend on such factors as the

respective prices of grandfathered group health plan and non-grandfathered group health plans, the willingness of grandfathered group health plans' covered populations to pay for benefits and protections available under non-grandfathered group health plans, and the participants' and beneficiaries' willingness to accept any increases in out-of-pocket costs due to changes to certain types of cost-sharing requirements. The Departments have concluded that providing flexibilities to make changes to certain types of cost-sharing requirements in grandfathered group health plans and grandfathered group health insurance coverage without causing a loss of grandfather status will enable plan sponsors and issuers to continue to offer quality, affordable coverage to their participants and beneficiaries while taking into account rising healthcare costs.

The Departments anticipate that the premium adjustment percentage index will continue to experience faster growth than medical CPI-U, and therefore are of the view that providing the alternative method of determining the maximum percentage increase will, over time, give grandfathered group health plans and grandfathered group health insurance coverage the flexibility to make changes to the plans' fixed-amount cost-sharing requirements (such as copayments, deductibles, and out-of-pocket limits) that would have previously resulted in the loss of grandfather status. Thus, the Departments are of the view that the final rules will allow sponsors of those grandfathered group health plans and coverage to continue to provide the coverage with which their participants and beneficiaries are familiar and comfortable, without the unnecessary burden of finding other coverage. Additionally, if the flexibilities provided for in the final rules result in a reduction in grandfathered group health plan and grandfathered group health insurance coverage premiums, there could potentially be a reduction in adverse health outcomes if participants and beneficiaries chose to obtain coverage they may have previously foregone and seek needed healthcare.²⁹

²⁵ U.S. Department of Labor, EBSA calculations using the 2019 Medical Expenditure Panel Survey, Insurance Component (MEPS-IC), the Form 5500 and 2017 Census County Business Patterns; Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2019 Annual Social and Economic Supplement to the Current Population Survey, Table 3C (forthcoming).

²⁶ 2017 Census of Governments, Government Organization Report, available at <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>; 2017 MEPS-IC State and Local Government data, available for query at https://meps.ahrq.gov/mepsweb/data_stats/MEPSnetIC/startup; Health Insurance Coverage Bulletin: Abstract of Auxiliary Data for the March 2019 Annual Social and Economic Supplement to the Current Population Survey, Table 3C, (forthcoming).

²⁷ The Departments note that comments received in response to the 2019 RFI and summarized earlier in this preamble described data obtained from Kaiser Family Foundation 2018 Employer Health Benefits Survey. See *supra* note 9. For the purposes of this RIA, the Departments used more recent data from the same survey. See Kaiser Family Foundation, "2020 Employer Health Benefits

Survey," available at <https://www.kff.org/health-costs/report/2020-employer-health-benefits-survey/>.

²⁸ Kaiser Family Foundation, "2010 Employer Health Benefits Survey," (Sept. 2010), available at: <https://www.kff.org/wp-content/uploads/2013/04/8085.pdf>.

²⁹ To the extent that utilization and health expenditures are relatively stable, the Departments

As noted previously in this preamble, in response to the 2019 RFI, some commenters suggested that their grandfathered plans offer more robust provider networks than other coverage options available to them or that they want to ensure that participants and beneficiaries are able to keep receiving care from current in-network providers. The Departments are of the view that providing the flexibilities in the final rules will help participants and beneficiaries maintain their current provider and service networks. If providers continue participating in the grandfathered plans' networks, this continuity offers participants and beneficiaries the ability to continue current and future care through those providers with whom they have built relationships.

As discussed previously in this preamble, one commenter on the 2019 RFI articulated a concern that the 2015 final rules may eventually preclude some sponsors and issuers of grandfathered group health plans and grandfathered group health insurance coverage from being able to make changes to fixed-amount cost-sharing requirements necessary to maintain a plan's HDHP status. For participants and beneficiaries, this would mean they could experience either substantial changes to their coverage (and likely premium increases) or a loss of eligibility to contribute to an HSA. The Departments expect that, under the 2015 final rules, there may be limited circumstances in which a grandfathered group health plan or grandfathered group health insurance coverage that is an HDHP (grandfathered HDHP) is unable to simultaneously maintain its grandfather status and satisfy the requirements for HDHPs under section 223(c)(2)(A) of the Code. Nonetheless, to avoid this scenario and provide assurance to grandfathered group health plan sponsors and issuers of grandfathered HDHPs, the final rules allow a grandfathered HDHP to make changes to fixed-amount cost-sharing requirements that otherwise could cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent the increases are necessary to comply with the requirements for HDHPs under section 223(c)(2)(A) of the Code.

The Departments have concluded that providing this flexibility to grandfathered HDHPs will allow them

expect that higher cost sharing may lead to lower premiums, both because higher cost sharing will reduce issuers' share of the costs of care and because of medical loss ratio (MLR) requirements, which encourage issuers to pass these savings to consumers in the form of lower premiums.

to preserve their grandfather status even if they increase their cost-sharing requirements to meet a future adjusted minimum annual deductible requirement under section 223(c)(2)(A) of the Code beyond the increase that would be permitted under paragraph (g)(1) of the 2015 final rules. Under section 223(g) of the Code, the required minimum deductible for an HDHP is adjusted for cost-of-living based on changes in the overall economy. Historically, the allowed increases under the 2015 final rules, which are based on changes in medical care costs (medical CPI-U), have exceeded increases based on changes in the overall economy (CPI-U or, for tax years beginning after December 31, 2017, C-CPI-U). Using 10 years of projections from the President's FY 2021 Budget, medical-CPI-U is expected to grow faster than CPI-U. Further, because the allowed increases under the 2015 final rules are based on the cumulative effect over a period of years, it is unlikely that using medical-CPI-U to index deductibles would result in lower deductibles than using C-CPI-U as required under section 223(g) of the Code.³⁰ Therefore, the Departments note that, to the extent these trends continue, it is unlikely that an increase required under section 223 of the Code for a plan to remain an HDHP would exceed the allowed increases under the 2015 final rules. Furthermore, to the extent that the revised definition of maximum percentage increase in the final rules will allow the deductible to grow as fast, or faster, than under the 2015 final rules, grandfathered HDHPs may not need to avail themselves of the additional flexibility provided in the final rules. Nevertheless, the Departments are of the view that affording this flexibility will make the rules more transparent to sponsors of grandfathered HDHPs. Thus, the final regulations will allow participants and beneficiaries enrolled in those plans to maintain their current coverage, continue contributing to any existing HSA, and potentially realize any reduction in premiums that may result from changes in cost-sharing requirements.

Costs and Transfers

The Departments recognize there are costs associated with the final rules that are difficult to quantify given the lack of information and data. For example, the Departments do not have data related to

³⁰ As noted earlier in this preamble, the Tax Cuts and Jobs Act amended section 1(f)(3) of the Code, cross-referenced in section 223(g) of the Code, to refer to C-CPI-U, instead of CPI-U, for tax years beginning after December 31, 2017.

the current annual out-of-pocket costs for participants and beneficiaries in grandfathered group HDHPs or other grandfathered group health plans and grandfathered group health insurance coverage. The Departments recognize that as medical care costs increase, some participants and beneficiaries in grandfathered health plans could face higher out-of-pocket costs for services that may be excluded by such plans, but that would be required to be covered by non-grandfathered group health plans and group health insurance coverage subject to PPACA market reforms. As noted earlier in this analysis, it is possible that lower premiums, compared to the likely premiums if these rules are not finalized, could partially offset these increased costs. Further, participants and beneficiaries who would otherwise be covered by a non-grandfathered plan could potentially face increases in adverse health outcomes if they forego treatment because certain services are not covered by their grandfathered plan or coverage. The Departments cannot precisely predict the number of group health plans and group health insurance coverage that will retain their grandfather status as a result of the final rules. According to the annual Kaiser Family Foundation Employer Health Benefits Survey, the percentage of employers offering health coverage that offered at least one grandfathered plan between 2016 and 2019 has been relatively stable (23 percent in 2016 to 22 percent in 2019).³¹ The Departments are of the view that a large change over that time period would have indicated that the 2015 final rules were too

³¹ See Kaiser Family Foundation, "2016 Employer Health Benefits Survey," available at <https://www.kff.org/health-costs/report/2016-employer-health-benefits-survey/>; Kaiser Family Foundation, "2017 Employer Health Benefits Survey," available at <https://www.kff.org/health-costs/report/2017-employer-health-benefits-survey/>; Kaiser Family Foundation, "2018 Employer Health Benefits Survey," available at <https://www.kff.org/health-costs/report/2018-employer-health-benefits-survey/>; and Kaiser Family Foundation, "2019 Employer Health Benefits Survey," available at <https://www.kff.org/health-costs/report/2019-employer-health-benefits-survey/>. Despite the relative stability between 2016 and 2019, the 2020 Employer Health Benefits Survey reported that the number of firms offering health coverage that offered at least one grandfathered plan in 2020 decreased to 16 percent. The Departments are of the view that this change may largely be attributable to issues with employer survey reporting during the COVID-19 pandemic, rather than to the 2015 final rules. The Kaiser Family Foundation reported a diminished response to the 2020 survey compared to previous years and attributed that lower response rate to a combination of factors including changing data collection firms, disruptions from the COVID-19 pandemic, and starting the fielding period later. Kaiser Family Foundation, "2020 Employer Health Benefits Survey," available at <https://www.kff.org/health-costs/report/2020-employer-health-benefits-survey/>.

restrictive and that a relaxation of those rules would have a large effect. The actual small change suggests the opposite. Therefore, the Departments do not expect a significant impact on the number of grandfathered group health plans or grandfathered group health insurance coverage as a result of the final rules.

For those plans and coverages that continue to maintain their grandfather status as a result of the flexibilities in the final rules, the participants and beneficiaries will continue to have coverage and may experience lower premiums when compared to non-grandfathered group health plans. Although some participants and beneficiaries will pay higher cost-sharing amounts, these increased costs may be partially offset by reduced employee premiums, and indirectly through potential wage adjustments that reflect reduced employer contributions due to any resulting lower premiums. In contrast, individuals who have low or no medical expenses, along with nonparticipants, will be unlikely to experience increased cost-sharing amounts and may benefit from lower employee premiums, and indirectly through potential wage adjustments.

The Departments recognize there will be transfers associated with the final rules that are difficult to quantify given the lack of information and data. The Departments realize that if plan sponsors avail themselves of the flexibilities in the final rules, some participants and beneficiaries of grandfathered group health plans and grandfathered group health insurance coverage will potentially see increases in out-of-pocket costs depending on the changes made to their plans. Additionally, participants and beneficiaries in a grandfathered HDHP could face increases in the plan's deductible if plans increase their fixed-amount cost-sharing requirements to meet a future adjusted minimum annual deductible requirement beyond the increase that is permitted under the 2015 final rules. Changes in costs associated with increased deductibles or other cost sharing will be a transfer from participants and beneficiaries with higher out-of-pocket costs to participants and beneficiaries with lower or no out-of-pocket costs and to nonparticipants, as the related premium reductions could affect wages.

Due to the overall lack of information and data related to what grandfathered group plan sponsors will choose to do, the Departments are unable to precisely estimate the overall economic impact, but the Departments anticipate that the overall impact will be minimal.

However, there is a large degree of uncertainty regarding the effect of the final rules on any potential changes to cost sharing at the plan level so actual experience could differ.

Commenters suggested that the provisions of the 2020 proposed rules would disadvantage consumers with pre-existing conditions. Specifically, commenters suggested that those individuals most likely to shoulder the burden of increased out-of-pocket costs are those who already have higher medical expenses and out-of-pocket costs (for example, those with blood cancer). Another commenter noted that the 2020 proposed rules suggested that the resulting increases in out-of-pocket expenditures for participants and beneficiaries of grandfathered plans could be offset by decreases in premiums or wage adjustments; however, according to this commenter, those potential benefits are minimal and uncertain, while participants and beneficiaries will likely be paying more for substandard health coverage. Another commenter suggested that the Departments should fully evaluate and publicly report on whether increased cost sharing will lead to decreased utilization of necessary medical care.

The Departments appreciate these concerns. Nevertheless, the Departments are of the view that finalizing the 2020 proposed rules is important to help grandfathered group health plans and grandfathered group health insurance coverage maintain grandfather status and supports the goal of promoting greater choice in coverage, especially in light of rising healthcare costs. The Departments recognize that should a grandfathered group health plan or grandfathered group health insurance coverage avail itself of the flexibilities in the final rules, some participants and beneficiaries could incur higher out-of-pocket costs for ongoing or future healthcare needs. However, as discussed previously in this preamble, participants and beneficiaries would continue to benefit from many PPACA consumer protections that are applicable to all group health plans and group health insurance coverage, regardless of grandfather status, including the prohibition on preexisting condition exclusions, the prohibition on waiting periods that exceed 90 days, and the prohibition on lifetime or annual dollar limits. Additionally, grandfathered group health plans and issuers of grandfathered group health insurance coverage are not prohibited from providing coverage consistent with any of PPACA market provisions that apply to non-grandfathered group health plans and may add coverage consistent

with such market provisions without relinquishing grandfather status.

As discussed later in the impact analysis, some participants and beneficiaries could experience savings in reduced premiums, wage adjustments, and continued access to tax-advantaged HSAs due to changes made as a result of the final rules. The Departments recognize that any increases in cost sharing, changes in premiums, or wage adjustments are at the discretion of the issuer or grandfathered group plan sponsor. The Departments are of the view that providing the flexibilities in the final rules could allow participants to retain their current coverage instead of finding alternate coverage, which may result in greater increases in cost-sharing or reduced benefits for those individuals. As noted later in the impact analysis, the Departments are of the view that because individuals with significant healthcare needs generally exceed the out-of-pocket limit for the plan year, they are only modestly affected by increases in cost-sharing requirements, while individuals with fewer healthcare needs are more likely to be affected by an increase in fixed-amount cost-sharing, but that they incur a small portion of the overall costs.

The Departments have concluded that the final rules strike a proper balance between preserving the ability to maintain existing coverage with the goals of expanding access to and improving the quality of health coverage.

Revenue Impact of Final Rules

This section of the preamble discusses the revenue impact of the final rules, considers a variety of approaches that employers offering grandfathered health plan coverage might have taken if the 2015 final rules were not amended, and compares the revenue impact of each approach under the 2015 final rules with the revenue impact under the final rules.

a. Employees Who Would Have Remained in Grandfathered Plans and Coverage Without the Final Rules

If the 2015 final rules were not amended, some employers might have chosen to continue to maintain their grandfathered health plan coverage. This subsection discusses the revenue impact that the final rules may have on this group of employers and employees.

Under the final rules, grandfathered group health plans and grandfathered group health insurance coverage will be allowed to increase fixed-amount cost-sharing requirements (such as copayments, deductibles, and out-of-

pocket limits) at a somewhat higher rate than under the 2015 final rules without losing grandfather status, which may result in a premium reduction (or similar cost reduction for a self-insured plan). Specifically, for increases in fixed-amount cost-sharing on or after the applicability date of the final rules, grandfathered group health plans and grandfathered group health insurance coverage may use an alternative standard for determining the maximum percentage increase that relies on the premium adjustment percentage, rather than medical inflation, to the extent that it yields a greater result than the standard under the 2015 final rules.

The premium adjustment percentage is estimated to be about three percentage points higher than medical inflation in 2026, using FY2021 President's Budget projections of medical CPI and National Health Expenditures premium projections. Therefore, as of that year, fixed-amount copayments, deductibles, and out-of-pocket limits could be three percentage points higher under the final rules than under the 2015 final rules. However, a grandfathered group plan that increases fixed-amount cost-sharing to the maximum amount allowed under the final rules is likely to realize only a small reduction in premiums. This is because plans incur most of their costs for a relatively small fraction of participants—that is, from high-cost individuals. Because high-cost individuals generally exceed the out-of-pocket limit for the year, they are only modestly affected by higher out-of-pocket limits. Low-cost individuals are more likely to be affected by an increase in fixed-amount cost-sharing, but they incur a small portion of the overall costs. Therefore, the impact of the final rules for a particular grandfathered group health plan will depend on the parameters of covered benefits under the plan, as well as the distribution of expenditures for the plan participants. In addition, increased cost sharing could result in participants and beneficiaries making fewer visits to providers (that is, lower utilization), which could result in lower medical costs for some individuals, but higher costs for others who delay needed medical care. If individuals generally forgo unnecessary care, but continue to go to providers when necessary, premiums could decline even more, but this outcome is uncertain.

Because of the Federal tax exclusion for employer-sponsored coverage, a premium reduction would increase tax revenues due to reduced employer contributions and employee pre-tax contributions made through a cafeteria plan. However, some employees might

partially offset their increases in out-of-pocket payments through increased pre-tax contributions to health flexible spending arrangements (FSAs) or HSAs. Those potential increases in pre-tax contributions to health FSAs and HSAs would reduce tax revenues.

Nonetheless, to the extent that employers would have continued to offer a grandfathered group health plan without changes to the 2015 final rules, under these final rules, the Departments expect tax revenues may increase slightly on net as a result of potential premium reductions. Further, there would be additional revenue gains to the extent that higher out-of-pocket payments discourage employees from continuing participation in the employer's group health plan. This increase may be offset by a reduction in revenue, however, if a reduction in premiums encourages non-participant employees to obtain coverage.

b. Employees Who Would No Longer Have Been Covered by Grandfathered Group Health Plans or Coverage Without the Final Rules

If the 2015 final rules were not amended, some employers might have chosen to change their insured grandfathered group health plans to self-insured, non-grandfathered group health plans, rather than continue to comply with the 2015 final rules, which would result in little, if any, revenue change. Thus, with respect to these employers, the adoption of the final rules will have little, if any, revenue effect.

Alternatively, assuming the 2015 final rules were not amended, an employer might switch to a fully insured non-grandfathered non-HDHP group health plan. With respect to small employers, employees who would transfer to the non-grandfathered group health plan could improve the small group market risk pool or make it worse. An employer with a healthy population might be more likely to self-insure, whereas a small employer with a less healthy population might be more likely to join an insurance pool.

One commenter stated that because the non-grandfathered small group market is subject to modified community rating and single risk pool requirements, making it easier for small-group health plans to preserve their grandfather status would encourage firms with younger or healthier employees to find ways to opt out of the non-grandfathered small group market, at the expense of other firms that then would face higher premiums. The commenter noted that because premiums and medical claims costs in the small group market are higher for

plans that are subject to all PPACA market reforms than for plans that are not, and because PPACA's changes to plan standards in the small group market were more significant than in the large group market, employees at small businesses have more to lose when employers avoid most PPACA market reforms. The commenter suggested that further extending grandfather status would only contribute to market segmentation that harms the non-grandfathered small-group market, rather than channeling younger and healthier groups into the insurance markets that generally are subject to PPACA market reforms, which would serve to bolster stability in those markets.

The Departments acknowledge that the existence of grandfathered group health plans potentially creates market segmentation in the small group market. However, to the extent such market segmentation exists, the Departments do not anticipate that the additional flexibilities provided in the final rules will increase segmentation since the final rules do not provide any mechanism for non-grandfathered plans to become grandfathered. Moreover, the Departments do not expect the number of plans that maintain grandfather status because of the final rules to be so significant as to exacerbate any market segmentation that may already exist.

Although the type of benefits covered in new, non-grandfathered plans (whether self-insured or fully insured) would likely be broader in some ways, such as for preventive care, the share of costs covered by the plan would likely decrease due to higher cost-sharing. Presumably, if the 2015 final rules were not amended, most employers would not make the switch from a grandfathered group health plan to a non-grandfathered group health plan unless the overall cost of providing benefits would decrease, which would cause some revenue gain. (Again, though, the revenue gain could be partially offset by increases in the employees' pre-tax contributions to health FSAs or HSAs.) On the other hand, if the final rules enable an employer that otherwise might switch to a non-grandfathered group health plan to retain its grandfather plan, this revenue gain would not occur, resulting in a revenue loss compared to the status quo under the 2015 final rules.

Without the change to the 2015 final rules, some employers might replace their grandfathered group health plan with an individual coverage health reimbursement arrangement (individual coverage HRA). If the employer contributes a similar dollar amount to

the individual coverage HRA as it currently does to the grandfathered group health plan, the employees' tax exclusion would be at least roughly the same as for the grandfathered group health plan. Moreover, the employees offered the individual coverage HRA would be as likely to be "firewalled" from obtaining a premium tax credit as if they had continued to participate in the grandfathered group health plan. Thus, under this scenario, there would be very little revenue effect from the final rules.

c. Termination of Employer-Sponsored Coverage

If the 2015 final rules were not amended, some employers might drop grandfathered group health coverage altogether and opt instead to make an employer shared responsibility payment, if required under section 4980H of the Code, which may result in an increase in federal revenue. In this case, all affected employees would qualify for a special enrollment period to enroll in other group coverage, if available, or individual health insurance coverage on or off the Exchange. Many of those employees with household incomes between 100–400 percent of the federal poverty level might qualify for financial assistance to help pay for their Exchange coverage and related healthcare expenses, which would increase federal outlays, as discussed further later in this section. Others might have household incomes too high to be eligible for a premium tax credit or might receive a smaller tax subsidy through the income-related premium tax credit than through an employer-sponsored health insurance tax exclusion. Accordingly, if these employers continue their grandfathered group health plan under the final rules, there may be an associated revenue loss. Other employees could purchase individual health insurance coverage but receive a premium tax credit that is greater than the value of the tax exclusion for their current employer plans. For this population, the final rules may result in a revenue gain. However, the employees for which there would be a revenue gain are likely a small population for an employer that is currently offering a grandfathered group health plan.

Despite the availability of a special enrollment period, some affected employees might forgo enrolling in alternative health coverage and become uninsured or might opt instead to purchase short-term, limited-duration insurance. In this case, these employees would no longer receive a tax exclusion for the grandfathered group health plan,

which, along with an employer shared responsibility payment, if any, may result in an increase in federal tax revenue. However, if these employees were to remain covered under a grandfathered group health plan as a result of the final rule, there may be a loss in federal revenue for this group.

Overall, there are a number of potential revenue effects of the final rules, some of which could offset each other. Additionally, there is a large degree of uncertainty, including uncertainty regarding how many group health plans would have continued as grandfathered plans absent the final rules and what alternatives would have been chosen by employers who would not have kept grandfathered group health plans absent the final rules, as well as how many grandfathered group health plans will make plan design changes as a result of the final rules. As a result, it is unclear whether these effects in the aggregate would result in a revenue gain or revenue loss. Because the employer market is so large, even a small percentage change to aggregate premiums can result in large revenue changes. Nevertheless, the Departments are of the view that overall net effects are likely to be relatively small.

Regulatory Review Costs

Affected entities will need to understand the requirements of the final rules before they can avail themselves of any of the flexibilities in the final rules. Sponsors and issuers of grandfathered group health plan coverage will be responsible for ensuring compliance with the final rules should they seek to make changes to their grandfathered group health plans' cost-sharing requirements.

If regulations impose administrative costs on private entities, such as the time needed to read and interpret the final rules, the Departments seek to estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review and interpret the final rules, the Departments assume that the total number of grandfathered group health plan coverage sponsors and issuers that will be able to avail themselves of the flexibilities provided by the final rules is a fair estimate of the number of entities affected. The Departments estimate 414,288 grandfathered plan sponsors and issuers of grandfathered group health insurance coverage will incur burdens related to reviewing the final rules.

The Departments acknowledge that this assumption may understate or overstate the costs of reviewing the final

rules. It is possible that not all affected entities will review the final rules in detail and that others may seek the assistance of outside counsel to read and interpret the final rules. For example, firms providing or sponsoring a grandfathered group health plan may not read the final rules and might rely upon an issuer or a third-party administrator, if self-funded, to read and interpret the final rules. For these reasons, the Departments are of the view that the number of grandfathered group health plan coverage sponsors and issuers is a fair estimate of the number of reviewers of the final rules. The Departments sought, but did not receive, comments on the approach to estimating the number of affected entities that will review and interpret the final rules.

Using the wage information from the Bureau of Labor and Statistics (BLS) for a Compensation and Benefits Manager (Code 11–3111), the Departments estimate that the cost of reviewing the final rules is \$129.04 per hour, including overhead and fringe benefits.³² Assuming an average reading speed, the Departments estimate that it would take approximately 0.5 hour for the staff to review and interpret the final rules; therefore, the Departments estimate that the cost of reviewing and interpreting the final rules for each grandfathered group health plan coverage sponsor and issuer is approximately \$64.52. Thus, the Departments estimate that the overall cost for the estimated 414,288 grandfathered group health plan coverage sponsors and issuers will be \$26,729,861.76 ($\$64.52 \times 414,288$ total number of estimated grandfathered plan sponsors and issuers).³³

D. Regulatory Alternatives Considered

In developing the policies contained in the final rules, the Departments considered alternatives to the final rules. In the following paragraphs, the Departments discuss the key regulatory alternatives considered.

³² Wage information is available at https://www.bls.gov/oes/current/oes_nat.htm. Hourly wage rate is determined by multiplying the mean hourly wage by 100 percent to account for overhead and fringe benefits. The mean hourly wage for a Compensation and Benefit Manager (Code 11–3111) is \$64.52, when multiplied by 100 percent results in a total adjusted hourly wage of \$129.04.

³³ The total number of grandfathered plan sponsors and issuers of grandfathered group health insurance coverage, discussed earlier in the preamble, was derived from the total number of ERISA covered plan sponsors multiplied by the percentage of entities offering grandfathered health plans (2.5 million * 0.16 = 400,000), the number of state and local governments multiplied by the percentage of entities offering grandfathered health plans (84,087 * 0.16 = 13,454), and the 834 issuers offering at least one grandfathered health plan (400,000 + 13,454 + 834 = 414,288).

The Departments considered whether to modify each of the six types of changes, measured from March 23, 2010, that cause a group health plan or group health insurance coverage to cease to be grandfathered. To provide more flexibility regarding changes to fixed cost-sharing requirements, the Departments considered revising the definition of maximum percentage increase to increase the allowed percentage points that are added to medical inflation. However, the Departments are of the view that the final rules allow for the desired flexibility, while better reflecting underlying costs for grandfathered group health plans and grandfathered group health insurance coverage. The Departments acknowledge that the premium adjustment percentage, which the Departments incorporate into the definition of maximum percentage increase, reflects the changes in premiums in both the individual and group market, and that individual market premiums have increased faster than premiums in the group market. Due to the comparative sizes of the individual and group markets, however, the historically faster growth in the individual market has had a minimal impact on the premium adjustment percentage index. Therefore, the Departments are of the view that the premium adjustment percentage is an appropriate measure to incorporate into the definition of maximum percentage increase.

Another option the Departments considered was allowing a decrease in contribution rates by an employer or employee organization without triggering a loss of grandfather status. Under the 2015 final rules, an employer or employee organization cannot decrease contribution rates based on cost of coverage toward the cost of any tier of coverage for any class of similarly situated individuals by more than five percentage points below the contribution rate for the coverage period that included March 23, 2010 without losing grandfather status. The Departments considered permitting group health plans and group health insurance coverage with grandfather status to decrease the contribution rates by more than five percentage points. This change would increase employer flexibility, but the Departments were concerned that a decrease in the contribution rate could change the plan or coverage to such an extent that the plan or coverage could not reasonably be described as being the same plan or coverage that was offered on March 23,

2010. As a result, this option was not included in the final rules.

Another option the Departments considered was allowing a change to annual dollar limits for a group health plan or health insurance coverage without triggering a loss of grandfather status. Under the 2015 final rules, a group health plan or group health insurance coverage that did not have an annual dollar limit on March 23, 2010, may not establish an annual dollar limit for any individual, whether provided in-network or out-of-network, without relinquishing grandfather status. If the plan or coverage had an annual dollar limit on March 23, 2010, it may not decrease the limit. Although for plan years beginning on or after January 1, 2014, group health plans and health insurance issuers generally may no longer impose annual or lifetime dollar limits on essential health benefits, permitting changes to annual dollar limits on benefits that are not essential health benefits may still represent a significant change to participants and beneficiaries who rely upon the benefits to which a limit is applied. Therefore, this option was not included in the final rules.

The Departments considered options to offset cost-sharing requirement changes by allowing sponsors of grandfathered group health plans and issuers of grandfathered group health insurance coverage to increase different types of cost-sharing requirements as long as any increase is offset by lowering another cost-sharing requirement to preserve the plan's or coverage's actuarial value. As discussed in previous rulemaking, however, an actuarial equivalency standard would allow a plan or coverage to make fundamental changes to the benefit design and still retain grandfather status, potentially conflicting with the goal of allowing participants and beneficiaries to retain health plans they like.³⁴ There would also be significant complexity involved in defining and determining actuarial value for these purposes, as well as significant burdens associated with administering and ensuring compliance with such rules. Therefore, the Departments did not include this option in the final rules.

The Departments considered changing the date of measurement for calculating whether changes to group health plans or health insurance coverage will cause a loss of grandfather status. For example, instead of looking at the cumulative change from March 23, 2010, the rules could measure the annual increases, starting from the

applicability date of the final rules. However, the Departments concluded that this option could limit flexibility for some employers. For example, some employers might want to keep the terms of the grandfathered group health plan the same for a few years and then make a more significant change later.

The Departments also considered making changes to the 2015 final rules to encourage more cost-effective care. One option the Departments considered was allowing unlimited changes to cost-sharing for out-of-network benefits. However, the Departments are concerned that unlimited discretion to change cost-sharing requirements for out-of-network benefits could result in changes to grandfathered group health plans or coverages so extensive that these plans or coverages could not reasonably be described as being the same plans or coverages that were offered on March 23, 2010. Additionally, the Departments decided that the change in the applicable index for medical inflation provides sufficient flexibility for fixed cost-sharing requirements. This option will give flexibility to grandfathered group health plans and grandfathered group health insurance coverage with respect to all fixed-amount cost-sharing requirements, including for out-of-network benefits.

E. Collection of Information Requirements

The final rules do not impose new information collection requirements; that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Though the final rules do not contain any new information collection requirements, the Departments are maintaining the current requirements that grandfathered plans maintain records documenting the terms of the plan in effect on March 23, 2010, include a statement in any summary of benefits that the plan or coverage believes it is grandfathered health plan coverage and that plans and coverages must provide contact information for participants to direct questions and complaints. Additionally, the Departments are maintaining the requirement that a grandfathered group health plan that is changing health insurance issuers must provide the succeeding health insurance issuer documentation of plan terms under the prior health insurance coverage sufficient to determine whether the standards of paragraph 26 CFR 54.9815-1251(g)(1), 29 CFR 2590.715-1251(g)(1) and 45 CFR 147.140(g)(1) are met, and

³⁴ 75 FR 34538, 34547 (June 17, 2010).

that insured group health plans (or multiemployer plans) that are grandfathered plans are required to notify the issuer (or multiemployer plan) if the contribution rate changes at any point during the plan year. The Departments do not anticipate that the final rules will make a substantive or material modification to the collections currently approved under the collection of information OMB control number 0938–1093 (CMS–10325), OMB control number 1210–0140 (DOL), and OMB control number 1545–2178 (Department of the Treasury).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of final rules on small entities, unless the head of the agency can certify that the rules would not have a significant economic 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 (SBA), (2) a not-for-profit 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 uses a change in revenues of more than three to five percent as its measure of significant economic impact on a substantial number of small entities.

The final rules amend the 2015 final rules to allow greater flexibility for grandfathered group health plans and issuers of grandfathered group health insurance coverage. Specifically, the final rules specify that grandfathered group health plans that are HDHPs may make changes to fixed-amount cost-sharing requirements that would otherwise cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent those changes are necessary to comply with the requirements for being HDHPs under section 223(c)(2)(A) of the Code. The final rules also include a revised definition of maximum percentage increase that will provide an alternative method of determining the maximum percentage increase that is based on the premium adjustment percentage.

G. Impact of Regulations on Small Business—Department of Health and Human Services and the Department of Labor

The Departments are of the view that health insurance issuers would be classified under the North American Industry Classification System code

524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of \$41.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (Health Maintenance Organization (HMO) Medical Centers) and, if this is the case, the SBA size standard would be \$35 million or less.³⁵ Few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from MLR annual report submissions for the 2019 MLR reporting year, approximately 74 out of 483 issuers of health insurance coverage nationwide had total premium revenue of \$41.5 million or less.³⁶ This estimate may overstate the actual number of small health insurance companies that may be affected, since over 68 percent of these small companies belong to larger holding groups. Most, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding \$41.5 million, and it is likely not all of these companies offer grandfathered group health plans or grandfathered group health coverage. The Departments do not expect any of these 74 potentially small entities to experience a change in revenues of more than three to five percent as a result of the final rules. Therefore, the Departments do not expect the provisions of the final rules to affect a substantial number of small entities. Due to the lack of knowledge regarding what small entities may decide to do with regard to the provisions in the final rules, the Departments are not able to precisely ascertain the economic effects on small entities. However, the Departments are of the view that the flexibilities provided for in the final rules will result in overall benefits for small entities by allowing them to make changes to certain cost-sharing requirements within limits and maintain their current grandfathered group health plans. The Departments sought, but did not receive, comments on ways that the 2020 proposed rules

³⁵ “Table of Small Business Size Standards Matched to North American Industry Classification System Codes.” U.S. Small Business Administration, available at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf.

³⁶ “Medical Loss Ratio Data and System Resources.” CCIIO, available at <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html>.

may impose additional costs and burdens on small entities.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.³⁷ The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary of Labor may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the DOL has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements. Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of the final rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the SBA (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). Therefore, EBSA requested, but did not receive, comments on the appropriateness of the size standard used in evaluating the impact of the final rules on small entities.

H. Impact of Regulations on Small Business—Department of the Treasury

Pursuant to section 7805(f) of the Code, the proposed rules that preceded these final rules were submitted to the Chief Counsel for Advocacy of the SBA for comment on their impact on small business, and no comments were received.

I. Effects on Small Rural Hospitals

Section 1102(b) of the SSA (42 U.S.C. 1302) requires agencies to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions

³⁷ The DOL consulted with the SBA in making this determination as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c).

of section 604 of the RFA. For purposes of section 1102(b) of the SSA, HHS defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. The final rules would not materially affect small rural hospitals. Therefore, while the final rules are not subject to section 1102(b) of the SSA, the Departments have determined that the final rules will not have a significant impact on the operations of a substantial number of small rural hospitals.

J. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million.

While the Departments recognize that some state, local, and tribal governments may sponsor grandfathered health plan coverage, the Departments do not expect any state, local, or tribal government to incur any additional costs associated with the final rules. The Departments estimate that any costs associated with the final rules will not exceed the \$156 million threshold. Thus, the Departments conclude that the final rules will not impose an unfunded mandate on state, local, or tribal governments or the private sector.

K. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has federalism implications. Federal agencies promulgating regulations that have federalism implications must consult with state and local officials and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

In the Departments' view, the final rules do not have any federalism implications. They simply provide grandfathered group health plan sponsors and issuers more flexibility to increase fixed-amount cost-sharing requirements and to make changes to fixed-amount cost-sharing requirements in grandfathered group health plans and grandfathered group health insurance

coverage that are HDHPs to the extent those changes are necessary to comply with the requirements for HDHPs under section 223(c)(2)(A) of the Code, without causing the plan or coverage to relinquish its grandfather status. The Departments recognize that some state, local, and tribal governments may sponsor grandfathered health plan coverage. The final rules will provide these entities with additional flexibility.

In general, through section 514, ERISA supersedes state laws to the extent that they relate to any covered employee benefit plan, and preserves state laws that regulate insurance, banking, or securities. While ERISA prohibits states from regulating a plan as an insurance or investment company or bank, the preemption provisions of section 731 of ERISA and section 2724 of the PHS Act (implemented in 29 CFR 2590.731(a) and 45 CFR 146.143(a)) apply so that the requirements in title XXVII of the PHS Act (including those enacted by PPACA) are not to be "construed to supersede any provision of state law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a 'requirement of a federal standard.'" The conference report accompanying HIPAA indicates that this is intended to be the "narrowest" preemption of states' laws (see House Conf. Rep. No. 104-736, at 205, reprinted in 1996 U.S. Code Cong. & Admin. News 2018). States may continue to apply state law requirements to health insurance issuers except to the extent that such requirements prevent the application of PHS Act requirements that are the subject of this rulemaking. Accordingly, states have significant latitude to impose requirements on health insurance issuers that are more restrictive than the federal law.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, the Departments have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with state insurance officials on an individual basis. While developing the final rules, the Departments attempted to balance the states' interests in regulating health insurance issuers with

Congress' intent to provide uniform minimum protections to consumers in every state. By doing so, it is the Departments' view that they have complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to the final rules, the Departments certify that the Department of the Treasury, EBSA, and CMS have complied with the requirements of Executive Order 13132 for the attached final rules in a meaningful and timely manner.

L. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," was issued on January 30, 2017, and requires that the costs associated with significant new regulations "shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations." It has been determined that the final rules are an action that primarily results in transfers and does not impose more than *de minimis* costs as described above and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

V. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; section 101(g), Public Law 104-191, 110 Stat. 1936; section 401(b), Public Law 105-200, 112 Stat. 645 (42 U.S.C. 651 note); section 512(d), Public Law 110-343, 122 Stat. 3881; section 1001, 1201, and 1562(e), Public Law 111-148, 124 Stat. 119, as amended by Public Law 111-152, 124 Stat. 1029; Secretary of Labor's Order 6-2009, 74 FR 21524 (May 7, 2009).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Employee benefit plans, Health care, Health insurance, Penalties, Pensions, Privacy, Reporting and recordkeeping requirements.

45 CFR Part 147

Age discrimination, Citizenship and naturalization, Civil rights, Health care, Health insurance, Individuals with disabilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sex discrimination.

Sunita Lough,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Approved: December 7, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

Dated: December 9, 2020.

Jeanne Klinefelter Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Dated: November 30, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: December 2, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Amendments to the Regulations

Accordingly, the Internal Revenue Service, Department of the Treasury, amends 26 CFR part 54 as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

■ **Par. 2.** Section 54.9815–1251 is as amended:

- a. By revising the first sentence of paragraph (g)(1) introductory text;
- b. By revising paragraphs (g)(1)(iii), (g)(1)(iv)(A) and (B), and (g)(1)(v);
- c. By redesignating paragraphs (g)(3) and (4) as paragraphs (g)(4) and (5);
- d. By adding a new paragraph (g)(3);
- e. By revising newly redesignated paragraphs (g)(4)(i) and (ii); and
- f. In newly redesignated paragraph (g)(5):
 - i. By revising Examples 3 and 4;
 - ii. By redesignating Examples 5 through 9 as Examples 6 through 10;

- iii. By adding a new Example 5;
- iv. By revising newly redesignated Examples 6 through 10; and
- v. By adding Example 11.

The revisions and additions read as follows:

§ 54.9815–1251 Preservation of right to maintain existing coverage.

* * * * *

(g) * * *
 (1) * * * Subject to paragraphs (g)(2) and (3) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan. * * *

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section).

(iv) * * *
 (A) An amount equal to \$5 increased by medical inflation, as defined in paragraph (g)(4)(i) of this section (that is, \$5 times medical inflation, plus \$5); or

(B) The maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations—*(A) *Contribution rate based on cost of coverage.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(4)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 54.9802(d)) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(4)(iii)(B) of this section) towards the

cost of any tier of coverage for any class of similarly situated individuals (as described in § 54.9802(d)) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

* * * * *

(3) *Special rule for certain grandfathered high deductible health plans.* With respect to a grandfathered group health plan or group health insurance coverage that is a high deductible health plan within the meaning of section 223(c)(2), increases to fixed-amount cost-sharing requirements made effective on or after June 15, 2021 that otherwise would cause a loss of grandfather status will not cause the plan or coverage to relinquish its grandfather status, but only to the extent such increases are necessary to maintain its status as a high deductible health plan under section 223(c)(2)(A).

(4) * * *

(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For purposes of this paragraph (g)(4)(i), the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI-U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means:

(A) With respect to increases for a group health plan and group health insurance coverage made effective on or after March 23, 2010, and before June 15, 2021, medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points; and

(B) With respect to increases for a group health plan and group health insurance coverage made effective on or after June 15, 2021, the greater of:

(1) Medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points; or

(2) The portion of the premium adjustment percentage, as defined in 45 CFR 156.130(e), that reflects the relative

change between 2013 and the calendar year prior to the effective date of the increase (that is, the premium adjustment percentage minus 1), expressed as a percentage, plus 15 percentage points.

* * * * *

(5) * * *

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment requirement of \$30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to \$40, effective before June 15, 2021. Within the 12-month period before the \$40 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3*, the increase in the copayment from \$30 to \$40, expressed as a percentage, is 33.33% ($40 - 30 = 10$; $10 \div 30 = 0.3333$; $0.3333 = 33.33\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2269 ($475 - 387.142 = 87.858$; $87.858 \div 387.142 = 0.2269$). The maximum percentage increase permitted is 37.69% ($0.2269 = 22.69\%$; $22.69\% + 15\% = 37.69\%$). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3* of this paragraph (g)(5), except the grandfathered group health plan subsequently increases the \$40 copayment requirement to \$45 for a later plan year, effective before June 15, 2021. Within the 12-month period before the \$45 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4*, the increase in the copayment from \$30 (the copayment that was in effect on March 23, 2010) to \$45, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2527 ($485 - 387.142 = 97.858$; $97.858 \div 387.142 = 0.2527$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% ($0.2527 = 25.27\%$; $25.27\% + 15\% = 40.27\%$), or \$6.26 ($5 \times 0.2527 = \1.26; $\$1.26 + \$5 = \$6.26$). Because 50% exceeds 40.27% and \$15 exceeds \$6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* Same facts as *Example 4* of this paragraph (g)(5), except the grandfathered group health plan increases the copayment requirement to \$45, effective after June 15, 2021. The greatest value of the overall medical care component of the CPI-U (unadjusted) in the preceding 12-month period is still 485. In the calendar year that includes the effective date of the increase, the applicable portion of the premium adjustment percentage is 36%.

(ii) *Conclusion.* In this *Example 5*, the grandfathered health plan may increase the copayment by the greater of: Medical inflation, expressed as a percentage, plus 15 percentage points; or the applicable portion of the premium adjustment percentage for the calendar year that includes the effective date of the increase, plus 15 percentage points. The latter amount is greater because it results in a 51% maximum percentage increase ($36\% + 15\% = 51\%$) and, as demonstrated in *Example 4* of this paragraph (g)(5), determining the maximum percentage increase using medical inflation yields a result of 40.27%. The increase in the copayment, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Because the 50% increase in the copayment is less than the 51% maximum percentage increase, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 6. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment of \$10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to \$15, effective before June 15, 2021. Within the 12-month period before the \$15 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 6*, the increase in the copayment, expressed as a percentage, is 50% ($15 - 10 = 5$; $5 \div 10 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a group plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% ($0.0720 = 7.20\%$; $7.20\% + 15\% = 22.20\%$), or \$5.36 ($\$5 \times 0.0720 = \0.36 ; $\$0.36 + \$5 = \$5.36$). The \$5 increase in copayment in this *Example 6* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) of this section, which would permit an

increase in the copayment of up to \$5.36.

Example 7. (i) *Facts.* Same facts as *Example 6* of this paragraph (g)(5), except on March 23, 2010, the grandfathered health plan has no copayment (\$0) for office visits for primary care providers. The plan is subsequently amended to increase the copayment requirement to \$5, effective before June 15, 2021.

(ii) *Conclusion.* In this *Example 7*, medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is \$5.36 ($\$5 \times 0.0720 = \0.36 ; $\$0.36 + \$5 = \$5.36$). The \$5 increase in copayment in this *Example 7* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of \$5.36. Thus, the \$5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 8. (i) *Facts.* On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 8*, the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 9. (i) *Facts.* On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of \$5,000 for self-only coverage and \$12,000 for family coverage. The required employee contribution for the coverage is \$1,000 for self-only coverage and \$4,000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% ($(5,000 - 1,000)/5,000$) for self-only coverage and 67% ($(12,000 - 4,000)/12,000$) for family coverage. For a subsequent plan year, the COBRA premium is \$6,000 for self-only coverage and \$15,000 for family coverage. The employee contributions for that plan year are \$1,200 for self-only coverage and \$5,000 for family coverage. Thus, the contribution rate based on cost of coverage is 80% ($(6,000 - 1,200)/6,000$) for self-only

coverage and 67% ((15,000 – 5,000)/ 15,000) for family coverage.

(ii) *Conclusion.* In this *Example 9*, because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125.

Example 10. (i) *Facts.* A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option *F* is a self-insured option. Options *G* and *H* are insured options. Beginning July 1, 2013, the plan increases coinsurance under Option *H* from 10% to 15%.

(ii) *Conclusion.* In this *Example 10*, the coverage under Option *H* is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (g)(1)(ii) of this section. Whether the coverage under Options *F* and *G* is grandfathered health plan coverage is determined separately under the rules of this paragraph (g).

Example 11. (i) *Facts.* A group health plan that is a grandfathered health plan and also a high deductible health plan within the meaning of section 223(c)(2) had a \$2,400 deductible for family coverage on March 23, 2010. The plan is subsequently amended after June 15, 2021 to increase the deductible limit by the amount that is necessary to comply with the requirements for a plan to qualify as a high deductible health plan under section 223(c)(2)(A), but that exceeds the maximum percentage increase.

(ii) *Conclusion.* In this *Example 11*, the increase in the deductible at that time does not cause the plan to cease to be a grandfathered health plan because the increase was necessary for the plan to continue to satisfy the definition of a high deductible health plan under section 223(c)(2)(A).

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Accordingly, the Department of Labor amends 29 CFR part 2590 as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 3. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat.

645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Secretary of Labor’s Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

- 4. Amend § 2590.715–1251:
 - a. By revising the first sentence of paragraph (g)(1) introductory text;
 - b. By revising paragraphs (g)(1)(iii), (g)(1)(iv)(A) and (B), and (g)(1)(v);
 - c. By redesignating paragraphs (g)(3) and (4) as paragraphs (g)(4) and (5);
 - d. By adding a new paragraph (g)(3);
 - e. By revising newly redesignated paragraphs (g)(4)(i) and (ii); and
 - f. In newly redesignated paragraph (g)(5):
 - i. By revising Examples 3 and 4;
 - ii. By redesignating Examples 5 through 9 as Examples 6 through 10;
 - iii. By adding a new Example 5;
 - iv. By revising newly redesignated Examples 6 through 10; and
 - v. By adding Example 11.

The revisions and additions read as follows:

§ 2590.715–1251 Preservation of right to maintain existing coverage.

* * * * *

(g) * * *

(1) * * * Subject to paragraphs (g)(2) and (3) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan. * * *

* * * * *

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section).

(iv) * * *

(A) An amount equal to \$5 increased by medical inflation, as defined in paragraph (g)(4)(i) of this section (that is, \$5 times medical inflation, plus \$5); or

(B) The maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations—(A) Contribution rate*

based on cost of coverage. A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(4)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 2590.702(d)) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(4)(iii)(B) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 2590.702(d)) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

* * * * *

(3) *Special rule for certain grandfathered high deductible health plans.* With respect to a grandfathered group health plan or group health insurance coverage that is a high deductible health plan within the meaning of section 223(c)(2) of the Internal Revenue Code, increases to fixed-amount cost-sharing requirements made effective on or after June 15, 2021 that otherwise would cause a loss of grandfather status will not cause the plan or coverage to relinquish its grandfather status, but only to the extent such increases are necessary to maintain its status as a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code.

(4) * * *

(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI–U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For purposes of this paragraph (g)(4)(i), the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI–U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means:

(A) With respect to increases for a group health plan and group health insurance coverage made effective on or after March 23, 2010, and before June 15, 2021, medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points; and

(B) With respect to increases for a group health plan and group health insurance coverage made effective on or after June 15, 2021, the greater of:

(1) Medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points; or

(2) The portion of the premium adjustment percentage, as defined in 45 CFR 156.130(e), that reflects the relative change between 2013 and the calendar year prior to the effective date of the increase (that is, the premium adjustment percentage minus 1), expressed as a percentage, plus 15 percentage points.

* * * * *

(5) * * *

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment requirement of \$30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to \$40, effective before June 15, 2021. Within the 12-month period before the \$40 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3*, the increase in the copayment from \$30 to \$40, expressed as a percentage, is 33.33% ($40 - 30 = 10$; $10 \div 30 = 0.3333$; $0.3333 = 33.33\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2269 ($475 - 387.142 = 87.858$; $87.858 \div 387.142 = 0.2269$). The maximum percentage increase permitted is 37.69% ($0.2269 = 22.69\%$; $22.69\% + 15\% = 37.69\%$). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3* of this paragraph (g)(5), except the grandfathered group health plan subsequently increases the \$40 copayment requirement to \$45 for a later plan year, effective before June 15, 2021. Within the 12-month period before the \$45 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4*, the increase in the copayment from \$30 (the copayment that was in effect on March 23, 2010) to \$45, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2527 ($485 - 387.142 = 97.858$; $97.858 \div 387.142 = 0.2527$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% ($0.2527 = 25.27\%$; $25.27\% + 15\% = 40.27\%$), or \$6.26 ($5 \times 0.2527 = \1.26; $\$1.26 + \$5 = \$6.26$). Because 50% exceeds 40.27% and \$15 exceeds \$6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* Same facts as *Example 4* of this paragraph (g)(5), except the grandfathered group health plan increases the copayment requirement to \$45, effective after June 15, 2021. The greatest value of the overall medical care component of the CPI-U (unadjusted) in the preceding 12-month period is still 485. In the calendar year that includes the effective date of the increase, the applicable portion of the premium adjustment percentage is 36%.

(ii) *Conclusion.* In this *Example 5*, the grandfathered health plan may increase the copayment by the greater of: Medical inflation, expressed as a percentage, plus 15 percentage points; or the applicable portion of the premium adjustment percentage for the calendar year that includes the effective date of the increase, plus 15 percentage points. The latter amount is greater because it results in a 51% maximum percentage increase ($36\% + 15\% = 51\%$) and, as demonstrated in *Example 4* of this paragraph (g)(5), determining the maximum percentage increase using medical inflation yields a result of 40.27%. The increase in the copayment, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Because the 50% increase in the copayment is less than the 51% maximum percentage increase, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 6. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment of \$10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to \$15, effective before June 15, 2021. Within the 12-month period before the \$15 copayment takes effect, the greatest value of the

overall medical care component of the CPI-U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 6*, the increase in the copayment, expressed as a percentage, is 50% ($15 - 10 = 5$; $5 \div 10 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a group plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% ($0.0720 = 7.20\%$; $7.20\% + 15\% = 22.20\%$), or \$5.36 ($\$5 \times 0.0720 = \0.36 ; $\$0.36 + \$5 = \$5.36$). The \$5 increase in copayment in this *Example 6* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) of this section, which would permit an increase in the copayment of up to \$5.36.

Example 7. (i) *Facts.* Same facts as *Example 6* of this paragraph (g)(5), except on March 23, 2010, the grandfathered health plan has no copayment (\$0) for office visits for primary care providers. The plan is subsequently, amended to increase the copayment requirement to \$5, effective before June 15, 2021.

(ii) *Conclusion.* In this *Example 7*, medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is \$5.36 ($\$5 \times 0.0720 = \0.36 ; $\$0.36 + \$5 = \$5.36$). The \$5 increase in copayment in this *Example 7* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of \$5.36. Thus, the \$5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 8. (i) *Facts.* On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 8*, the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 9. (i) Facts. On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of \$5,000 for self-only coverage and \$12,000 for family coverage. The required employee contribution for the coverage is \$1,000 for self-only coverage and \$4,000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% $((5,000 - 1,000)/5,000)$ for self-only coverage and 67% $((12,000 - 4,000)/12,000)$ for family coverage. For a subsequent plan year, the COBRA premium is \$6,000 for self-only coverage and \$15,000 for family coverage. The employee contributions for that plan year are \$1,200 for self-only coverage and \$5,000 for family coverage. Thus, the contribution rate based on cost of coverage is 80% $((6,000 - 1,200)/6,000)$ for self-only coverage and 67% $((15,000 - 5,000)/15,000)$ for family coverage.

(ii) Conclusion. In this *Example 9*, because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125 of the Internal Revenue Code.

Example 10. (i) Facts. A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option *F* is a self-insured option. Options *G* and *H* are insured options. Beginning July 1, 2013, the plan increases coinsurance under Option *H* from 10% to 15%.

(ii) Conclusion. In this *Example 10*, the coverage under Option *H* is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (g)(1)(ii) of this section. Whether the coverage under Options *F* and *G* is grandfathered health plan coverage is determined separately under the rules of this paragraph (g).

Example 11. (i) Facts. A group health plan that is a grandfathered health plan and also a high deductible health plan within the meaning of section 223(c)(2) of the Internal Revenue Code had a \$2,400 deductible for family coverage on March 23, 2010. The plan is subsequently amended after June 15, 2021 to increase the deductible limit by the amount that is necessary to comply with the requirements for a plan to qualify as a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code, but that exceeds the maximum percentage increase.

(ii) Conclusion. In this *Example 11*, the increase in the deductible at that

time does not cause the plan to cease to be a grandfathered health plan because the increase was necessary for the plan to continue to satisfy the definition of a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 5. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92, as amended, and section 3203, Pub. L. 116-136, 134 Stat. 281.

- 6. Section 147.140 is amended:
 - a. By revising the first sentence of paragraph (g)(1) introductory text;
 - b. By revising paragraphs (g)(1)(iii), (g)(1)(iv)(A) and (B), and (g)(1)(v);
 - c. By redesignating paragraphs (g)(3) and (4) as paragraphs (g)(4) and (5);
 - d. By adding a new paragraph (g)(3);
 - e. By revising newly redesignated paragraphs (g)(4)(i) and (ii); and
 - f. In newly redesignated paragraph (g)(5):
 - i. By revising Examples 3 and 4;
 - ii. By redesignating Examples 5 through 9 as Examples 6 through 10;
 - iii. By adding a new Example 5;
 - iv. By revising newly redesignated Examples 6 through 10;
 - v. By adding Example 11.

The revisions and additions read as follows:

§ 147.140 Preservation of right to maintain existing coverage.

(g) * * *
 (1) * * * Subject to paragraphs (g)(2) and (3) of this section, the rules of this paragraph (g)(1) describe situations in which a group health plan or health insurance coverage ceases to be a grandfathered health plan. * * *

(iii) *Increase in a fixed-amount cost-sharing requirement other than a copayment.* Any increase in a fixed-amount cost-sharing requirement other than a copayment (for example, deductible or out-of-pocket limit), determined as of the effective date of the increase, causes a group health plan or health insurance coverage to cease to be a grandfathered health plan, if the total

percentage increase in the cost-sharing requirement measured from March 23, 2010 exceeds the maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section).

(iv) * * *
 (A) An amount equal to \$5 increased by medical inflation, as defined in paragraph (g)(4)(i) of this section (that is, \$5 times medical inflation, plus \$5); or

(B) The maximum percentage increase (as defined in paragraph (g)(4)(ii) of this section), determined by expressing the total increase in the copayment as a percentage.

(v) *Decrease in contribution rate by employers and employee organizations—*(A) *Contribution rate based on cost of coverage.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on cost of coverage (as defined in paragraph (g)(4)(iii)(A) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 146.121(d) of this subchapter) by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010.

(B) *Contribution rate based on a formula.* A group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate based on a formula (as defined in paragraph (g)(4)(iii)(B) of this section) towards the cost of any tier of coverage for any class of similarly situated individuals (as described in § 146.121(d) of this subchapter) by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010.

* * * * *

(3) *Special rule for certain grandfathered high deductible health plans.* With respect to a grandfathered group health plan or group health insurance coverage that is a high deductible health plan within the meaning of section 223(c)(2) of the Internal Revenue Code, increases to fixed-amount cost-sharing requirements made effective on or after June 15, 2021 that otherwise would cause a loss of grandfather status will not cause the plan or coverage to relinquish its grandfather status, but only to the extent such increases are necessary to maintain its status as a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code.

(4) * * *

(i) *Medical inflation defined.* For purposes of this paragraph (g), the term *medical inflation* means the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) (unadjusted) published by the Department of Labor using the 1982–1984 base of 100. For purposes of this paragraph (g)(4)(i), the increase in the overall medical care component is computed by subtracting 387.142 (the overall medical care component of the CPI-U (unadjusted) published by the Department of Labor for March 2010, using the 1982–1984 base of 100) from the index amount for any month in the 12 months before the new change is to take effect and then dividing that amount by 387.142.

(ii) *Maximum percentage increase defined.* For purposes of this paragraph (g), the term *maximum percentage increase* means:

(A) With respect to increases for a group health plan and group health insurance coverage made effective on or after March 23, 2010, and before June 15, 2021, medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points;

(B) With respect to increases for a group health plan and group health insurance coverage made effective on or after June 15, 2021, the greater of:

(1) Medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points; or

(2) The portion of the premium adjustment percentage, as defined in § 156.130(e) of this subchapter, that reflects the relative change between 2013 and the calendar year prior to the effective date of the increase (that is, the premium adjustment percentage minus 1), expressed as a percentage, plus 15 percentage points; and

(C) With respect to increases for individual health insurance coverage, medical inflation (as defined in paragraph (g)(4)(i) of this section), expressed as a percentage, plus 15 percentage points.

* * * * *

(5) * * *

Example 3. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment requirement of \$30 per office visit for specialists. The plan is subsequently amended to increase the copayment requirement to \$40, effective before June 15, 2021. Within the 12-month period before the \$40 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 475.

(ii) *Conclusion.* In this *Example 3*, the increase in the copayment from \$30 to \$40, expressed as a percentage, is 33.33% ($40 - 30 = 10$; $10 \div 30 = 0.3333$; $0.3333 = 33.33\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2269 ($475 - 387.142 = 87.858$; $87.858 \div 387.142 = 0.2269$). The maximum percentage increase permitted is 37.69% ($0.2269 = 22.69\%$; $22.69\% + 15\% = 37.69\%$). Because 33.33% does not exceed 37.69%, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 4. (i) *Facts.* Same facts as *Example 3* of this paragraph (g)(5), except the grandfathered group health plan subsequently increases the \$40 copayment requirement to \$45 for a later plan year, effective before June 15, 2021. Within the 12-month period before the \$45 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 485.

(ii) *Conclusion.* In this *Example 4*, the increase in the copayment from \$30 (the copayment that was in effect on March 23, 2010) to \$45, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.2527 ($485 - 387.142 = 97.858$; $97.858 \div 387.142 = 0.2527$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 40.27% ($0.2527 = 25.27\%$; $25.27\% + 15\% = 40.27\%$), or \$6.26 ($5 \times 0.2527 = \1.26; $\$1.26 + \$5 = \$6.26$). Because 50% exceeds 40.27% and \$15 exceeds \$6.26, the change in the copayment requirement at that time causes the plan to cease to be a grandfathered health plan.

Example 5. (i) *Facts.* Same facts as *Example 4* of this paragraph (g)(5), except the grandfathered group health plan increases the copayment requirement to \$45, effective after June 15, 2021. The greatest value of the overall medical care component of the CPI-U (unadjusted) in the preceding 12-month period is still 485. In the calendar year that includes the effective date of the increase, the applicable portion of the premium adjustment percentage is 36%.

(ii) *Conclusion.* In this *Example 5*, the grandfathered health plan may increase the copayment by the greater of: Medical inflation, expressed as a percentage, plus 15 percentage points; or the applicable portion of the premium adjustment percentage for the

calendar year that includes the effective date of the increase, plus 15 percentage points. The latter amount is greater because it results in a 51% maximum percentage increase ($36\% + 15\% = 51\%$) and, as demonstrated in *Example 4* of this paragraph (g)(5), determining the maximum percentage increase using medical inflation yields a result of 40.27%. The increase in the copayment, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Because the 50% increase in the copayment is less than the 51% maximum percentage increase, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

Example 6. (i) *Facts.* On March 23, 2010, a grandfathered group health plan has a copayment of \$10 per office visit for primary care providers. The plan is subsequently amended to increase the copayment requirement to \$15, effective before June 15, 2021. Within the 12-month period before the \$15 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 415.

(ii) *Conclusion.* In this *Example 6*, the increase in the copayment, expressed as a percentage, is 50% ($15 - 10 = 5$; $5 \div 10 = 0.5$; $0.5 = 50\%$). Medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a group plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv) of this section is the greater of the maximum percentage increase of 22.20% ($0.0720 = 7.20\%$; $7.20\% + 15\% = 22.20\%$), or \$5.36 ($\$5 \times 0.0720 = \0.36 ; $\$0.36 + \$5 = \$5.36$). The \$5 increase in copayment in this *Example 6* would not cause the plan to cease to be a grandfathered health plan pursuant to paragraph (g)(1)(iv) of this section, which would permit an increase in the copayment of up to \$5.36.

Example 7. (i) *Facts.* Same facts as *Example 6* of this paragraph (g)(5), except on March 23, 2010, the grandfathered health plan has no copayment (\$0) for office visits for primary care providers. The plan is subsequently amended to increase the copayment requirement to \$5, effective before June 15, 2021.

(ii) *Conclusion.* In this *Example 7*, medical inflation (as defined in paragraph (g)(4)(i) of this section) from March 2010 is 0.0720 ($415.0 - 387.142 = 27.858$; $27.858 \div 387.142 = 0.0720$). The increase that would cause a plan to cease to be a grandfathered health plan under paragraph (g)(1)(iv)(A) of this section is \$5.36 ($\$5 \times 0.0720 = \0.36 ;

\$0.36 + \$5 = \$5.36). The \$5 increase in copayment in this *Example 7* is less than the amount calculated pursuant to paragraph (g)(1)(iv)(A) of this section of \$5.36. Thus, the \$5 increase in copayment does not cause the plan to cease to be a grandfathered health plan.

Example 8. (i) Facts. On March 23, 2010, a self-insured group health plan provides two tiers of coverage—self-only and family. The employer contributes 80% of the total cost of coverage for self-only and 60% of the total cost of coverage for family. Subsequently, the employer reduces the contribution to 50% for family coverage, but keeps the same contribution rate for self-only coverage.

(ii) *Conclusion.* In this *Example 8*, the decrease of 10 percentage points for family coverage in the contribution rate based on cost of coverage causes the plan to cease to be a grandfathered health plan. The fact that the contribution rate for self-only coverage remains the same does not change the result.

Example 9. (i) Facts. On March 23, 2010, a self-insured grandfathered health plan has a COBRA premium for the 2010 plan year of \$5,000 for self-only coverage and \$12,000 for family coverage. The required employee contribution for the coverage is \$1,000 for self-only coverage and \$4,000 for family coverage. Thus, the contribution rate based on cost of coverage for 2010 is 80% $((5,000 - 1,000)/5,000)$ for self-only coverage and 67% $((12,000 - 4,000)/12,000)$ for family coverage. For a subsequent plan year, the COBRA premium is \$6,000 for self-only coverage and \$15,000 for family coverage. The employee contributions for that plan year are \$1,200 for self-only coverage and \$5,000 for family coverage. Thus, the contribution rate based on cost of coverage is 80% $((6,000 - 1,200)/6,000)$ for self-only coverage and 67% $((15,000 - 5,000)/15,000)$ for family coverage.

(ii) *Conclusion.* In this *Example 9*, because there is no change in the contribution rate based on cost of coverage, the plan retains its status as a grandfathered health plan. The result would be the same if all or part of the employee contribution was made pre-tax through a cafeteria plan under section 125 of the Internal Revenue Code.

Example 10. (i) Facts. A group health plan not maintained pursuant to a collective bargaining agreement offers three benefit packages on March 23, 2010. Option *F* is a self-insured option. Options *G* and *H* are insured options. Beginning July 1, 2013, the plan

increases coinsurance under Option *H* from 10% to 15%.

(ii) *Conclusion.* In this *Example 10*, the coverage under Option *H* is not grandfathered health plan coverage as of July 1, 2013, consistent with the rule in paragraph (g)(1)(ii) of this section. Whether the coverage under Options *F* and *G* is grandfathered health plan coverage is determined separately under the rules of this paragraph (g).

Example 11. (i) Facts. A group health plan that is a grandfathered health plan and also a high deductible health plan within the meaning of section 223(c)(2) of the Internal Revenue Code had a \$2,400 deductible for family coverage on March 23, 2010. The plan is subsequently amended after June 15, 2021 to increase the deductible limit by the amount that is necessary to comply with the requirements for a plan to qualify as a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code, but that exceeds the maximum percentage increase.

(ii) *Conclusion.* In this *Example 11*, the increase in the deductible at that time does not cause the plan to cease to be a grandfathered health plan because the increase was necessary for the plan to continue to satisfy the definition of a high deductible health plan under section 223(c)(2)(A) of the Internal Revenue Code.

[FR Doc. 2020-27498 Filed 12-11-20; 8:45 am]

BILLING CODE P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the first quarter of 2021. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (katz.gregory@pbgc.gov), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC

20005, 202-229-3829. (TTY users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 202-229-3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (<https://www.pbgc.gov>).

PBGC uses the interest assumptions in appendix B to part 4044 ("Interest Rates Used to Value Benefits") to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The first quarter 2021 interest assumptions will be 1.69 percent for the first 20 years following the valuation date and 1.66 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2020, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.07 percent in the select rate, and an increase of 0.26 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the first quarter of 2021.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, add an entry for “January–March 2021” at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t =$	i_t	for $t =$	i_t	for $t =$
January–March 2021	0.0169	1–20	0.0166	>20	N/A	N/A

Issued in Washington, DC, by:
Hilary Duke,
Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.
 [FR Doc. 2020–27377 Filed 12–14–20; 8:45 am]
BILLING CODE 7709–02–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2019–0027]

RIN 0651–AD42

Trademark Fee Adjustment

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; delay of effective date.

SUMMARY: On November 17, 2020, the United States Patent and Trademark Office (USPTO) published in the **Federal Register** a final rule on setting and adjusting trademark fees that is scheduled to go into effect on January 2, 2021. This final rule changes the effective date of one fee paid by international applicants under the Madrid Protocol from January 2, 2021, to February 18, 2021.

DATES: The effective date of 37 CFR 2.6(a)(1)(ii), amended at 85 FR 73197, November 17, 2020, is delayed from January 2, 2021, to February 18, 2021.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–8946, or by email at TMPolicy@uspto.gov.

SUPPLEMENTARY INFORMATION: The USPTO published a final rule (85 FR 73197, Nov. 17, 2020) that set or adjusted certain trademark fees, as

authorized by the Leahy-Smith America Invents Act, as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018. Those fee changes allow the USPTO to continue to recover the prospective aggregate costs of strategic and operational trademark and Trademark Trial and Appeal Board goals (based on workload projections included in the USPTO fiscal year 2021 Congressional Justification), including associated administrative costs, and to further USPTO strategic objectives by better aligning fees with costs, protecting the integrity of the trademark register, improving the efficiency of agency processes, and ensuring financial sustainability to facilitate effective trademark operations.

Among the changes in the November 17, 2020 final rule, the USPTO amended the fee at 37 CFR 2.6(a)(1)(ii) addressing applications under section 66(a) of the Trademark Act, 15 U.S.C. 1141f. This fee, paid by international applicants designating the United States under the World Intellectual Property Organization’s (WIPO) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol), is set to increase from \$400 to \$500.

This final rule delays the effective date of the change to § 2.6(a)(1)(ii) because the treaty requires three months advance notice to WIPO, which then alerts international applicants, before an increase in the amount of the international application/subsequent designation fee can enter into force. On November 18, 2020, the USPTO provided WIPO with the required notice of the change to § 2.6(a)(1)(ii). Thus, the effective date of § 2.6(a)(1)(ii) is delayed from January 2, 2021, to February 18, 2021, three months following the notification.

Rulemaking Requirements

A. Administrative Procedure Act: This final rule revises the effective date of § 2.6(a)(1)(ii). This action relates to the setting or adjusting of trademark fees and is a rule of agency practice and procedure and/or an interpretive rule pursuant to 5 U.S.C. 553(b)(A). See *JEM Broad. Co. v. F.C.C.*, 22 F.3d 32 (D.C. Cir. 1994) (“[T]he ‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980))); see also *Bachow Commc’ns Inc. v. F.C.C.*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A)).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B) and (d)(1), finds good cause to adopt the change in this final rule without prior notice and an opportunity for public comment or a 30-day delay in effectiveness, as such procedures would be impracticable and contrary to the public interest. Immediate implementation of the change to the

effective date of § 2.6(a)(1)(ii) is in the public interest because it will allow the USPTO to meet its obligation under the Madrid Protocol to provide three months advance notice to WIPO and to international applicants of any changes to international application/subsequent designation fees. A delay of this final rule to provide prior notice and comment procedures and a delay in effectiveness are impracticable because they would allow the change to § 2.6(a)(1)(ii) to go into effect before the agency has provided WIPO with the required three-month advance notice, thereby defeating the purpose of this rulemaking. Therefore, the Director finds there is good cause to waive notice and comment procedures and the 30-day delay in effectiveness for this rule.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required and none have been prepared. See 5 U.S.C. 605(b).

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866 (Jan. 30, 2017).

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020-27564 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-16-P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3030, 3040, 3045, 3050, and 3055

[Docket No. RM2017-3; Order No. 5763]

System for Regulating Market Dominant Rates and Classifications

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting final rules modifying the system for regulating rates and classifications for Market Dominant products. The revised rules incorporate feedback from comments received from the Commission's prior proposed rulemaking. The rules as adopted are

intended to enable the Market Dominant rate making system to achieve certain statutory objectives.

DATES: *Effective:* January 14, 2021.

ADDRESSES: For additional information, Order No. 5763 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Relevant Statutory Requirements
- II. Background
- III. Basis and Purpose of Final Rules

I. Relevant Statutory Requirements

The Postal Accountability and Enhancement Act (PAEA),¹ directed the Commission to promulgate rules establishing a ratemaking system for Market Dominant products within 18 months after the law's enactment, which the Commission did in 2007. See 39 U.S.C. 3622(a); Docket No. RM2007-1. Section 3622(d)(3) of title 39 of the United States Code requires the Commission to review the ratemaking system 10 years after the PAEA's enactment to determine if the system has achieved the 9 statutory objectives as specified by the PAEA, taking into account the 14 statutory factors. 39 U.S.C. 3622(b), (c), and (d)(3). After making its determination that the ratemaking system did not achieve the statutory objectives, taking into account the statutory factors, the Commission began a public rulemaking process to make modifications to the ratemaking system for Market Dominant products as necessary to achieve the objectives pursuant to 39 U.S.C. 3622(d)(3).

II. Background

Pursuant to section 3622(d)(3), the Commission initiated Docket No. RM2017-3 for the purpose of conducting its 10-year review of the Market Dominant ratemaking system. In Order No. 4257,² the Commission found that in the decade following the PAEA's enactment, the ratemaking system had not achieved the statutory objectives, taking into account the statutory factors. Order No. 4257 at 275. On the same day that it released its findings, the Commission issued a notice of proposed rulemaking (NPR), setting forth a number of proposed regulatory modifications intended to enable the ratemaking system to achieve the

statutory objectives and seeking public input.³ In response to comments received, the Commission issued a revised notice of proposed rulemaking (Revised NPR) again seeking public comment on the Commission's revised proposals.⁴ The Commission's further modifications and responses to public comments received from the Revised NPR are addressed in its final rules.

III. Basis and Purpose of Final Rules

Order No. 4257 concluded that while the ratemaking system had fulfilled some of the PAEA's goals, the overall system had not achieved the statutory objectives, taking into account the statutory factors. Order No. 4257 at 3-4. For ease of organization, the Commission's analysis grouped the PAEA's nine statutory objectives into three principal areas: (1) The structure of the ratemaking system; (2) the financial health of the Postal Service; and (3) service.

For the first principal area, the Commission found that the ratemaking system had resulted in predictable and stable rates, in terms of timing and magnitude (Objective 2); that it had reduced administrative burden and increased transparency (Objective 6); that it had provided the Postal Service with pricing flexibility (Objective 4); and that it had, on balance, maintained just prices (Objective 8). *Id.* at 142-145. However, the Commission found that the ratemaking system had not increased pricing efficiency (Objective 1). *Id.* at 146. For the second principal area—the financial health of the Postal Service—the Commission found that while the ratemaking system had been sufficient to provide for mail security and terrorism deterrence (Objective 7); had provided a sufficient mechanism to allocate institutional costs between Market Dominant products and Competitive products (Objective 9); and had generally enabled the Postal Service to achieve short-term financial stability, medium- and long-term financial stability had not been achieved (Objective 5). *Id.* at 247-249. The Commission also found that cost reductions and operational efficiency improvements were not sufficient to achieve overall financial stability and therefore not maximized (Objective 1). *Id.* at 184-194, 221-226. Likewise due to loss-making products and classes, the Commission found the system did not

³ Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258), 82 FR 58280 (December 11, 2017).

⁴ Revised Notice of Proposed Rulemaking, December 5, 2019 (Order No. 5337), 84 FR 67685 (December 11, 2019).

¹ Public Law 109-435, 120 Stat. 3198 (2006).

² Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017 (Order No. 4257).

have an adequate mechanism to maintain reasonable rates (Objective 8). *Id.* at 226–236.

Finally, for the third principal area—service (Objective 3)—the Commission found that service standards declined during the PAEA era because the Postal Service had reduced the high-quality service standards that were initially promulgated in 2007. *Id.* at 273.

In light of the deficiencies described above and in response to the comments received from the NPR and Revised NPR, Order No. 5763 sets forth regulatory changes targeted to address the identified areas where the ratemaking system failed to achieve the objectives set forth in section 3622(b).

To address obstacles to the Postal Service's ability to maintain financial health and target primary drivers of net losses, the Commission implements two mechanisms designed to provide additional revenue for costs outside the Postal Service's control. The first mechanism, designed to address consequences of mail density declines, modifies the price cap to provide additional rate adjustment authority equal to the density-driven portion of increases in average cost-per-piece, as calculated under the Commission's formula. Order No. 5337 at 70–71. The second mechanism, designed to address the Postal Service's retirement amortization payments, modifies the price cap to provide additional Market Dominant rate adjustment authority equal to the percentage by which total revenue⁵ would need to increase to provide sufficient revenue for the Postal Service to meet its required retirement obligation payments, as calculated under the Commission's formula. *Id.* at 96–97.

In the Revised NPR, the Commission proposed to provide an additional 1 percentage point of performance-based rate authority per mail class annually contingent on Postal Service achievement of distinct performance-based requirements for operational efficiency and service standard quality. *Id.* at 14. In the final rules, the Commission has elected to withdraw that proposed authority in response to commenter concerns. The Commission will open a separate rulemaking to further study potential modifications to the ratemaking system that link financial incentives and/or

⁵ The retirement-based rate authority is not intended to provide full compensation. Instead, the formula calculates the revenue increase that would be required from all products (both Market Dominant and Competitive) and authorizes only the Market Dominant portion in this authority. The Postal Service, at its discretion, may implement an equivalent rate increase on Competitive products.

consequences to efficiency gains, cost reductions, and the maintenance of service standards. Order No. 5763 at 21. For the purposes of transparency, the Commission adopts the following reporting requirements: The Postal Service, when it files its *Annual Compliance Report* (ACR), must provide the input data and calculations used to produce the annual total factor productivity estimates, and provide a description of and reason for any changes to the service standards (including relevant business rules), or certify that no changes have occurred. *Id.*

The Commission also adopts rules relating to non-compensatory classes and products to address the system's failure to maintain reasonable rates and promote pricing efficiency.⁶ For non-compensatory classes of mail, the Commission provides an additional rate authority of 2 percentage points per class and per fiscal year the Postal Service may use, with an aim to narrow the cost coverage gap of those classes over time. *Id.* at 159. For non-compensatory products, the Postal Service is restricted from reducing rates for those products and will be required to enact minimum product-level price increases for each non-compensatory product. *Id.* at 182. These restrictions are designed to stop the trend of declining cost coverage for these products and move cost coverage toward 100 percent. *Id.* at 186.

Also to improve pricing efficiency, the Commission adopts rules intended to phase out two practices impeding pricing efficiency: Workshare discounts that are either set substantially below avoided costs or substantially above avoided costs. *Id.* at 197. With its “do no harm principle,” the Postal Service is restricted from changing workshare discounts set equal to avoided costs, from reducing workshare discounts set below avoided costs, and from increasing workshare discounts set above avoided costs. *Id.* at 19. A low workshare discount or an excessive workshare discount would be permitted if it were new, if it would represent an improvement of 20 percent over the existing workshare discount passthrough, or if it were set in accordance with a prior Commission order (via the proposed waiver process). *Id.* at 199. A low workshare discount would also be permitted if the proposed workshare discount would produce a passthrough of at least 85 percent. *Id.*

⁶ Non-compensatory classes are those classes whose attributable cost exceeds revenue; likewise non-compensatory products are those products whose attributable cost exceeds revenue.

Additionally, an excessive workshare discount would be permitted if it would be provided in connection with a subclass of mail (product), consisting exclusively of mail matter of educational, cultural, scientific, or informational (ECSI) value (39 U.S.C. 3622(e)(2)(C)) and accompanied by certain information to ensure transparency. *Id.*

The final rules also include new annual reporting requirements intended to facilitate the tracking of costs and monitoring of the Postal Service's efforts to reduce costs. *Id.* at 228. The final rules require the Postal Service to provide information consisting of three separate components: (1) A consolidated cost analysis; (2) detailed information regarding planned and active large-scale cost-reduction initiatives; and (3) summary information pertaining to approved Decision Analysis Reports, which are internal Postal Service documents used to justify and obtain approval for certain proposed capital spending projects. *Id.*

The Commission also modifies the schedule for regular and predictable rate adjustments by requiring the Postal Service to update it annually and provide certain information designed to increase transparency for mailers with regard to the Postal Service's planned price changes. *Id.* at 242. It will also extend the minimum notice period between the date the Postal Service filed a notice of proposed rate adjustment and the date the proposed rates could go into effect from 45 days to 90 days. *Id.* at 243. The final rules discontinue the practice that the Commission addresses the objectives and factors of 39 U.S.C. 3622(b) and (c) in individual rate adjustment proceedings. *Id.* at 243–244.

Finally, the rules provide for a 5-year review period for a holistic review of the effects of the Commission's rule changes. *Id.* at 266. The Commission retains flexibility to adjust certain components of the system sooner than that if serious ill effects are evident. *Id.*

List of Subjects

39 CFR Part 3030

Administrative practice and procedure, Fees, Postal Service.

39 CFR Part 3040

Administrative practice and procedure, Foreign relations, Postal Service.

39 CFR Part 3045

Administrative practice and procedure, Postal Service.

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3055

Administrative practice and procedure, Reporting and recordkeeping requirements.

By the Commission.

Erica A. Barker,
Secretary.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

■ 1. Revise part 3030 to read as follows:

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

- Sec.
3030.100 Applicability.
3030.101 Definitions.
3030.102 Schedule for regular and predictable rate adjustments.

Subpart B—Rate Adjustments

- 3030.120 General.
3030.121 Postal Service rate adjustment filing.
3030.122 Contents of a rate adjustment filing.
3030.123 Supporting technical documentation.
3030.124 Docket and notice.
3030.125 Opportunity for comments.
3030.126 Proceedings.
3030.127 Maximum rate adjustment authority.
3030.128 Calculation of percentage change in rates.
3030.129 Exceptions for de minimis rate increases.

Subpart C—Consumer Price Index Rate Authority

- 3030.140 Applicability.
3030.141 CPI-U data source.
3030.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.
3030.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.

Subpart D—Density Rate Authority

- 3030.160 Applicability.
3030.161 Density calculation data sources.
3030.162 Calculation of density rate authority.

Subpart E—Retirement Obligation Rate Authority

- 3030.180 Definitions.
3030.181 Applicability.
3030.182 Retirement obligation data sources.
3030.183 Calculation of retirement obligation rate authority.
3030.184 Required minimum remittances.
3030.185 Forfeiture.

Subpart F—[Reserved]

Subpart G—Non-Compensatory Classes or Products

- 3030.220 Applicability.
3030.221 Individual product requirement.
3030.222 Class requirement and additional class rate authority.

Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority

- 3030.240 General.
3030.241 Schedule of banked rate adjustment authority.
3030.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.
3030.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.
3030.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.
3030.245 Application of banked rate authority.

Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

- 3030.260 General.
3030.261 Contents of a rate adjustment filing.
3030.262 Supplemental information.
3030.263 Docket and notice.
3030.264 Public hearing.
3030.265 Opportunity for comments.
3030.266 Deadline for Commission decision.
3030.267 Treatment of banked rate adjustment authority.

Subpart J—Workshare Discounts

- 3030.280 Applicability.
3030.281 Calculation of passthroughs for workshare discounts.
3030.282 Increased pricing efficiency.
3030.283 Limitations on excessive discounts.
3030.284 Limitations on discounts below avoided cost.
3030.285 Proposal to adjust a rate associated with a workshare discount.
3030.286 Application for waiver.

Authority: 39 U.S.C. 503; 3622.

Subpart A—General Provisions

§ 3030.100 Applicability.

(a) The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing the modern system of ratemaking for regulating rates and classes for market dominant products. The rules in this part are applicable whenever the Postal Service proposes to adjust a rate of general applicability for any market dominant product, which includes the addition of a new rate, the removal of an existing rate, or a change to an existing rate. Current rates may be found in the Mail Classification Schedule appearing on

the Commission's website at www.prc.gov.

(b) Rates may be adjusted either subject to the rules appearing in subpart B of this part, which includes a limitation on rate increases, or subject to the rules appearing in subpart I of this part, which does not include a limitation on rate increases but requires either extraordinary or exceptional circumstances. The rules applicable to the calculation of the limitations on rate increases appear in subparts C through H of this part. The rules for workshare discounts, which are applicable whenever market dominant rates are adjusted, appear in subpart J of this part.

§ 3030.101 Definitions.

(a) The definitions in paragraphs (b) through (l) of this section apply to this part.

(b) *Annual limitation* means the annual limitation on the percentage change in rates equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) unadjusted for seasonal variation over the most recently available 12-month period preceding the date the Postal Service files a request to review its notice of rate adjustment, as determined by the Commission.

(c) *Banked rate authority* means unused rate adjustment authority accumulated for future use pursuant to the rules in this part.

(d) A *class* of mail means the First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, or Special Services groupings of market dominant Postal Service products or services. Generally, the regulations in this part are applicable to individual classes of mail.

(e) *Density rate authority* means rate authority that is available to all classes to address the effects of decreases in density of mail.

(f) *Maximum rate adjustment authority* means the maximum percentage change in rates available to a class for any planned increase in rates. It is the sum of: The consumer price index rate authority, and any available density rate authority, retirement obligation rate authority, banked rate authority, and rate authority applicable to non-compensatory classes.

(g) *Rate authority applicable to non-compensatory classes* means rate authority available to classes where revenue for each product within the class was insufficient to cover that product's attributable costs as determined by the Commission.

(h) *Rate cell* means each and every separate rate identified as a rate of general applicability.

(i) *Rate incentive* means a discount that is not a workshare discount and that is designed to increase or retain volume, improve the value of mail for mailers, or improve the operations of the Postal Service.

(j) *Rate of general applicability* means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies, including the volume of mail sent by a mailer in a past year or years. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

(k) *Retirement obligation rate authority* means rate authority that is available to all classes to provide revenue for remittance towards the statutorily mandated amortization payments for unfunded liabilities.

(l) A *seasonal or temporary rate* is a rate that is in effect for a limited and defined period of time.

§ 3030.102 Schedule for regular and predictable rate adjustments.

(a) The Postal Service shall develop a Schedule for Regular and Predictable Rate Adjustments applicable to rate adjustments subject to this part. The Schedule for Regular and Predictable Rate Adjustments shall:

(1) Schedule rate adjustments at specific regular intervals of time;

(2) Provide estimated filing and implementation dates (month and year) for future rate adjustments for each class of mail expected over a minimum of the next 3 years; and

(3) Provide an explanation that will allow mailers to predict with reasonable accuracy, by class, the amounts of future scheduled rate adjustments.

(b) The Postal Service shall file a current Schedule for Regular and Predictable Rate Adjustments annually with the Commission at the time of filing the Postal Service's section 3652 report (see § 3050.1(g) of this chapter). The Commission shall post the current schedule on the Commission's website at www.prc.gov.

(c) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule.

(d) The Postal Service may vary the magnitude of rate adjustments from

those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide an explanation for such variation with its rate adjustment filing.

Subpart B—Rate Adjustments

§ 3030.120 General.

This subpart describes the process for the periodic adjustment of rates subject to the percentage limitations specified in § 3030.127 that are applicable to each class of mail.

§ 3030.121 Postal Service rate adjustment filing.

(a) In every instance in which the Postal Service determines to exercise its statutory authority to adjust rates for a class of mail, the Postal Service shall comply with the requirements specified in paragraphs (b) through (d) of this section.

(b) The Postal Service shall take into consideration how the planned rate adjustments are in accordance with the provisions of 39 U.S.C. chapter 36.

(c) The Postal Service shall provide public notice of its planned rate adjustments in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 90 days prior to the planned implementation date of the rate adjustments.

(d) The Postal Service shall file a request to review its notice of rate adjustment with the Commission no later than 90 days prior to the planned implementation date of the rate adjustment.

§ 3030.122 Contents of a rate adjustment filing.

(a) A rate adjustment filing under § 3030.121 shall include the items specified in paragraphs (b) through (j) of this section.

(b) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 90 days before the effective date(s) for the planned rate adjustments.

(c) The intended effective date(s) of the planned rate adjustments.

(d) A schedule of the planned rate adjustments, including a schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(e) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(f) The supporting technical documentation as described in § 3030.123.

(g) A demonstration that the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(h) A certification that all cost, avoided cost, volume, and revenue figures submitted with the rate adjustment filing are developed from the most recent applicable Commission accepted analytical principles.

(i) For a rate adjustment that only includes a decrease in rates, a statement of whether the Postal Service elects to generate unused rate adjustment authority.

(j) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

§ 3030.123 Supporting technical documentation.

(a) Supporting technical documentation shall include the items specified in paragraphs (b) through (k) of this section, as applicable to the specific rate adjustment filing. This information must be supported by workpapers in which all calculations are shown and all relevant values (*e.g.*, rates, CPI-U values, billing determinants) are identified with citations to original sources. The information must be submitted in machine-readable, electronic format. Spreadsheet cells must be linked to underlying data sources or calculations (not hard-coded), as appropriate.

(b) The maximum rate adjustment authority, by class, as summarized by § 3030.127 and calculated separately for each of subparts C through H of this part, as appropriate.

(c) A schedule showing the banked rate adjustment authority available, by class, and the available amount for each of the preceding 5 years calculated as required by subpart H of this part.

(d) The calculation of the percentage change in rates, by class, calculated as required by § 3030.128.

(e) The planned usage of rate adjustment authority, by class, and calculated separately for each of subparts C through H of this part, as appropriate.

(f) The amount of new unused rate adjustment authority, by class, if any, that will be generated by the rate adjustment calculated as required by subpart H of this part, as applicable.

(g) A schedule of the workshare discounts included with the planned rate adjustments, and a companion

schedule listing the avoided costs that underlie each such discount.

(h) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the workshare discount;

(2) All data, economic analyses, and other information relied on to justify the workshare discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the workshare discount.

(i) Whenever the Postal Service establishes a new discount or surcharge rate it does not view as creating a workshare discount, it must include with its filing:

(1) An explanation of the basis for its view that the discount or surcharge rate is not a workshare discount; and

(2) A certification that the Postal Service applied accepted analytical principles to the discount or surcharge rate.

(j) Whenever the Postal Service includes a rate incentive with its planned rate adjustment, it must include with its filing:

(1) Whether the rate incentive is being treated under § 3030.128(f)(2) or under § 3030.128(f)(1) and (g);

(2) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), whether the rate incentive is available to all mailers equally on the same terms and conditions; and

(3) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), sufficient information to demonstrate that the rate incentive is a rate of general applicability, which at a minimum includes: The terms and conditions of the rate incentive; the factors that determine eligibility for the rate incentive; a statement that affirms that the rate incentive will not benefit a single mailer; and a statement that affirms that the rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator.

(k) For each class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission, a demonstration that the planned rate adjustments comply with the requirements in subpart G of this part.

§ 3030.124 Docket and notice.

(a) The Commission will establish a docket for each rate adjustment filed by the Postal Service under § 3030.121, promptly publish notice of the filing in the **Federal Register**, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

(d) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule.

(e) The identification of an officer of the Commission to represent the interests of the general public in the docket.

(f) A period of 30 days from the date of the filing for public comment.

(g) Such other information as the Commission deems appropriate.

§ 3030.125 Opportunity for comments.

Public comments should focus on whether planned rate adjustments comport with applicable statutory and regulatory requirements.

§ 3030.126 Proceedings.

(a) If the Commission determines that the rate adjustment filing does not substantially comply with the requirements of §§ 3030.122 and 3030.123, the Commission may:

(1) Inform the Postal Service of the deficiencies and provide an opportunity for the Postal Service to take corrective action;

(2) Toll or otherwise modify the procedural schedule until such time the Postal Service takes corrective action;

(3) Dismiss the rate adjustment filing without prejudice; or

(4) Take other action as deemed appropriate by the Commission.

(b) Within 21 days of the conclusion of the public comment period the Commission will determine whether the planned rate adjustments are consistent with applicable law and issue an order announcing its findings. Applicable law means only the applicable requirements of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629.

(c) If the planned rate adjustments are found consistent with applicable law, they may take effect.

(d) If the planned rate adjustments are found inconsistent with applicable law, the Commission will notify and require the Postal Service to respond to any issues of noncompliance.

(e) Following the Commission's notice of noncompliance, the Postal Service

may submit an amended rate adjustment filing that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended rate adjustment filing shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(f) The Commission will allow a period of 10 days from the date of the amended rate adjustment filing for public comment.

(g) The Commission will review the amended rate adjustment filing together with any comments filed for compliance and issue an order announcing its findings within 21 days after the comment period ends.

(h) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect. However, no amended rate shall take effect until 45 days after the Postal Service transmits its rate adjustment filing specifying that rate.

(i) If the planned rate adjustments in an amended rate adjustment filing are found to be inconsistent with applicable law, the Commission shall explain the basis for its determination and suggest an appropriate remedy. Noncompliant rates may not go into effect.

(j) A Commission finding that a planned rate adjustment is in compliance with the applicable requirements of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I, is provisional and subject to subsequent review.

§ 3030.127 Maximum rate adjustment authority.

(a) The maximum rate adjustment authority available to the Postal Service for each class of market dominant mail is limited to the sum of the percentage points developed in subparts C through E and G through H of this part.

(b) For any product where the attributable cost for that product exceeded the revenue from that product as determined by the Commission, rates may not be reduced.

§ 3030.128 Calculation of percentage change in rates.

(a) For the purpose of calculating the percentage change in rates, the current rate is the rate in effect at the time of the rate adjustment filing under § 3030.121 with the following exceptions:

(1) A seasonal or temporary rate shall be identified and treated as a rate cell

separate and distinct from the corresponding non-seasonal or permanent rate. When used with respect to a seasonal or temporary rate, the current rate is the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time of the rate adjustment filing.

(2) When used with respect to a rate cell that corresponds to a rate incentive that was previously excluded from the calculation of the percentage change in rates, the current rate is the full undiscounted rate in effect for the rate cell at the time of the rate adjustment filing, not the discounted rate in effect for the rate cell at such time.

(b) For the purpose of calculating the percentage change in rates, the volume for each rate cell shall be obtained from the most recently available 12 months of Postal Service billing determinants with the following permissible adjustments:

(1) The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. The Postal Service shall

identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(2) Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.

(3) For an adjustment accounting for the effects of the deletion of a rate cell when an alternate rate cell is not available, the Postal Service should adjust the billing determinants associated with the rate cell to 0. If the Postal Service does not adjust the billing determinants for the rate cell to 0, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (b)(1) of this section.

(c) For a rate adjustment that involves a rate increase, for each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and

the resulting products are summed. Second, the same set of rate cell volumes is multiplied by the corresponding current rate for each cell and the resulting products are summed. Third, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) For rate adjustments that only involve a rate decrease, for each class of mail and product within the class, the percentage change in rates is calculated by amending the workpapers attached to the Commission's order relating to the most recent rate adjustment filing that involved a rate increase to replace the planned rates under the most recent rate adjustment filing that involves a rate increase with the corresponding planned rates applicable to the class from the rate adjustment filing involving only a rate decrease.

(e) The formula for calculating the percentage change in rates for a class, described in paragraphs (c) and (d) of this section, is as follows:

$$\text{Percentage change in rates} = \left(\frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where:

N = number of rate cells in the class.

i = denotes a rate cell (i = 1, 2, . . . , N).

R_{i,n} = planned rate of rate cell i.

R_{i,c} = current rate of rate cell i (for rate adjustment involving a rate increase) or rate from most recent rate adjustment involving a rate increase for rate cell i (for a rate adjustment only involving a rate decrease).

V_i = volume of rate cell i.

(f)(1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in paragraph (g) of this section).

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may

be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior);

(iii) The rate incentive is a rate of general applicability; and

(iv) The rate incentive is made available to all mailers equally on the same terms and conditions.

(g)(1) Mail volumes sent at rates under a negotiated service agreement or a rate incentive that is not a rate of general applicability are to be included in the calculation of the percentage change in rates under this section as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g., because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement or the rate incentive that is not a rate of general applicability shall be excluded from the calculation of the percentage change in rates.

(2) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements and rate incentives that are not rates of general

applicability in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3030.129 Exceptions for de minimis rate increases.

(a) The Postal Service may request that the Commission review a de minimis rate increase without immediately calculating the maximum rate adjustment authority or banking unused rate adjustment authority. For the exception in this paragraph (a) to apply, requests to review de minimis rate adjustments must be filed separately from any other request to review a rate adjustment filing.

(b) Rate adjustments resulting in rate increases are de minimis if:

(1) For each affected class, the rate increases do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

(2) For each affected class, the sum of all rate increases included in de minimis rate increases since the most recent rate adjustment resulting in a rate increase, or the most recent rate adjustment due to extraordinary and exceptional circumstances, that was not a de minimis rate increase does not result in the percentage change in rates

for the class equaling or exceeding 0.001 percent.

(c) If the rate adjustments are de minimis, no unused rate adjustment authority will be added to the schedule of banked rate adjustment authority maintained under subpart G of this part as a result of the de minimis rate increase.

(d) If the rate adjustments are de minimis, no rate decreases may be taken into account when determining whether rate increases comply with paragraphs (b)(1) and (2) of this section.

(e) In the next rate adjustment filing proposing to increase rates for a class that is not a de minimis rate increase:

(1) The maximum rate adjustment authority shall be calculated as if the de minimis rate increase had not been filed; and

(2) For purposes of calculating the percentage change in rates, the current rate shall be the current rate from the de minimis rate increase.

(f) The Postal Service shall file supporting workpapers with each request to review a de minimis rate increase that demonstrate that the sum of all rate increases included in de minimis rate increases since the most recent rate adjustment resulting in a rate increase that was not de minimis, or the most recent rate adjustment due to extraordinary and exceptional circumstances, does not result in a percentage change in rates for the class equaling or exceeding 0.001 percent.

(g) For any product where the attributable cost for that product exceeded the revenue from that product as determined by the Commission, rates may not be reduced.

Subpart C—Consumer Price Index Rate Authority

§ 3030.140 Applicability.

The Postal Service may adjust rates based upon changes in the Consumer Price Index for all Urban Consumers (CPI-U) identified in § 3030.141. If rate adjustment filings involving rate increases are filed 12 or more months apart, rate adjustments are subject to a full year limitation calculated pursuant to § 3030.142. If rate adjustment filings involving rate increases are filed less than 12 months apart, rate adjustments are subject to a partial year limitation calculated pursuant to § 3030.143.

§ 3030.141 CPI-U data source.

The monthly CPI-U values needed for the calculation of rate adjustment limitations under this subpart shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items,

Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

§ 3030.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.

(a) If a rate adjustment filing involving a rate increase is filed 12 or more months after the most recent rate adjustment filing involving a rate increase, then the calculation of an annual limitation for the class (full year limitation) involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Third, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(b) The formula for calculating a full year limitation for a rate adjustment filing filed 12 or more months after the last rate adjustment filing is as follows: Full Year Limitation = (Recent Average / Base Average) – 1.

§ 3030.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.

(a) If a rate adjustment filing involving a rate increase is filed less than 12 months after the most recent rate adjustment filing involving a rate increase, then the annual limitation for the class (partial year limitation) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(b) The applicable partial year limitation is calculated in two steps. First, a simple average CPI-U index is calculated by summing the 12 most recently available monthly CPI-U values from the date of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, the partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous rate adjustment filing (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The

result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating the partial year limitation for a rate adjustment filing filed less than 12 months after the last rate adjustment filing is as follows: Partial Year Limitation = (Recent Average / Previous Recent Average) – 1.

Subpart D—Density Rate Authority

§ 3030.160 Applicability.

(a) This subpart allocates rate authority to address the effects of decreases in the density of mail as measured by the sources identified in § 3030.161. The calculation of the additional rate authority corresponding to the change in density is described in § 3030.162.

(b) The Postal Service shall file a notice with the Commission by December 31 of each year that calculates the amount of density rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and determine how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission's determination; and

(3) May be used to generate unused rate authority, if unused, within 12 months of the Commission's announcement.

§ 3030.161 Density calculation data sources.

(a) The data needed for the calculation of the density rate authority in § 3030.162 shall be obtained from the values reported by the Postal Service as specified in paragraphs (b) through (d) of this section. When both originally filed and annually revised data are available, the originally filed data shall be used. When the originally filed data are corrected through a refile or in the Commission's Annual Compliance Determination report, the corrected version of the originally filed data shall be used.

(b) Market dominant volume and total volume from the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter;

(c) Institutional costs and total costs from the Cost and Revenue Analysis report, filed with the Postal Service's

section 3652 report (see § 3050.1(g) of this chapter); and

(d) The number of delivery points, from the input data used to produce the Total Factor Productivity estimates,

filed with the Postal Service's section 3652 report.

§ 3030.162 Calculation of density rate authority.

(a) *Formulas.* (1) The formula for calculating the amount of density rate

authority, in conformance with paragraph (b)(1) of this section, is as follows:

$$\text{Density rate authority} = \text{the greater of } 0 \text{ and } -1 * \frac{IC_T}{TC_T} * \% \Delta D_{[T-1, T]}$$

Where:

T = most recently completed fiscal year.

T-1 = fiscal year prior to fiscal year T.

IC_T = institutional cost in fiscal year T.

TC_T = total cost in fiscal year T.

%ΔD_[T-1, T] = Percentage change in density from fiscal year T-1 to fiscal year T.

(2) The formula for calculating the percentage change in density, in conformance with paragraph (b)(2) of this section, is as follows:

$$\text{Percentage change in density from prior fiscal year} = \frac{\frac{V_T}{DP_T}}{\frac{V_{T-1}}{DP_{T-1}}} - 1$$

Where:

T = most recently completed fiscal year.

T-1 = fiscal year prior to fiscal year T.

V_T = volume in fiscal year T (either market dominant volume or total volume as discussed in paragraph (b)(2) of this section).

DP_T = delivery points in fiscal year T.

(b) *Calculation.* (1) The amount of density rate authority available under this section shall be calculated in three steps. First, the percentage change in density during the most recently completed fiscal year shall be calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section. Second, this percentage change shall be multiplied by the institutional cost ratio, which is calculated as institutional costs for the most recently completed fiscal year divided by total costs for that fiscal year. Finally, this product shall be multiplied by negative 1 so that declines in density correspond to a positive increase in rates. If the result of this calculation is less than 0, the amount of additional rate authority shall be 0.

(2) The percentage change in density from the prior fiscal year shall be calculated as the ratio of volume to delivery points for the most recently completed fiscal year, divided by the same ratio for the prior fiscal year, and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places. To ensure that decreases in competitive product volume will not result in the Postal Service receiving greater additional rate adjustment authority under this subpart, the percentage change in density shall be calculated

two ways: Using market dominant volume and using total volume. The greater of the two results (not using absolute value) shall be used as the percentage change in density from the prior fiscal year.

Subpart E—Retirement Obligation Rate Authority

§ 3030.180 Definitions.

(a) The definitions in paragraphs (b) through (e) of this section apply to this subpart.

(b) *Amortization payments* mean the amounts that the Postal Service is invoiced by the U.S. Office of Personnel Management to provide for the liquidation of the specific and supplemental unfunded liabilities by statutorily predetermined dates, as described in § 3030.182(a).

(c) *Phase-in period* means the period of time spanning the fiscal years of issuance of the first five determinations following January 14, 2021, as specified by the timing provisions in § 3030.181.

(d) *Required minimum remittance* means the minimum amount the Postal Service is required to remit during a particular fiscal year, as calculated under § 3030.184.

(e) *Revenue collected under this subpart* means the amount of revenue collected during a fiscal year as a result of all previous rate increases authorized under this subpart, as calculated under § 3030.184.

§ 3030.181 Applicability.

(a) This subpart allocates additional rate authority to provide the Postal Service with revenue for remittance

towards the statutorily mandated amortization payments for supplemental and unfunded liabilities identified in § 3030.182. As described in § 3030.184, for retirement obligation rate authority to be made available, the Postal Service must annually remit towards these amortization payments all revenue collected under this subpart previously. The full retirement obligation rate authority, calculated as described in § 3030.183, shall be phased in over 5 fiscal years, taking into account changes in volume during the phase-in period. If combined with an equal rate increase on Competitive products, the compounded rate increase resulting from retirement obligation rate authority is calculated to generate sufficient additional revenue at the end of the phase-in period to permit the Postal Service to remit the entire invoiced amount of its amortization payments.

(b) Until the conclusion of the phase-in period, the Postal Service shall file a notice with the Commission by December 31 of each year that calculates the amount of retirement obligation rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and determine how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment

filed after the Commission's determination;

(3) Shall lapse if not used in the first generally applicable rate adjustment filed after the Commission's determination;

(4) Shall lapse if unused, within 12 months of the Commission's determination, however this paragraph (c)(4) shall not prohibit the Postal Service from making a stand-alone adjustment to one or two generally applicable rate cells, if such a case were to be followed by a broader rate adjustment in the class later in the same fiscal year; and

(5) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

§ 3030.182 Retirement obligation data sources.

(a) The amounts of the amortization payments needed for the calculation of retirement obligation rate adjustment authority in § 3030.183 shall be obtained from notifications to the Postal Service by the Office of Personnel Management of annual determinations of the funding amounts specific to payments at the end of each fiscal year for Retiree Health Benefits as computed under 5 U.S.C. 8909a(d)(2)(B) and (d)(3)(B)(ii); the Civil Service Retirement System as computed under 5 U.S.C. 8348(h)(2)(B); and the Federal Employees Retirement System as computed under 5 U.S.C. 8423(b)(1)(B), (b)(2), and (b)(3)(B), filed with the Postal Service's section 3652 report.

(b) The values for market dominant revenue, total revenue and market dominant volumes needed for the

calculation of retirement obligation rate authority in § 3030.183 shall be obtained from values reported in the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter.

(c) The values for additional rate authority previously provided under this subpart, if any, needed for the calculation of retirement obligation rate authority in § 3030.183 and the calculation of required minimum remittances under § 3030.184 shall be obtained from the Commission's prior determinations.

§ 3030.183 Calculation of retirement obligation rate authority.

(a) *Formulas.* (1) The formula for calculating the amount of retirement obligation rate authority available under this subpart, described in paragraph (b)(1) of this section, is as follows:

$$\text{Additional rate authority in fiscal year } T + 1 = \left(1 + \frac{AP_T}{TR_T} - PARA_T \right)^{\frac{1}{5-N}} - 1$$

Where:

T = most recently completed fiscal year.
 AP_T = total amortization payment for fiscal year T.
 TR_T = total revenue in fiscal year T.
 PARA_T = previously authorized retirement obligation rate authority, compounded through fiscal year T, expressed as a

proportion of the market dominant rate base and calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section.

N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

(2) The formula for calculating the amount of previously authorized retirement obligation rate authority through fiscal year T, described in paragraph (b)(2) of this section, is as follows:

Previously authorized retirement obligation rate authority through

$$\text{fiscal year } T = 1 - \left(\prod_{t=T-N}^T (1 + r_t) \right)^{-1}$$

Where:

T = most recently completed fiscal year.
 r_t = retirement obligation rate authority authorized in fiscal year T.
 N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

make the full amortization payment. It does not account, however, for any previous rate authority authorized under this subpart. The second step is therefore to subtract the proportion of the market dominant rate base resulting from previously authorized retirement obligation rate authority. That proportion is calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section. Third, to amortize the resulting amount of retirement obligation rate authority over the remainder of the phase-in period, the difference shall be raised to the power of the inverse of the number of determinations remaining in the phase-in period, including the current determination. Finally, 1 shall be

subtracted from the result to convert from a proportional change in rates to a percentage of rate adjustment authority.

(2) The amount of previously authorized retirement obligation rate authority shall be calculated in two steps. First, the sums of 1 and the amount of retirement obligation rate authority authorized in each of the previous fiscal years shall be multiplied together. This product represents the compounded amount of such rate authority, expressed as a net rate increase. To express this product as a proportion of the market dominant rate base, the second step is to subtract the inverse of this product from 1.

(b) *Calculations.* (1) The amount of retirement obligation rate authority available for a fiscal year shall be calculated in four steps. First, the ratio of the total amortization payment for the fiscal year under review to the total revenue in the fiscal year under review shall be added to 1. This sum represents the factor by which an equal increase in market dominant and competitive rates in the fiscal year under review would generate sufficient additional revenue to

§ 3030.184 Required minimum remittances.

(a) *Minimum remittances.* During each fiscal year subsequent to January 14, 2021, the Postal Service shall remit towards the liabilities identified in § 3030.182 an amount equal to or greater

than the amount of revenue collected as a result of all previous rate increases under this subpart during the previous fiscal year, as calculated using the formulas in paragraph (b) of this section, as described in paragraph (c) of this section.

(b) *Formulas.* (1) The formula for calculating the amount of revenue collected under this subpart during a fiscal year, described in paragraph (c)(1) of this section, is as follows:

$$\text{Amount of revenue} = MDR_T \left(1 - \left(\prod_{t=T-N}^T 1 + (p_t)(r_t) \right)^{-1} \right)$$

Where:

T = most recently completed fiscal year.
MDR_T = market dominant revenue in fiscal year T.
N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

r_t = retirement obligation rate authority authorized in fiscal year t.
p_t = prorated fraction of r_t that was in effect during fiscal year T, calculated using the formula in paragraph (b)(2) of this section, as described in paragraph (c)(2) of this section.

(2) The formula for calculating the prorated fraction of retirement obligation rate authority authorized in a particular fiscal year t that was in effect during the most recently completed fiscal year, described in paragraph (c)(2) of this section, is as follows:

Prorated fraction

$$= \begin{cases} 0, & \text{if } r_t \text{ was not in effect during fiscal year T} \\ 1, & \text{if } r_t \text{ was in effect for all of fiscal year T} \\ \frac{\left(\frac{E_Q}{D_Q}\right)(QMDV_Q) + \sum_{i=Q+1}^4 QMDV_i}{MDV_T}, & \text{if } r_t \text{ came into effect during fiscal year T} \end{cases}$$

Where:

T = most recently completed fiscal year.
r_t = retirement obligation rate authority authorized under this subpart in fiscal year t.
Q = the number of the quarter during the fiscal year of the effective date of the price increase including retirement obligation rate authority made available under this subpart.
E_Q = number of days in quarter Q subsequent to and including the effective date of the price increase.
D_Q = total number of days in quarter Q.
QMDV_Q = market dominant volume in quarter Q.
MDV_T = market dominant volume in fiscal year T.

(c) *Calculations.* (1) The amount of revenue collected under this subpart during a fiscal year, as calculated by the formula in paragraph (b)(1) of this section, shall be calculated in three steps. First, the sums of 1 and the amount of retirement obligation rate authority made available under this subpart during each previous fiscal year—prorated to account for mid-year price increases as described in paragraph (b)(2) of this section—shall be multiplied together. This product represents the proportion by which prices were higher during the most recently completed fiscal year as a result

of retirement obligation rate authority. Second, to express this net price increase as a proportion of market dominant revenue, the inverse of this product shall be subtracted from 1. Finally, the result shall be multiplied by market dominant revenue for the fiscal year to change the proportion into a dollar amount.

(2)(i) The prorated fraction of retirement obligation rate authority authorized in a particular fiscal year that was in effect during the most recently completed fiscal year, as calculated by the formula in paragraph (b)(2) of this section, shall be a piecewise function of three parts. First, if the retirement obligation rate authority authorized in a particular year was not in effect during the most recently completed fiscal year, the prorated fraction shall be 0. Second, if the retirement obligation rate authority authorized in a particular year was in effect during the entirety of the most recently completed fiscal year, the prorated fraction shall be 1. Finally, if the retirement obligation rate authority authorized in a particular fiscal year was used to raise prices during the most recently completed fiscal year, the prorated fraction shall be the proportion

of volume sent during the fiscal year after that rate increase went into effect.

(ii) The proportion in paragraph (c)(2)(i) of this section shall be calculated in four steps. First, the number of days of the fiscal quarter after and including the effective date of the price adjustment including the retirement obligation rate authority shall be divided by the total number of days in that fiscal quarter. This quotient determines the proportion of days in that quarter in which the higher rates were in effect. Second, that quotient shall be multiplied by the market dominant volume from that fiscal quarter to determine the amount of volume during the quarter receiving the higher rates. Third, that product shall be added to the market dominant volume from any subsequent quarters of the fiscal year because the volume in those quarters was also sent under the higher rates. Finally, this sum shall be divided by the total market dominant volume from the fiscal year to determine the proportion of annual volume sent after the rate increase went into effect.

§ 3030.185 Forfeiture.

(a) If any of the circumstances described in paragraphs (b) through (d)

of this section occur, the Postal Service shall not be eligible for future retirement obligation rate authority under this subpart, and the Commission may commence additional proceedings as appropriate.

(b) If, subsequent to March 1, 2021, and prior to the end of the phase-in period, the Postal Service fails to timely file the notice required under § 3030.181(b);

(c) In any fiscal year in which retirement obligation rate authority was determined to be available under this subpart, the Postal Service fails to timely file under § 3030.122 for a rate increase including the full amount of retirement obligation rate authority authorized under this subpart during that fiscal year, to take effect prior to the end of that fiscal year; or

(d) In any fiscal year including or subsequent to the first fiscal year in which rate authority under this subpart was used to adjust market dominant rates, the Postal Service's total payments towards the supplemental and unfunded liabilities identified in § 3030.182 are not equal to or greater than the minimum remittance required for that fiscal year under § 3030.184(a).

Subpart F—[Reserved]

Subpart G—Non-compensatory Classes or Products

§ 3030.220 Applicability.

This subpart is applicable to a class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission. Section 3030.221 is applicable where the attributable cost for a product within a class exceeded the revenue from that particular product where the product is classified within a class where the overall class revenue exceeded the attributable cost for that class. Section 3030.222 is applicable where the attributable cost for an entire class exceeded the revenue from that class.

§ 3030.221 Individual product requirement.

Whenever the Postal Service files a rate adjustment filing affecting a class of mail which includes a product where the attributable cost for that product exceeded the revenue from that product, as determined by the Commission, the Postal Service shall increase the rates for each non-compensatory product by a minimum of 2 percentage points above the percentage increase for that class. This section does not create additional rate authority applicable to any class of mail. This section only applies to products classified within classes for

which the overall class revenue exceeded the attributable cost for that class. This section does not apply to a non-compensatory product for which the Commission has determined that the Postal Service lacks independent authority to set rates (such as rates set by treaty obligation).

§ 3030.222 Class requirement and additional class rate authority.

(a) This section provides 2 percentage points of additional rate authority for any class of mail where the attributable cost for that class exceeded the revenue from that class as determined by the Commission. This additional rate authority is optional and may be used at the Postal Service's discretion.

(b) The Commission shall announce how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's announcement;

(2) Must be included in the calculation of the maximum rate adjustment authority change in rates in the first generally applicable rate adjustment filed after the Commission's announcement; and

(3) May be used to generate unused rate authority, if unused, within 12 months of the Commission's announcement.

Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority

§ 3030.240 General.

Unless a specific exception applies, unused rate adjustment authority, on a class-by-class basis, shall be calculated for each rate adjustment filing. Unused rate adjustment authority shall be added to the schedule of banked rate authority in each instance, and be available for application to rate adjustments pursuant to the requirements of this subpart.

§ 3030.241 Schedule of banked rate adjustment authority.

Upon the establishment of unused rate adjustment authority, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of banked rate authority on a class-by-class basis. At a minimum, the schedule must track the amount of banked rate authority available immediately prior to the rate adjustment filing and the amount of banked rate authority available upon acceptance of the rates included in the rate adjustment filing. It shall also track all changes to the schedule, including the docket numbers of Commission decisions affecting the schedule, the

dates and amounts that any rate authority was generated or subsequently expended, and the expiration dates of all rate adjustment authority. The schedule shall be included with any rate adjustment filing purporting to modify the amount of banked rate adjustment authority.

§ 3030.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.

(a) When rate adjustment filings that involve a rate increase are filed 12 months apart or less, unused rate adjustment authority for a class is equal to the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C through G of this part and this subpart, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3030.128, subject to the limitations described in paragraph (b) of this section.

(b) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subparts C and D of this part and § 3030.222.

§ 3030.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.

(a) When rate adjustment filings that involve a rate increase are filed more than 12 months apart, any interim rate adjustment authority must first be added to the schedule of banked rate authority before the unused rate adjustment authority is calculated.

(b) Interim rate adjustment authority for a class is equal to the Base Average applicable to the second rate adjustment filing (as developed pursuant to § 3030.142) divided by the Recent Average utilized in the first rate adjustment filing (as developed pursuant to § 3030.142) and subtracting 1 from the quotient. The result is expressed as a percentage and immediately added to the schedule of banked rate authority as of the date the rate adjustment filing is filed. If the Commission announces that rate authority calculated pursuant to subpart D of this part or § 3030.222 are available and no rate adjustment is filed before the Commission subsequently announces that further rate authority calculated pursuant to subpart D of this part or § 3030.222 are available, then the amount of rate authority calculated pursuant to subpart D of this part and § 3030.222 in the first Commission

announcement shall be added to the interim rate adjustment authority.

(c) Unused rate adjustment authority for a class is equal to the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C through G of this part and this subpart, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3030.128, subject to the limitations described in paragraph (d) of this section.

(d) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subparts C and D of this part and § 3030.222.

§ 3030.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.

(a) For rate adjustment filings that only include rate decreases, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C through G of this part and this subpart, as appropriate, for the most recent rate adjustment that involves a rate increase and the percentage change in rates for the class calculated pursuant to § 3030.128(d) is calculated. Second, the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase is subtracted from that result.

(b) Unused rate adjustment authority generated under paragraph (a) of this section for a class shall be added to the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase on the schedule maintained under § 3030.241. For purposes of this section, the unused rate adjustment authority generated under paragraph (a) of this section for a class shall be deemed to have been added to the schedule maintained under § 3030.241 on the same date as the most recent rate adjustment filing that involves a rate increase.

(c) For rate adjustment filings that only include rate decreases, the sum of unused rate adjustment authority generated under paragraph (a) of this section and the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase cannot exceed the unused portion of rate adjustment authority calculated pursuant to subparts C and D of this part and § 3030.222 in the most recent rate adjustment that involves a rate increase.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3030.245, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

(e) For rate adjustment filings that only include rate decreases, unused rate adjustment authority generated under this section lapses 5 years from the date of filing of the most recent rate adjustment filing that involves a rate increase.

(f) A rate adjustment filing that only includes rate decreases that is filed immediately after a rate adjustment due to extraordinary or exceptional circumstances (*i.e.*, without an intervening rate adjustment involving a rate increase) may not generate unused rate adjustment authority.

§ 3030.245 Application of banked rate authority.

(a) Banked rate authority may be applied to any planned rate adjustment subject to the limitations appearing in paragraphs (b) through (f) of this section.

(b) Banked rate authority may only be applied to a proposal to adjust rates after applying rate authority as described in subparts C through F of this part and in § 3030.222.

(c) A maximum of 2 percentage points of banked rate authority may be applied to a rate adjustment for any class in any 12-month period. If banked rate authority is used, it shall be subtracted from the schedule of banked rate adjustment authority as of the date of the final order accepting the rates.

(d) Subject to paragraphs (b) and (c) of this section, interim rate adjustment authority may be used to make a rate adjustment pursuant to the rate adjustment filing that led to its calculation. If interim rate adjustment authority is used to make such a rate adjustment, the interim rate adjustment authority generated pursuant to the rate adjustment filing shall first be added to the schedule of banked rate adjustment authority pursuant to § 3030.241 as the most recent entry. Then, any interim rate adjustment authority used in accordance with this paragraph (d) shall be subtracted from the existing banked rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(e) Banked rate authority for a class must be applied, using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(f) Banked rate adjustment authority calculated under this section shall lapse

5 years from the date of the rate adjustment filing leading to its calculation.

Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

§ 3030.260 General.

The Postal Service may request to adjust rates for market dominant products due to extraordinary or exceptional circumstances pursuant to 39 U.S.C. 3622(d)(1)(E). The rate adjustments are not subject to rate adjustment limitations or the restrictions on the use of unused rate adjustment authority. The rate adjustment request may not include material classification changes. The request is subject to public participation and Commission review within 90 days.

§ 3030.261 Contents of a rate adjustment filing.

(a) Each exigent request shall include the items specified in paragraphs (b) through (i) of this section.

(b) A schedule of the planned rates.

(c) Calculations quantifying the increase for each affected product and class.

(d) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase and the specific rate adjustments requested relate to those circumstances.

(e) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

(f) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products.

(g) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part.

(h) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action.

(i) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

§ 3030.262 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide additional information in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested. The Postal Service shall include within its request the identification of one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification or additional information.

§ 3030.263 Docket and notice.

(a) The Commission will establish a docket for each request to adjust rates due to extraordinary or exceptional circumstances, publish notice of the request in the **Federal Register**, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

(d) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule.

(e) The identification of an officer of the Commission to represent the interests of the general public in the docket.

(f) A specified period for public comment.

(g) Such other information as the Commission deems appropriate.

§ 3030.264 Public hearing.

(a) The Commission will hold a public hearing on the Postal Service's request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and supporting information.

(b) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3010.120 of this chapter, and will become part of the administrative record of the proceeding.

(c) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and

completeness of the supporting materials provided with the request.

(d) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

§ 3030.265 Opportunity for comments.

(a) Following the conclusion of the public hearings and submission of any supplementary materials, interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate adjustment;

(2) The adequacy of the justification for adjustments in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(b) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3030.266 Deadline for Commission decision.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness. The Commission will act expeditiously on the Postal Service's request, taking into account all written comments. In every instance, a Commission decision will be issued within 90 days of the filing of an exigent request.

§ 3030.267 Treatment of banked rate adjustment authority.

(a) Each request will identify the banked rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Rate adjustments may use existing banked rate adjustment authority in amounts greater than the limitations described in § 3030.245.

(c) Increases will exhaust all banked rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

Subpart J—Workshare Discounts**§ 3030.280 Applicability.**

This subpart is applicable whenever the Postal Service proposes to adjust a rate associated with a workshare discount. For the purpose of this subpart, the cost avoided by the Postal

Service for not providing the applicable service refers to the amount identified in the most recently applicable Annual Compliance Determination, unless the Commission otherwise provides.

§ 3030.281 Calculation of passthroughs for workshare discounts.

For the purpose of this subpart, the percentage passthrough for any workshare discount shall be calculated by dividing the workshare discount by the cost avoided by the Postal Service for not providing the applicable service and expressing the result as a percentage.

§ 3030.282 Increased pricing efficiency.

(a) For a workshare discount that is equal to the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may change the size of the discount.

(b) For a workshare discount that exceeds the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may increase the size of the discount.

(c) For a workshare discount that is less than the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may decrease the size of the discount.

§ 3030.283 Limitations on excessive discounts.

(a) No proposal to adjust a rate may set a workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent less than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3030.286.

(e) The proposed workshare discount is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)) and is in compliance with § 3030.285(c).

§ 3030.284 Limitations on discounts below avoided cost.

(a) No proposal to adjust a rate may set a workshare discount that would be below the cost avoided by the Postal

Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent more than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3030.286.

(e) The percentage passthrough for the proposed workshare discount is at least 85 percent.

§ 3030.285 Proposal to adjust a rate associated with a workshare discount.

(a) Each proposal to adjust a rate associated with a workshare discount shall be supported by substantial evidence and demonstrate that each proposed workshare discount has been set in compliance with 39 U.S.C. 3622(e) and this subpart. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(b) For each proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3030.283 under which the Postal Service is justifying the excessive discount and include any relevant analysis supporting the claim.

(c) For each proposed workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), would exceed the cost avoided by the Postal Service for not providing the applicable service, and would not be set in accordance with at least one specific provision appearing in § 3030.283(b) through (d), the rate adjustment filing shall provide the information specified in paragraphs (c)(1) through (3) of this section:

(1) The number of mail owners receiving the workshare discount during the most recent full fiscal year and for the current fiscal year to date;

(2) The number of mail owners for the applicable product or products in the most recent full fiscal year and for the current fiscal year to date; and

(3) An explanation of how the proposed workshare discount would promote the public interest, even though the proposed workshare

discount would substantially exceed the cost avoided by the Postal Service.

(d) For each proposed workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3030.284 under which the Postal Service is justifying the discount that is below the cost avoided and include any relevant analysis supporting the claim.

§ 3030.286 Application for waiver.

(a) In every instance in which the Postal Service determines to adjust a rate associated with a workshare discount in a manner that does not comply with the limitations imposed by §§ 3030.283 through 3030.284, the Postal Service shall file an application for waiver. The Postal Service must file any application for waiver at least 60 days prior to filing the proposal to adjust a rate associated with the applicable workshare discount. In its application for waiver, the Postal Service shall indicate the approximate filing date for its next rate adjustment filing.

(b) The application for waiver shall be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by §§ 3030.283 through 3030.284 should be granted. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(c) The application for waiver shall include a specific and detailed statement signed by one or more knowledgeable Postal Service official(s) who sponsors the application and attests to the accuracy of the information contained within the statement. The statement shall set forth the information specified in paragraphs (c)(1) through (8) of this section, as applicable to the specific workshare discount for which a waiver is sought:

(1) The reason(s) why a waiver is alleged to be necessary (with justification thereof), including all relevant supporting analysis and all assumptions relied upon.

(2) The length of time for which a waiver is alleged to be necessary (with justification thereof).

(3) For each subsequent rate adjustment filing planned to occur during the length of time for which a waiver is sought, a representation of the proposed minimum amount of the change to the workshare discount.

(4) For a claim that the amount of the workshare discount exceeding the cost avoided by the Postal Service for not

providing the applicable service is necessary in order to mitigate rate shock (39 U.S.C. 3622(e)(2)(B)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(4)(i) through (iii) of this section:

(i) A description of the customers that the Postal Service claims would be adversely affected.

(ii) Prices and volumes for the workshare discount at issue (the benchmark and workshared mail category) for the last 10 years.

(iii) Quantitative analysis or, if not available, qualitative analysis indicating the nature and extent of the likely harm to the customers that would result from setting the workshare discount in compliance with § 3030.283(c).

(5) For a claim that setting an excessive or low workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service, the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(5)(i) through (iii) of this section:

(i) A description of the operational strategy at issue.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating how the workshare discount at issue is related to that operational strategy.

(iii) How setting the workshare discount in compliance with § 3030.283(c) or § 3030.284(c), whichever is applicable, would impede that operational strategy.

(6) For a claim that reducing or eliminating the excessive workshare discount would lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to the Postal Service's institutional costs from the mail that is subject to the discount (39 U.S.C. 3622(e)(3)(A)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(6)(i) through (iii) of this section:

(i) A description of the affected category of mail.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected loss of volume and reduced contribution that is claimed would result from reducing or eliminating the excessive workshare discount.

(iii) How setting the excessive workshare discount in compliance with § 3030.283(c) would lead to the expected loss of volume and reduced contribution.

(7) For a claim that reducing or eliminating the excessive workshare

discount would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount (39 U.S.C. 3622(e)(3)(B)), or a claim that increasing or eliminating a low workshare discount for a non-compensatory product would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount, the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(7)(i) through (iii) of this section:

(i) A description of the mailers not able to take advantage of the discount.
(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected size of the rate increase that is claimed would result in the rates paid by mailers not able to take advantage of the discount.

(iii) How setting the excessive workshare discount in compliance with § 3030.283(c) or the low workshare discount for a non-compensatory product in compliance with § 3030.284(c) or (e), whichever is applicable, would result in a further increase in the rates paid by mailers not able to take advantage of the discount.

(8) Any other relevant factors or reasons to support the application for waiver.

(d) Unless the Commission otherwise provides, commenters will be given at least 7 calendar days to respond to the application for waiver after it has been filed by the Postal Service.

(e) To better evaluate the waiver application, the Commission may, on its own behalf or by request of any interested person, order the Postal Service to provide experts on the subject matter of the waiver application to participate in technical conferences, prepare statements clarifying or supplementing their views, or answer questions posed by the Commission or its representatives.

(f) For a proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if at least one provision appearing in 39 U.S.C. 3622(e)(2)(A) through (e)(2)(D) or 39 U.S.C. 3622(e)(3)(A) through (e)(3)(B) is determined to apply.

(g) For a proposed workshare discount that would be set below the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if setting the workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service or if increasing or eliminating a low

workshare discount for a non-compensatory product would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount.

(h) The Commission will issue an order announcing, at a minimum, whether the requested waiver will be granted or denied no later than 21 days following the close of any comment period(s). An order granting the application for waiver shall specify all conditions upon which the waiver is granted, including the date upon which the waiver shall expire.

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE

■ 2. The authority citation for part 3040 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 3. Amend § 3040.132 by revising paragraphs (a) and (b) to read as follows:

§ 3040.132 Supporting justification.

* * * * *

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

* * * * *

■ 4. Amend § 3040.152 by revising paragraphs (a) and (b) to read as follows:

§ 3040.152 Supporting justification.

* * * * *

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

* * * * *

■ 5. Amend § 3040.172 by revising paragraphs (a) and (b) to read as follows:

§ 3040.172 Supporting justification.

* * * * *

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

* * * * *

■ 6. Amend § 3040.181 by revising paragraph (b)(1) to read as follows:

§ 3040.181 Supporting justification for material changes to product descriptions.

* * * * *

(b)(1) As to market dominant products, explain why the changes are not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; or

* * * * *

■ 7. Amend § 3040.182 by revising paragraph (e) to read as follows:

§ 3040.182 Docket and notice of material changes to product descriptions.

* * * * *

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

■ 8. Amend § 3040.190 by revising paragraph (c)(2) to read as follows:

§ 3040.190 Minor corrections to product descriptions.

* * * * *

(c) * * *

(2) Explain why the proposed corrections are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; and

* * * * *

■ 9. Amend § 3040.191 by revising paragraph (e) to read as follows:

§ 3040.191 Docket and notice of minor corrections to product descriptions.

* * * * *

(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

■ 10. Add subpart G to read as follows:

Subpart G—Requests for Market Dominant Negotiated Service Agreements

Sec.

3040.220 General.

3040.221 Additional supporting justification for negotiated service agreements.

3040.222 Data collection plan and report for negotiated service agreements.

§ 3040.220 General.

This subpart imposes additional requirements whenever there is a request to add a negotiated service agreement to the market dominant product list. The additional supporting justification appearing in § 3040.221 also should be provided whenever the Postal Service proposes to modify the terms of an existing market dominant negotiated service agreement. Commission findings that the addition of a special classification is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review. No rate(s) shall take effect until 45 days after the Postal Service files a request for review of a notice of a new rate or rate(s) adjustment specifying the rate(s) and the effective date.

§ 3040.221 Additional supporting justification for negotiated service agreements.

(a) Each request shall also include the items specified in paragraphs (b) through (j) of this section.

(b) A copy of the negotiated service agreement.

(c) The planned effective date(s) of the planned rates.

(d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i) and (ii)). The projection of the change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of the change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the

Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(5) If the Postal Service believes the Commission's accepted analytical principles are not the most accurate and reliable methodology available:

(i) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service's alternative methodology.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(i) A discussion in regard to how functionally similar negotiated service agreements will be made available on public and reasonable terms to similarly situated mailers.

(j) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3040.222 Data collection plan and report for negotiated service agreements.

(a) The Postal Service shall include with any request concerning a negotiated service agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(i) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(ii) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(iii) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

PART 3045—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

■ 11. The authority citation for part 3045 continues to read as follows:

Authority: 39 U.S.C. 503; 3641.

■ 12. Amend § 3045.15 by revising paragraph (a) to read as follows:

§ 3045.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI-U index, as specified in § 3030.141(a) of this chapter.

* * * * *

PART 3050—PERIODIC REPORTING

■ 13. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

■ 14. Amend § 3050.20 by revising paragraph (c) to read as follows:

§ 3050.20 Compliance and other analyses in the Postal Service's section 3652 report.

* * * * *

(c) It shall address such matters as non-compensatory rates and failures to achieve stated goals for on-time delivery standards. A more detailed analysis is required when the Commission observed and commented upon the same matter in its Annual Compliance Determination for the previous fiscal year.

■ 15. Amend § 3050.21 by:

- a. Revising paragraphs (a), (e), (l), and (m); and
- b. Adding paragraphs (n) and (o).

The revisions and additions read as follows:

§ 3050.21 Content of the Postal Service’s section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (o) of this section.

* * * * *

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs;

(4) The factual and analytical bases for any claim that one or more of the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (e)(2)(D) or 39 U.S.C. 3622(e)(3)(A) through (e)(3)(B) apply; and

(5) For each workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), exceeded the cost avoided by the Postal Service for not providing the applicable service, and was not set in accordance with at least one specific provision appearing in § 3030.262(b) through (d) of this chapter, the information specified in paragraphs (e)(5)(i) through (iii) of this section:

- (i) The number of mail owners receiving the workshare discount;
- (ii) The number of mail owners for the applicable product or products; and
- (iii) An explanation of how the workshare discount promotes the public interest, even though the workshare discount substantially exceeds the cost avoided by the Postal Service;

* * * * *

(l) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the fiscal year subject to review and each of the preceding 4 fiscal years;

(m) Input data and calculations used to produce the annual Total Factor Productivity estimates;

(n) Copies of notifications to the Postal Service by the Office of Personnel Management (OPM) of annual determinations of the funding amounts specific to payments at the end of each fiscal year computed under 5 U.S.C. 8909a(d)(2)(B) and 5 U.S.C. 8909a(d)(3)(B)(ii); 5 U.S.C. 8348(h)(2)(B) and 5 U.S.C. 8423(b)(3)(B); 5 U.S.C. 8423(b)(1)(B) and 5 U.S.C. 8423(b)(2); and

(o) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service’s compliance with the applicable provisions of title 39 of the United States Code.

- 16. Add § 3050.55 to read as follows:

§ 3050.55 Information pertaining to cost reduction initiatives.

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated in paragraphs (b) through (f).

(b) Within 95 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes cost data from the fiscal year. For purposes of this paragraph (b), the percentage change shall compare the fiscal year under review to the previous fiscal year. At a minimum, the report shall include:

- (1) For all market dominant mail, the percentage change in total unit attributable cost;
- (2) For each market dominant mail product, the percentage change in unit attributable cost;
- (3) For the system as a whole, total average cost per piece, which includes all Postal Service competitive and market dominant attributable costs and institutional costs;
- (4) The percentage change in total average cost per piece;
- (5) Market dominant unit attributable cost by product;
- (6) If the percentage change in unit attributable cost for a market dominant mail product is more than 0.0 percent and exceeds the percentage change in total market dominant mail unit attributable cost, then the following information shall be provided:

(i) Unit attributable cost workpapers for the product disaggregated into the following cost categories: mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost;

(ii) A narrative that identifies cost categories that are driving above average increases in unit attributable cost for the

product and explains the reason for the above-average increase; and

(iii) A specific plan to reduce unit attributable cost for the product; and

(7) An analysis of volume trends and mail mix changes for each market dominant mail product from fiscal year 2017 through the end of the fiscal year under review, which shall include at a minimum:

(i) A comparison of actual unit attributable costs and estimated unit attributable costs for each market dominant mail product, using the volume distribution from fiscal year 2017;

(ii) A narrative that identifies the drivers of change in volume trends and the mail mix; and

(iii) A narrative that explains the methodology used to calculate the estimated unit attributable costs as required by paragraph (b)(7)(i) of this section.

(c) Within 95 days after the end of each fiscal year, the Postal Service shall file a report with analysis of each planned cost reduction initiative that is expected to require Postal Service total expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

- (1) A narrative that describes each cost reduction initiative planned for future fiscal years, including the status, the expected total expenditure, start date, end date, and any intermediate deadlines;
- (2) Identification of a metric to measure the impact of each planned cost reduction initiative identified in paragraph (c)(1) of this section, a narrative describing the selected metric, a narrative explaining the reason for selecting that metric, and a schedule approximating the months and fiscal years in which the cost reduction impact is expected to be measureable; and
- (3) Estimates of the expected impact of each planned cost reduction initiative, with supporting workpapers, using the metric identified in paragraph (c)(2) of this section, total market dominant mail attributable unit cost, and total unit cost as calculated pursuant to paragraph (b)(3) of this section.

(d) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that describes each active cost reduction initiative during the fiscal year which incurred or is expected to incur Postal Service expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

- (1) The information described in paragraphs (c)(1) through (3) of this

section, based on actual data for the fiscal year, and a specific statement as to whether the initiative actually achieved the expected impact as measured by the selected metric;

(2) An explanation of the trends, changes, or other reasons that caused any variance between the actual information provided under paragraph (d)(1) of this section and the estimated information previously provided under paragraphs (c)(1) through (3) of this section, if applicable;

(3) A description of any mid-implementation adjustments the Postal Service has taken or will take to align the impacts with the schedule; and

(4) Any revisions to the schedule of cost reduction impacts for future fiscal years.

(e) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all projects associated with a Decision Analysis Report for the fiscal year. At a minimum, the report shall include:

(1) A description of each project;

(2) The status of each project;

(3) An estimate of cost savings or additional revenues from each project; and

(4) The return on investment expected from each project.

(f) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all planned projects that have an approved Decision Analysis Report for the next fiscal year. At a minimum, the report shall include:

(1) A description of each planned project;

(2) The status of each project;

(3) An estimate of the cost savings or additional revenues expected from each project; and

(4) The return on investment expected from each project.

■ 17. Amend § 3050.60 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (e);

■ c. Redesignating paragraphs (f) and (g) as paragraphs (e) and (f).

The revision reads as follows:

§ 3050.60 Miscellaneous reports and documents.

(a) The reports in paragraphs (b) through (f) of this section shall be provided at the times indicated in paragraphs (b) through (f).

* * * * *

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 18. The authority citation for part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

■ 19. Amend § 3055.2 by revising paragraph (c) to read as follows:

§ 3055.2 Contents of the annual report of service performance achievements.

* * * * *

(c) The applicable service standard(s) for each product. If there has been a change to a service standard(s) since the previous report, a description of and reason for the change shall be provided. If there have been no changes to service standard(s) since the previous report, a certification stating this fact shall be provided.

* * * * *

[FR Doc. 2020–26645 Filed 12–14–20; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[LLES9120000 L14400000.PN0000]

RIN 1004–AE76

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; Eastern States

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the BLM-Eastern States Office of the Bureau of Land Management (BLM). All filings and other documents relating to public lands in the 31 States east of and bordering the Mississippi River must be filed at the new address of the BLM-Eastern States Office beginning on January 14, 2021.

DATES: This rule is effective on January 14, 2021.

ADDRESSES: You may send inquiries or suggestions to the Deputy State Director for Communications, BLM-Eastern States Office, 5275 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Francis Piccoli, (202) 912–7700. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Matters

I. Background

This final rule reflects the administrative action of changing the street address of the Eastern States Office of the BLM. This rule changes the postal and street address for the personal filing of documents relating to public lands in the Eastern States but makes no other changes in filing requirements. The BLM has determined that the rule has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds that under 5 U.S.C. 553(b)(B), notice and public comment procedures are unnecessary.

II. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The rule imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

National Environmental Policy Act

The BLM has found that the final rule is of a procedural nature and thus is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.210(i). In addition, the final rule does not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental regulations, policies, and procedures of the Department of the Interior, the term “categorical exclusions” means a category of actions which do not individually or cumulatively have a significant effect on the human environment, have been found to have no such effect in procedures adopted by a Federal agency, and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or

disproportionately burden small entities. This final rule is a purely administrative regulatory action having no effect upon the public or the environment and it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). The rule will not have an annual effect on the economy of \$100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995 because the rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Further, the administrative final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the Eastern States Office. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have sufficient federalism implications to warrant the preparation

of a federalism summary impact statement.

The final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This administrative final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public and will not unduly burden the judicial system. This final rule meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that the rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updates the Eastern States Office address included in the Code of Federal Regulations.

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

In accordance with Executive Order 13211, the BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 in paragraph (a) by revising the entry for “Eastern States Office” to read as follows:

§ 1821.10 Where are BLM offices located?
(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Eastern States Office, 5275 Leesburg Pike, Falls Church, VA 22041—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

* * * * *

Casey Hammond,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2020–27054 Filed 12–14–20; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2020–0005; Internal Agency Docket No. FEMA–8657]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA’s CSB available at www.fema.gov/flood-insurance/work-with-nfip/community-status-book.

Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, documents such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at www.fema.gov. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674-1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at www.fema.gov.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood

insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at fema.gov.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 List of eligible communities.

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region V				
Wisconsin:				
Argyle, Village of, Lafayette County	550224	June 24, 1975, Emerg; August 15, 1979, Reg; December 17, 2020, Susp.	Dec. 17, 2020	Dec. 17, 2020.
Belmont, Village of, Lafayette County	550225	July 25, 1975, Emerg; December 4, 1986, Reg; December 17, 2020, Susp.	.....do *	Do.
South Wayne, Village of, Lafayette County	550231	January 29, 1987, Emerg; January 29, 1987, Reg; December 17, 2020, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VII				
Iowa:				
Aplington, City of, Butler County	190335	September 3, 2010, Emerg; September 16, 2011, Reg; December 17, 2020, Susp.	.....do	Do.
Aredale, City of, Butler County	190035	November 3, 1975, Emerg; August 19, 1986, Reg; December 17, 2020, Susp.	.....do	Do.
Butler County, Unincorporated Areas	190850	July 5, 1994, Emerg; November 6, 2000, Reg; December 17, 2020, Susp.	.....do	Do.
Clarksville, City of, Butler County	190336	October 28, 1985, Emerg; September 6, 1989, Reg; December 17, 2020, Susp.	.....do	Do.
Dumont, City of, Butler County	190036	July 21, 1975, Emerg; August 1, 1986, Reg; December 17, 2020, Susp.	.....do	Do.
Greene, City of, Butler County	190037	July 8, 1975, Emerg; October 15, 1982, Reg; December 17, 2020, Susp.	.....do	Do.
New Hartford, City of, Butler County	190038	November 6, 1974, Emerg; September 29, 1986, Reg; December 17, 2020, Susp.	.....do	Do.
Parkersburg, City of, Butler County	190337	N/A, Emerg; February 21, 2014, Reg; December 17, 2020, Susp.	.....do	Do.
Sheldon, City of, O'Brien County	190216	July 25, 1975, Emerg; September 18, 1985, Reg; December 17, 2020, Susp.	.....do	Do.
Shell Rock, City of, Butler County	190338	October 1, 1991, Emerg; May 1, 1992, Reg; December 17, 2020, Susp.	.....do	Do.

*.....do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Katherine B. Fox,
Assistant Administrator for Mitigation,
Federal Insurance and Mitigation
Administration—FEMA Resilience,
Department of Homeland Security, Federal
Emergency Management Agency.
[FR Doc. 2020-27340 Filed 12-14-20; 8:45 am]
BILLING CODE 9110-12-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2014-0061;
FF09E21000 FXES11110900000 212]

Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the northern spotted owl (*Strix occidentalis caurina*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that reclassification of the northern spotted owl from a threatened species to an endangered species is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We will develop a proposed rule to reclassify the northern spotted owl as our priorities allow. However, we

ask the public to submit to us any new information relevant to the status of the subspecies or its habitat at any time.

DATES: The finding in this document was made on December 15, 2020.

ADDRESSES: A detailed description of the basis for this finding is available on the internet at <http://www.regulations.gov> under docket number FWS-R1-ES-2014-0061.

Supporting information used to prepare this finding is available by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, telephone: 503-231-6179, email: paul_henson@fws.gov. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding on whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (“12-month finding”). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3)

warranted but precluded. “Warranted but precluded” means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that, when we find that a petitioned action is warranted but precluded, we treat the petition as though it is resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and “threatened species” as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under

section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected

effect on the species now and in the foreseeable future.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the northern spotted owl (*Strix occidentalis caurina*) meets the definition of an "endangered species," we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future threats to the subspecies. We reviewed the petition, information available in our files, and other available published and unpublished information. This evaluation may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment for the northern spotted owl contains more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that this subspecies meets the definition of an endangered species. This supporting information can be found on the internet at <http://www.regulations.gov> under docket number FWS-R1-ES-2014-0061. The following is an informational summary of the finding in this document.

Previous Federal Actions

On June 26, 1990, we published in the **Federal Register** (55 FR 26114) a final rule listing the northern spotted owl as a threatened species. On August 21, 2012, we received a petition dated August 15, 2012, from the Environmental Protection Information Center (EPIC) requesting that the northern spotted owl be listed as an endangered species pursuant to the Act. On April 10, 2015, we published a 90-day finding (80 FR 19259), in which we announced that the petition presented substantial information indicating that reclassification may be warranted for the northern spotted owl and that our status review will also constitute our 5-year review for the northern spotted owl.

Summary of Finding

The northern spotted owl is the largest of three subspecies of spotted owls, and inhabits structurally complex forests from southwestern British Columbia through Washington and Oregon, and into northern California. The northern spotted owl is relatively long-lived, has a long reproductive life span, invests significantly in parental care, and exhibits high adult survivorship relative to other North American owls. The historical range of

the northern spotted owl included most mature forests or stands throughout the Pacific Northwest, from southwestern British Columbia to as far south as Marin County, California. The current range of the northern spotted owl is smaller than the historical range, as the northern spotted owl is extirpated or very uncommon in certain areas such as southwestern Washington and British Columbia.

Habitat loss was the primary factor leading to the listing of the northern spotted owl as a threatened species, and it continues to be a stressor on the subspecies due to the lag effects of past habitat loss, continued timber harvest, wildfire, and a minor amount from insect and forest disease outbreaks. The most recent rangewide northern spotted owl demographic study (Dugger *et al.* 2016, entire) found that nonnative barred owls are currently the stressor with the largest negative impact on northern spotted owls through competition of resources. The study also found a significant rate of decline in northern spotted owl populations (3.8 percent per year for all study areas combined but as high as 8.4 percent per year in one study area in Washington), and the rate of decline has increased noticeably since the 2011 5-year Review for the Northern Spotted Owl (USFWS 2011b, p. 3). Populations of northern spotted owls in several long-term demographic monitoring areas have declined more than 70 percent since the early 1990s, and the extinction risk for northern spotted owl populations has increased, particularly in Washington and Oregon.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern spotted owl, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. On non-Federal lands, State regulatory mechanisms have not prevented the continued decline of nesting/roosting and foraging habitat; the amount of northern spotted owl habitat on these lands has decreased considerably over the past two decades, including in geographic areas where Federal lands are lacking. On Federal lands, the Northwest Forest Plan has reduced habitat loss and allowed for the development of new northern spotted owl habitat; however, the combined effects of climate change, high-severity wildfire, and past management practices are changing forest ecosystem processes and dynamics, and the expansion of barred owl populations is altering the

capacity of intact habitat to support northern spotted owls.

Based on our review of the best available scientific and commercial information pertaining to the factors affecting the northern spotted owl, we find that the stressors acting on the subspecies and its habitat, particularly rangewide competition from the nonnative barred owl and high-severity wildfire, are of such imminence, intensity, and magnitude to indicate that the northern spotted owl is now in danger of extinction throughout all of its range. Our status review indicates that the northern spotted owl meets the definition of an endangered species. Therefore, in accordance with sections 3(6) and 4(a)(1) of the Act, we find that listing the northern spotted owl as an endangered species is warranted throughout all of its range. However, work on a reclassification for the northern spotted owl has been, and continues to be, precluded by work on higher-priority actions—which includes listing actions with statutory, court-ordered, or court-approved deadlines and final listing determinations. This work includes all the actions listed in the National Listing Workplan discussed below under *Preclusion* and in the tables below under *Expeditious Progress*, as well as other actions at various stages of completion, such as 90-day findings for new petitions.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted but precluded, the Service must make two determinations: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending proposals to determine whether any species is endangered or threatened; and (2) that expeditious progress is being made to add qualified species to either of the Lists and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is precluded by higher priority listing actions—(1) The amount of resources available for completing the listing function, (2) the estimated cost of completing the proposed listing regulation, and (3) the Service's

workload, along with the Service's prioritization of the proposed listing regulation, in relation to other actions in its workload.

Available Resources

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program (spending cap). This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the Act (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final rules to add species to the Lists or to change the status of species from threatened to endangered; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual “resubmitted” petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed rules designating critical habitat or final critical habitat determinations; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

For more than two decades the size and cost of the workload in these categories of actions have far exceeded the amount of funding available to the Service under the spending cap for completing listing and critical habitat actions under the Act. Since we cannot exceed the spending cap without violating the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(A)), each year we have been compelled to determine that work on at least some actions was precluded by work on higher-priority actions. We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and because we allocate our listing budget on a nationwide basis. Through the listing cap and the amount of funds needed to complete court-mandated actions within the cap, Congress and the courts have in effect determined the amount of money remaining (after completing court-

mandated actions) for listing activities nationwide. Therefore, the funds that remain within the listing cap—after paying for work needed to comply with court orders or court-approved settlement agreements—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2019, through the Consolidated Appropriations Act of 2019, (Pub. L. 116–6, February 15, 2019), Congress appropriated the Service \$18,318,000 under a consolidated cap for all domestic and foreign listing work, including status assessments, listings, domestic critical habitat determinations, and related activities. For FY 2020, through the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, December 20, 2019), Congress appropriated \$20,318,000 for all domestic and foreign listing work. The amount of funding Congress will appropriate in future years is uncertain.

Costs of Listing Actions

The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer-review comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. Our practice of proposing to designate critical habitat concurrent with listing species requires additional coordination and an analysis of the economic impacts of the designation, and thus adds to the complexity and cost of our work. Since completing all of the work for outstanding listing and critical habitat actions has for so long required more funding than has been available within the spending cap, the Service has developed several ways to determine the relative priorities of the actions within its workload to identify the work it can complete with the funding it has available for listing and critical habitat actions each year.

Prioritizing Listing Actions

The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance

with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) essential litigation-related, administrative, and listing program-management functions; (3) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; and (4) section 4 listing actions that do not have absolute statutory deadlines.

In previous years, the Service received many new petitions, including multiple petitions to list numerous species—a single petition even sought to list 404 domestic species. The emphasis that petitioners placed on seeking listing for hundreds of species at a time through the petition process significantly increased the number of actions within the third category of our workload—actions that have absolute statutory deadlines for making findings on those petitions. In addition, the necessity of dedicating all of the Listing Program funding towards determining the status of 251 candidate species and complying with other court-ordered requirements between 2011 and 2016 added to the number of petition findings awaiting action. Because we are not able to work on all of these at once, the Service's most recent effort to prioritize its workload focuses on addressing the backlog in petition findings that has resulted from the influx of large multi-species petitions and the 5-year period in which the Service was compelled to suspend making 12-month findings for most of those petitions. The number of petitions that are awaiting status reviews and accompanying 12-month findings illustrates the considerable extent of this backlog: As a result of the outstanding petitions to list hundreds of species, and our efforts to make initial petition findings within 90 days of receiving the petition to the maximum extent practicable, at the beginning of FY 2020 we had 422 12-month petition findings for domestic species yet to be initiated and completed.

To determine the relative priorities of the outstanding 12-month petition findings, the Service developed a prioritization methodology (methodology) (81 FR 49248; July 27, 2016), after providing the public with notice and an opportunity to comment on the draft methodology (81 FR 2229; January 15, 2016). Under the methodology, we assign each 12-month finding to one of five priority bins: (1) The species is critically imperiled; (2) Strong data are already available about the status of the species; (3) new science is underway that would inform key uncertainties about the status of the

species; (4) conservation efforts are in development or underway and likely to address the status of the species; or (5) the available data on the species are limited. As a general rule, 12-month findings with a lower bin number have a higher priority than, and are scheduled before, 12-month findings with a higher bin number. However, we make some exceptions—for example, we may schedule a lower-priority finding earlier if batching it with a higher-priority finding would generate efficiencies. We may also consider where there are any special circumstances that affect the timing for completion of an action. One circumstance that might result in divergence from priority order is when the current highest priorities are clustered in a geographic area, such that the field office where the highest-priority work is clustered has reached capacity; in such a circumstance, other field offices would continue to work on their highest-priority actions even if those actions are relatively lower in priority than the previously mentioned at-capacity field office. In other words, we recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas. This approach also results in efficiencies from having listing work completed by biologists in the field office who have the scientific expertise on the ecosystems, species, and threats within that geographic area. Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. Therefore, it is important that we be as efficient as possible in our listing process.

After finalizing the prioritization methodology, we then applied that methodology to develop a multi-year National Listing Workplan (Workplan) for completing the outstanding status assessments and accompanying 12-month findings. The purpose of the Workplan is provide transparency and predictability to the public about when the Service anticipates completing specific 12-month findings while allowing for flexibility to update the Workplan when new information changes the priorities. In May 2019, the Service released its updated Workplan for addressing the Act's domestic listing and critical habitat decisions over the subsequent 5 years. The updated Workplan identified the Service's schedule for addressing all domestic species on the candidate list and

conducting 267 status reviews and accompanying 12-month findings by FY 2023 for domestic species that have been petitioned for Federal protections under the Act. As we implement our Workplan and work on proposed rules for the highest-priority species, we increase efficiency by preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest-priority species. The National Listing Workplan is available online at: <https://www.fws.gov/endangered/what-we-do/listing-workplan.html>.

An additional way in which we determine relative priorities of outstanding actions in the section 4 program is application of the listing priority guidelines (48 FR 43098; September 21, 1983). Under those guidelines, which apply primarily to candidate species, we assign each candidate a listing priority number (LPN) of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus), a species, or a part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined for efficiency with work on a proposed rule for other high-priority species.

Finally, proposed rules for reclassification of threatened species status to endangered species status are generally lower in priority because, as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered species status if we can combine this with higher-priority work.

Based on our listing priority system, we are assigning an LPN of 3 to this reclassification of the northern spotted owl. This priority number indicates the magnitude of threat is high and those threats are imminent. As explained above, proposed rules to reclassify threatened species to endangered species status are a lower priority than listing currently unprotected species, so listing a candidate species with a higher

LPN number would generally be a higher priority action than reclassification of an already listed species such as the northern spotted owl. As such, we will continue to monitor the threats to the northern spotted owl and the subspecies' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Listing Program Workload

The National Listing Workplan that the Service released in 2019 outlined work for domestic species over the period from 2019 to 2023. Tables 1 and 2 under *Expeditious Progress*, below, identify the higher-priority listing actions that we completed through FY 2020 (September 30, 2020), as well as those we have been working on in FY 2020 but have not yet completed. For FY 2020, our National Listing Workplan includes 74 12-month findings or proposed listing actions that are at various stages of completion at the time of this finding. In addition to the actions scheduled in the National Listing Workplan, the overall Listing Program workload also includes the development and revision of listing regulations that are required by new court orders or settlement agreements, or to address the repercussions of any new court decisions, as well as proposed and final critical habitat designations or revisions for species that have already been listed. The Service's highest priorities for spending its funding in FY 2019 and FY 2020 are actions included in the Workplan and actions required to address court decisions. As described in "Prioritizing Listing Actions," above, reclassification of the northern spotted owl is a lower-priority action than these types of work. Therefore, these higher-priority actions precluded reclassifying the owl in FY 2019, and the Service anticipates that they will continue to preclude work on reclassifying the owl in FY 2020 and the near future.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. Please note that in the Code of Federal Regulations, the "Lists" are grouped as one list of endangered and threatened wildlife (50 CFR 17.11(h)) and one list of endangered and threatened plants (50 CFR 17.12(h)). However, the "Lists" referred to in the Act mean one list of endangered species (wildlife and plants) and one list of threatened species (wildlife and plants).

Therefore, under the Act, expeditious progress includes actions to reclassify species—that is, either remove them from the list of threatened species and add them to the list of endangered species, or remove them from the list of endangered species and add them to the list of threatened species.

As with our "precluded" finding, the evaluation of whether expeditious progress is being made is a function of the resources available and the competing demands for those funds. As discussed earlier, the FY 2020 appropriations law included a spending cap of \$20,318,000 for listing activities, and the FY 2019 appropriations law included a spending cap of \$18,318,000 for listing activities.

As discussed below, given the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress in adding qualified species to the Lists.

The work of the Service's domestic listing program in FY 2019 and FY 2020 (as of September 30, 2020) includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that may warrant listing (90-day petition findings); (2) undertaking an evaluation of the best available scientific data about those species and the threats they face to determine whether or not listing is warranted (a status review and accompanying 12-month finding); and (3) adding qualified species to the Lists (by publishing proposed and final listing rules). We explain in more detail how we are making expeditious progress in all three of the steps necessary for adding qualified species to the Lists (identifying, evaluating, and adding species). Subsequent to discussing our expeditious progress in adding qualified species to the Lists, we explain our expeditious progress in removing from the Lists species that no longer require the protections of the Act.

First, we are making expeditious progress in identifying species that may warrant listing. In FY 2019 and FY 2020 (as of September 30, 2020), we completed 90-day findings on petitions to list 14 species.

Second, we are making expeditious progress in evaluating the best scientific and commercial data available about species and threats they face (status reviews) to determine whether or not listing is warranted. In FY 2019 and FY 2020 (as of September 30, 2020), we completed 12-month findings for 69 species. In addition, we funded and worked on the development of 12-month findings for 34 species and

proposed listing determinations for 9 candidates. Although we did not complete those actions during FY 2019 or FY 2020 (as of September 30, 2020), we made expeditious progress towards doing so by initiating and making progress on the status reviews to determine whether adding the species to the Lists is warranted.

Third, we are making expeditious progress in adding qualified species to the Lists. In FY 2019 and FY 2020 (as of September 30, 2020), we published final listing rules for 7 species, including final critical habitat designations for 1 of those species and final protective regulations under the Act's section 4(d) for 2 of the species. In addition, we published proposed rules to list an additional 20 species (including concurrent proposed critical habitat designations for 13 species and concurrent protective regulations under the Act's section 4(d) for 14 species).

The Act also requires that we make expeditious progress in removing species from the Lists that no longer require the protections of the Act. Specifically, we are making expeditious progress in removing (delisting) domestic species, as well as reclassifying endangered species to threatened species status (downlisting). This work is being completed under the Recovery program in light of the resources available for recovery actions, which are funded through the recovery line item in the budget of the Endangered Species Program. Because recovery actions are funded separately from listing actions, they do not factor into our assessment of preclusion; that is, work on recovery actions does not preclude the availability of resources for completing new listing work. However, work on recovery actions does count towards our assessment of making expeditious progress because the Act states that expeditious progress includes both adding qualified species to, and removing qualified species from, the Lists of Endangered and Threatened Wildlife and Plants. During FY 2019 and FY 2020 (as of September 30, 2020), we finalized downlisting of 1 species, finalized delisting rules for 7 species, proposed downlisting of 7 species, and proposed delisting of 11 species. The rate at which the Service has completed delisting and downlisting actions in FY 2019 and FY 2020 (as of September 30, 2020) is higher than any point in the history of the Act.

The tables below catalog the Service's progress in FY 2019 and FY 2020 (as of September 30, 2020) as it pertains to our evaluation of making expeditious progress. Table 1 includes completed and published domestic listing actions;

Table 2 includes domestic listing actions funded and initiated in previous fiscal years and in FY 2020 that are not yet complete as of September 30, 2020; and Table 3 includes completed and published proposed and final downlisting and delisting actions for domestic species.

TABLE 1—COMPLETED DOMESTIC LISTING ACTIONS IN FY 2019 AND FY 2020
[As of September 30, 2020]

Publication date	Title	Action(s)	Federal Register citation
10/9/2018	Threatened Species Status for Coastal Distinct Population Segment of the Pacific Marten.	Proposed Listing— Threatened with Section 4(d) Rule and 12-Month Petition Finding.	83 FR 50574–50582
10/9/2018	Threatened Species Status for Black-Capped Petrel With a Section 4(d) Rule.	Proposed Listing— Threatened with Section 4(d) Rule and 12-Month Petition Finding.	83 FR 50560–50574
10/9/2018	12-Month Petition Finding and Threatened Species Status for Eastern Black Rail With a Section 4(d) Rule.	Proposed Listing— Threatened with Section 4(d) Rule and 12-Month Petition Finding.	83 FR 50610–50630
10/9/2018	Threatened Species Status With Section 4(d) Rule and Critical Habitat Designation for Slenderclaw Crayfish.	Proposed Listing— Threatened with Section 4(d) Rule and Critical Habitat and 12-Month Finding.	83 FR 50582–50610
10/11/2018	Threatened Species Status With Section 4(d) Rule and Critical Habitat Designation for Atlantic Pigtoe.	Proposed Listing— Threatened with Section 4(d) Rule and Critical Habitat and 12-Month Finding.	83 FR 51570–51609
11/21/2018	Endangered Species Status for the Candy Darter.	Final Listing—Endangered	83 FR 58747–58754
12/19/2018	12-Month Findings on Petitions to List 13 Species as Endangered or Threatened Species.	12-Month Petition Findings	83 FR 65127–65134
12/28/2018	Threatened Species Status for Trispot Darter ..	Final Listing—Threatened	83 FR 67131–67140
4/4/2019	12-Month Findings on Petitions to List Eight Species as Endangered or Threatened Species.	12-Month Petition Findings	84 FR 13237–13242
4/4/2019	12-Month Petition Finding and Endangered Species Status for the Missouri Distinct Population Segment of Eastern Hellbender.	Proposed Listing— Endangered and 12-Month Petition Finding.	84 FR 13223–13237
4/26/2019	90-Day Findings for Four Species (3 domestic species and 1 foreign species)*.	90-Day Petition Findings	84 FR 17768–17771
5/22/2019	Threatened Species Status with Section 4(d) Rule for Neuse River Waterdog and Endangered Species Status for Carolina Madtom and Proposed Designations of Critical Habitat.	Proposed Listings—Threatened Status with Section 4(d) Rule with Critical Habitat; Endangered Status with Critical Habitat and 12-Month Petition Findings.	84 FR 23644–23691
8/13/2019	Endangered Species Status for Franklin’s Bumble Bee.	Proposed Listing—Endangered and 12-Month Petition Finding.	84 FR 40006–40019
8/15/2019	12-Month Findings on Petitions to List Eight Species as Endangered or Threatened Species.	12-Month Petition Findings	84 FR 41694–41699
8/15/2019	90-Day Findings for Three Species	90-Day Petition Findings	84 FR 41691–41694
9/6/2019	90-Day Findings for Three Species	90-Day Petition Findings	84 FR 46927–46931
10/07/2019	Twelve Species Not Warranted for Listing as Endangered or Threatened Species.	12-Month Petition Findings	84 FR 53336–53343
10/21/2019	Endangered Species Status for Barrens Topminnow.	Final Listing—Endangered	84 FR 56131–56136
11/08/2019	12-Month Finding for the California Spotted Owl.	12-Month Petition Finding	84 FR 60371–60372
11/21/2019	Threatened Species Status for Meltwater Lednian Stonefly and Western Glacier Stonefly With a Section 4(d) Rule.	Final Listing—Threatened with Section 4(d) Rule.	84 FR 64210–64227
12/06/2019	Endangered Species Status for Beardless Chinchweed With Designation of Critical Habitat, and Threatened Species Status for Bartram’s Stonecrop With Section 4(d) Rule.	Proposed Listings —Endangered with Critical Habitat; Threatened with Section 4(d) Rule and 12-Month Petition Findings.	84 FR 67060–67104
12/19/2019	Five Species Not Warranted for Listing as Endangered or Threatened Species.	12-Month Petition Findings	84 FR 69707–69712
12/19/2019	90-Day Findings for Two Species	90-Day Petition Findings	84 FR 69713–69715
01/08/2020	Threatened Species Status for the Hermes Copper Butterfly With 4(d) Rule and Designation of Critical Habitat.	Proposed Listing—Threatened with Section 4(d) Rule and Critical Habitat.	85 FR 1018–1050
01/08/2020	Endangered Status for the Sierra Nevada Distinct Population Segment of the Sierra Nevada Red Fox.	Proposed Listing—Endangered	85 FR 862–872
05/05/2020	Endangered Status for the Island Marble Butterfly and Designation of Critical Habitat.	Final Listing—Endangered with Critical Habitat	85 FR 26786–26820
05/15/2020	Endangered Species Status for Southern Sierra Nevada Distinct Population Segment of Fisher.	Final Listing—Endangered	85 FR 29532–29589

TABLE 1—COMPLETED DOMESTIC LISTING ACTIONS IN FY 2019 AND FY 2020—Continued
[As of September 30, 2020]

Publication date	Title	Action(s)	Federal Register citation
7/16/2020	90-Day Finding for the Dunes Sagebrush Lizard.	90-Day Petition Finding	85 FR 43203–43204
7/22/2020	90-Day Findings for Two Species	90-Day Petition Findings	85 FR 44265–44267
7/23/2020	Four Species Not Warranted for Listing as Endangered or Threatened Species.	12-Month Petition Findings	85 FR 44478–44483
8/26/2020	Endangered Species Status for Marron Bacora and Designation of Critical Habitat.	Proposed Listing-Endangered with Critical Habitat and 12-Month Petition Finding.	85 FR 52516–52540
9/1/2020	Two Species Not Warranted for Listing as Endangered or Threatened Species.	12-Month Petition Findings	85 FR 54339–54342
9/16/2020	Findings on a Petition To Delist the Distinct Population Segment of the Western Yellow-Billed Cuckoo and a Petition To List the U.S. Population of Northwestern Moose**.	12-Month Petition Finding	85 FR 57816–57818
9/17/2020	Threatened Species Status for Chapin Mesa milkvetch and Section 4(d) Rule with Designation of Critical Habitat.	Proposed Listing-Threatened With Section 4(d) Rule and Critical Habitat.	85 FR 58224–58250
9/17/2020	Threatened Species Status for Big Creek crayfish and St. Francis River Crayfish and With Section 4(d) Rule with Designation of Critical Habitat.	Proposed Listings-Threatened With Section 4(d) Rule and Critical Habitat.	85 FR 58192–58222
9/29/2020	Threatened Species Status for longsolid and round hickorynut mussel and Section 4(d) Rule With Designation of Critical Habitat, Not Warranted 12-Month Finding for purple Liliput.	Proposed Listings-Threatened With Section 4(d) Rule and Critical Habitat; 12-Month Petition Findings.	85 FR 61384–61458
9/29/2020	Threatened Species Status for Wright’s Marsh Thistle and Section 4(d) Rule With Designation of Critical Habitat.	Proposed Listing-Threatened With Section (4) Rule and Critical Habitat.	85 FR 61460–61498

* 90-day finding batches may include findings regarding both domestic and foreign species. The total number of 90-day findings reported in this assessment of expeditious progress pertains to domestic species only.

** Batched 12-month findings may include findings regarding listing and delisting petitions. The total number of 12-month findings reported in this assessment of expeditious progress pertains to listing petitions only.

TABLE 2—DOMESTIC LISTING ACTIONS FUNDED AND INITIATED IN PREVIOUS FYS AND IN FY 2020 THAT ARE NOT YET COMPLETE AS OF SEPTEMBER 30, 2020

Species	Action
northern spotted owl	12-month finding.
false spike	12-month finding.
Guadalupe fatmucket	12-month finding.
Guadalupe orb	12-month finding.
Texas fatmucket	Proposed listing determination or not warranted finding.
Texas fawnsfoot	Proposed listing determination or not warranted finding.
Texas pimpleback	Proposed listing determination or not warranted finding.
South Llano Springs moss	12-month finding.
peppered chub	12-month finding.
whitebark pine	Proposed listing determination or not warranted finding.
Key ringneck snake	12-month finding.
Rimrock crowned snake	12-month finding.
<i>Euphilotes ancilla cryptica</i>	12-month finding.
<i>Euphilotes ancilla purpura</i>	12-month finding.
Hamlin Valley pyrg	12-month finding.
longitudinal gland pyrg	12-month finding.
sub-globose snake pyrg	12-month finding.
Louisiana pigtoe	12-month finding.
Texas heelsplitter	12-month finding.
triangle pigtoe	12-month finding.
prostrate milkweed	12-month finding.
alligator snapping turtle	12-month finding.
Black Creek crayfish	12-month finding.
bracted twistflower	Proposed listing determination or not warranted finding.
Canoe Creek clubshell	12-month finding.
Clear Lake hitch	12-month finding.
Doll’s daisy	12-month finding.
frecklebelly madtom	12-month finding.
longfin smelt (San Francisco Bay-Delta DPS)	Proposed listing determination or not warranted finding.
magnificent Ramshorn	Proposed listing determination or not warranted finding.
Mt. Rainier white-tailed ptarmigan	12-month finding.

TABLE 2—DOMESTIC LISTING ACTIONS FUNDED AND INITIATED IN PREVIOUS FYs AND IN FY 2020 THAT ARE NOT YET COMPLETE AS OF SEPTEMBER 30, 2020—Continued

Species	Action
Ocmulgee skullcap	12-month finding.
Penasco least chipmunk	Proposed listing determination or not warranted finding.
Puerto Rico harlequin butterfly	Proposed listing determination or not warranted finding.
Puget oregonian snail	12-month finding.
relict dace	12-month finding.
Rocky Mountain monkeyflower	12-month finding.
sickle darter	12-month finding.
southern elktoe	12-month finding.
southern white-tailed ptarmigan	12-month finding.
tidewater amphipod	12-month finding.
tufted puffin	12-month finding.
western spadefoot	12-month finding.

TABLE 3—COMPLETED DOMESTIC RECOVERY ACTIONS (PROPOSED AND FINAL DOWNLISTINGS AND DELISTINGS) IN FY 2019 AND FY 2020
[As of September 30, 2020]

Publication date	Title	Action(s)	Federal Register citation
10/18/2018	Removing Deseret Milkvetch (<i>Astragalus desereticus</i>) From the Federal List of Endangered and Threatened Plants.	Final Rule—Delisting	83 FR 52775–52786
02/26/2019	Removing the Borax Lake Chub From the List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	84 FR 6110–6126
03/15/2019	Removing the Gray Wolf (<i>Canis lupus</i>) From the List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	84 FR 9648–9687
05/03/2019	Reclassifying the American Burying Beetle From Endangered to Threatened on the Federal List of Endangered and Threatened Wildlife With a 4(d) Rule.	Proposed Rule—Downlisting	84 FR 19013–19029
08/27/2019	Removing <i>Trifolium stoloniferum</i> (Running Buffalo Clover) From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	84 FR 44832–44841
09/13/2019	Removing the Foskett Speckled Dace From the List of Endangered and Threatened Wildlife.	Final Rule—Delisting	84 FR 48290–48308
10/03/2019	Removal of the Monito Gecko (<i>Sphaerodactylus micropithecus</i>) From the Federal List of Endangered and Threatened Wildlife.	Final Rule—Delisting	84 FR 52791–52800
10/07/2019	Removal of <i>Howellia aquatilis</i> (Water Howellia) From the List of Endangered and Threatened Plants.	Proposed Rule—Delisting	84 FR 53380–53397
10/09/2019	Removing the Kirtland’s Warbler From the Federal List of Endangered and Threatened Wildlife.	Final Rule—Delisting	84 FR 54436–54463
10/24/2019	Removal of the Interior Least Tern From the Federal List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	84 FR 56977–56991
11/05/2019	Removing <i>Oenothera coloradensis</i> (Colorado Butterfly Plant) From the Federal List of Endangered and Threatened Plants.	Final Rule—Delisting	84 FR 59570–59588
11/26/2019	Removing Bradshaw’s Lomatium From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	84 FR 65067–65080
11/26/2019	Removal of the Nashville Crayfish From the Federal List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	84 FR 65098–65112
11/26/2019	Reclassification of the Endangered June Sucker to Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting	84 FR 65080–65098
12/19/2019	Reclassifying the Hawaiian Goose From Endangered to Threatened With a Section 4(d) Rule.	Final Rule—Downlisting	84 FR 69918–69947
01/02/2020	Removing the Hawaiian Hawk From the Federal List of Endangered and Threatened Wildlife.	Final Rule—Delisting	85 FR 164–189
01/06/2020	Removing the Kanab Ambersnail From the List of Endangered and Threatened Wildlife.	Proposed Rule—Delisting	85 FR 487–492
01/22/2020	Reclassification of the Humpback Chub From Endangered to Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting	85 FR 3586–3601
03/10/2020	Removing <i>Lepanthes eltoroensis</i> From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	85 FR 13844–13856
04/27/2020	Removing <i>Arenaria cumberlandensis</i> (Cumberland Sandwort) From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	85 FR 23302–23315
06/01/2020	Removing San Benito Evening-Primrose (<i>Camissonia benitensis</i>) From the Federal List of Endangered and Threatened Plants.	Proposed Rule—Delisting	85 FR 33060–33078
06/11/2020	Removing the Borax Lake Chub From the List of Endangered and Threatened Wildlife.	Final Rule—Delisting	85 FR 35574–35594
7/24/2020	Reclassification of Morro Shoulderband Snail (<i>Helminthoglypta walkeriana</i>) From Endangered to Threatened With a 4(d) Rule.	Proposed Rule—Downlisting	85 FR 44821–44835
8/19/2020	Reclassification of Stephens’ Kangaroo Rat From Endangered To Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting	85 FR 50991–51006

TABLE 3—COMPLETED DOMESTIC RECOVERY ACTIONS (PROPOSED AND FINAL DOWNLISTINGS AND DELISTINGS) IN FY 2019 AND FY 2020—Continued

[As of September 30, 2020]

Publication date	Title	Action(s)	Federal Register citation
9/30/2020	Reclassification of beach layia (<i>Layia carnosa</i>) From Endangered To Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting	85 FR 61684–61700
9/30/2020	Reclassification of Virgin Islands Tree Boa From Endangered to Threatened With a Section 4(d) Rule.	Proposed Rule—Downlisting	85 FR 61700–61717

When a petitioned action is found to be warranted but precluded, the Service is required by the Act to treat the petition as resubmitted on an annual basis until a proposal or withdrawal is published. If the petitioned species is not already listed under the Act, the species becomes a “candidate” and is reviewed annually in the “candidate notice of review” (CNOR). The number of candidate species remaining in FY 2020 is the lowest it has been since 1975. For these species, we are working on developing a species status assessment, preparing proposed listing determinations, or preparing not-warranted 12-month findings.

Another way that we have been expeditious in making progress in adding and removing qualified species to and from the Lists is that we have made our actions as efficient and timely as possible, given the requirements of the Act and regulations and constraints relating to workload and personnel. We are continually seeking ways to streamline processes or achieve economies of scale, such as batching related actions together for publication. Given our limited budget for implementing section 4 of the Act, these efforts also contribute toward our expeditious progress in adding and removing qualified species to and from the Lists.

The northern spotted owl will remain listed as a threatened species, and we will continue to evaluate this subspecies as new information becomes available. Continuing review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

Under 50 CFR 17.31(a), threatened wildlife added to the List of Endangered and Threatened Wildlife on or prior to September 26, 2019, are provided all provisions of 50 CFR 17.21 for endangered wildlife, except 50 CFR 17.21(c)(5). The northern spotted owl was granted the protections of an endangered species at the time it was listed as a threatened species in 1990 (55 FR 26114–26194). Therefore, we conclude that reclassification will not provide any additional protections for

the species as it already receives the protections of the provisions of 50 CFR 17.21 for endangered wildlife.

A detailed discussion of the basis for this finding can be found in the northern spotted owl species status report and other supporting documents (see ADDRESSES, above). A detailed discussion of the basis for this finding can be found in the northern spotted owl species assessment and other supporting documents (see ADDRESSES, above).

New Information

We intend that any proposed reclassification for the northern spotted owl will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or threats to the northern spotted owl to the person specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor this subspecies and make appropriate decisions about its conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service’s Species Assessment Team.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.
[FR Doc. 2020–27198 Filed 12–14–20; 8:45 am]
BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 201209–0334]

RIN 0648–BK05

Fisheries of the Northeastern United States; Omnibus Framework Adjustment To Modify the Mid-Atlantic Fishery Management Council’s Risk Policy

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements changes to the Mid-Atlantic Fishery Management Council’s Risk Policy. This action is intended to adjust the Council’s risk policy by accepting a higher level of risk for stocks at or above biomass targets. These adjustments could lead to increases in catch limits for healthy fisheries managed by the Council.

DATES: Effective December 15, 2020.

ADDRESSES: The Mid-Atlantic Fishery Management Council developed an environmental assessment (EA) for this action that describes and analyzes these measures and other considered alternatives. Copies of the Risk Policy Omnibus Framework Adjustment, including the EA and information on the economic impacts of this rulemaking, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at <http://www.mafmc.org>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or

available on the internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Shannah Jaburek, Fishery Management Specialist, 978-282-8456.

SUPPLEMENTARY INFORMATION:

Background

The Council took final action on this Risk Policy Omnibus Framework Adjustment to modify its risk policy in December 2019 and submitted the action to NMFS in early August 2020. NMFS published a proposed rule for the Framework on November 12, 2020 (85 FR 72312). In the interest of implementing a final rule before January 1, 2021 to facilitate the development of 2021 fishing year specifications, the proposed rule included a 15-day public comment period that closed on November 26, 2020.

NMFS has approved all of the measures in the Framework recommended by the Council, as described below. This final rule implements changes to the Council's risk policy and removes the typical/atypical species designation. The Magnuson-Stevens Fishery Conservation and Management Act allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

This action adjusts the Council's risk policy by accepting a higher level of risk (*i.e.*, the probability of overfishing, known as P^*) for stocks that are healthy and either at or above biomass targets. For stocks not subject to a rebuilding plan that have a ratio of biomass (B) to biomass at maximum sustainable yield (B_{MSY}) of 1.0 or lower, the maximum P^* as informed by the overfishing limit (OFL) distribution will decrease linearly from a maximum value of 45 percent until the P^* becomes zero at a B/B_{MSY} ratio of 0.10. For stocks with biomass that exceeds B_{MSY} and the B/B_{MSY} ratio is greater than 1.0, the P^* will increase linearly from 45 percent to a maximum of 49 percent when the B/B_{MSY} ratio is equal to 1.5 or greater. Under the current risk policy, the maximum allowed P^* is capped at 40 percent for stocks with a B/B_{MSY} ratio of 1.0 or higher, with this probability decreasing linearly until P^* becomes zero at the B/B_{MSY} ratio of 0.10. The Council made no adjustments for stocks under a rebuilding plan or stocks with no OFL

or proxy OFL. The increased tolerance of risk could lead to increases in ABC allocations for healthy fisheries the Council manages. The Council and its Scientific and Statistical Committee used this modified risk policy in recommending ABCs for scup and black sea bass for the 2021 fishing year that begins on January 1, 2021.

This action also removes the typical/atypical species designation when applied to the current risk policy. This designation was intended to provide for less risk to those species whose life histories make them more vulnerable to over-exploitation; however, it has rarely been used and is currently only applied to ocean quahog. This allows the Council to better use improvements in stock assessment and modeling approaches that can more appropriately account for and address such vulnerability.

Proposed Rule Comments and Responses

We received seven relevant and two non-relevant comments on the proposed rule during the public comment period. Below is a summary of the relevant comments and our responses.

Comment 1: NMFS received two comments in agreement with the action. The Virginia Marine Resources Commission noted no objections to the changes in the Council's risk policy. A member of the public commented in agreement with these adjustments, noting it was a welcomed change and enabled better management and sustainability. Specifically, it enables better utilization of species that are flourishing while still limiting the harvest of those fisheries that cannot sustain increases in allocations.

Response: NMFS agrees.

Comment 2: One commenter supported removing the typical/atypical species designation. The commenter also suggested that NMFS conduct an in-depth analysis of the regulatory changes to fully consider all impacts, including any increased risk to the environment and fish stocks as well as economic impacts. The commenter also noted that, under Executive Order (E.O.) 12866, the net benefits of these regulatory changes must outweigh the net costs.

Response: NMFS agrees with removing the species designation. The Council's EA provides the analysis suggested by the commenter. In the EA, economic impacts are analyzed, along with a comprehensive analysis of impacts to the affected environment that includes managed and non-target species, physical environment, protected species, and effects on human

communities. The alternatives considered in this action do not modify existing commercial quotas or recreational harvest limits for Council-managed fisheries and, therefore, will not have any direct socioeconomic impacts. However, increases in ABC allocations through future actions as a result of this action could result in positive socioeconomic impacts. When the proposed action is considered in conjunction with all other impacts from past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative; therefore, no significant cumulative effects on the human environment are associated with the proposed action. Based on these findings, the outcome of the EA analysis was a Finding of No Significant Impact of implementing the regulatory changes as recommended by the Council. In addition, as suggested by the regulatory impact analysis in the EA, this rule was determined to be not significant under E.O. 12866.

Comment 3: One member of the public asked NMFS to clarify what is meant by species whose life histories make them more vulnerable to over-exploitation.

Response: Over-exploitation occurs when a species is harvested in larger quantities than what is sustainable. Certain species characteristics, such as low reproduction rates and long timeframes to recruit to harvestable size for the fishery, could make it more difficult for the stock to recover to sustainable biomass levels, thus making the species more vulnerable to over-exploitation. While this rule removes the atypical designation for these species, any future rulemakings would still consider these factors when putting measures in place.

Comment 4: Three members of the public opposed the rule due to reasons that included overfishing concerns, lack of studies on long-term impacts to support increasing risk probabilities, concern with loosening or eliminating policies meant to protect and conserve natural resources, and ocean temperature shifts/changes.

Response: NMFS appreciates the stated concerns that members of the public have with this rule. The changes to the Council's risk policy only apply to fisheries that are healthy and are at or above sustainable levels (*i.e.*, are not overfished and overfishing is not occurring). An example of a stock where increased risk may be applied is the black sea bass fishery, which in recent years has been at double or close to double the biomass at maximum sustainable yield. In addition, NMFS

continuously conducts biomass surveys and stock assessments to gauge the health of managed fisheries. These biomass surveys also collect other environmental data, such as ocean temperature, which help NMFS evaluate any changes within the stock, for example biomass increases/decreases and changes in stock structure such as shifting locations. The changes to the risk policy implemented in this action are administrative in nature and merely allow fishery managers and scientists to consider taking increased risks when setting ABC allocations. It is also important to note that, while this action allows for increased risk from the current policy, the revised policy still ensures that there would be less than a 50 percent chance of overfishing. Any ABC recommendations will be made through future rulemakings, which will include a comprehensive analysis of any proposed measures.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

This final rule is considered to be an E.O. 13771 deregulatory action.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that, because this rule relieves a restriction by allowing the Council to increase ABC allocations for the healthy fisheries it manages, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). In addition, the need to implement these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. The Council and its SSC used this modified risk policy in recommending ABCs for scup and black sea bass for the 2021 fishing year specifications package for summer flounder, scup, and black sea bass. The scup, black sea bass, and summer

flounder fisheries operate on the calendar year. Annual publication of the summer flounder quotas prior to the start of the fishing year, by December 31, is required by Court Order in *North Carolina Fisheries Association v. Daley*. If this risk policy rule were not effective prior to the start of the fishing year, this could delay the 2021 summer flounder, scup, and black sea bass specifications, requiring interim specifications for these species to go into effect on January 1. This scenario would create unnecessary challenges for individual states when setting commercial possession and/or trip limits, which apportion the catch over the entire calendar year. This would cause unnecessary harm to the fisheries and is contrary to the public interest.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 10, 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 § 648.21, revise paragraphs (b)(1) and (2), and (c)(1) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(b) * * * (1) For stocks with a ratio of biomass (B) to biomass at MSY (B_{MSY}) of 1.0 or lower, the maximum probability of overfishing as informed by the OFL distribution shall decrease linearly from a maximum value of 45 percent until the probability of overfishing becomes zero at a B/B_{MSY} ratio of 0.10.

(2) For stocks with biomass that exceeds B_{MSY} and the B/B_{MSY} ratio is greater than 1.0, the probability of overfishing shall increase linearly from a probability of overfishing of 45 percent to a maximum probability of overfishing of 49 percent when the B/B_{MSY} ratio is equal to 1.5 or greater.

* * * * *

(c) * * * (1) Unless otherwise allowed in paragraph (c)(2) of this section, for instances in which the application of the risk policy approaches in paragraph (b) of this section using OFL distribution results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

* * * * *

[FR Doc. 2020–27562 Filed 12–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648–XA707]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to CT

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

ACTION: Notice; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2020 commercial summer flounder quota to the State of Connecticut. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for North Carolina and Connecticut.

DATES: Effective December 10, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is

apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2020 allocations were published on October 9, 2019 (84 FR 54041).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator must approve any such transfer based on the criteria in § 648.102(c)(2)(i). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: The transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

North Carolina is transferring 50,000 lb (22,680 kg) to Connecticut. This transfer is occurring through mutual agreement of the states. This transfer was requested to ensure Connecticut would not exceed its 2020 quota. The revised summer flounder quotas for fishing year 2020 are now: North Carolina, 3,035,501 lb (1,376,880 kg); and Connecticut, 350,241 lb (158,867 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i)(A) through (C), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: December 10, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2020-27561 Filed 12-10-20; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200623-0167; RTID 0648-XA706]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers From MA to NC, DE to RI, and VA to NY

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

ACTION: Notification; quota transfers.

SUMMARY: NMFS announces that the Commonwealth of Massachusetts, the State of Delaware, and the Commonwealth of Virginia are transferring a portion of their 2020 commercial bluefish quota to the State of North Carolina, the State of Rhode Island, and the State of New York, respectively. These quota adjustments are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial bluefish quotas for Massachusetts, North Carolina, Delaware, Rhode Island, Virginia, and New York.

DATES: Effective December 14, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281-9225.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2020 allocations were published on June 29, 2020 (85 FR 38794).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP) published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii).

The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: The transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

Massachusetts is transferring 55,000 lb (24,948 kg) of bluefish commercial quota to North Carolina; Delaware is transferring 30,000 lb (13,608 kg) to Rhode Island; and Virginia is transferring 50,000 lb (22,679 kg) to New York, through mutual agreement of the states. These transfers were requested to ensure that North Carolina, Rhode Island, and New York would not exceed their 2020 state quotas. The revised bluefish quotas for 2020 are: Massachusetts, 115,838 lb (52,543 kg); North Carolina, 1,056,058 lb (479,020 kg); Delaware, 21,966 lb (9,964 kg); Rhode Island, 343,366 lb (155,748 kg); Virginia, 203,682 lb (92,389 kg); and New York, 387,335 lb (175,692 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

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

Dated: December 10, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2020-27538 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227-0066; RTID 0648-XA701]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear and trawl catcher vessels (CVs) to CVs less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear and American Fisheries Act (AFA) catcher/processors (CPs) in the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to allow the 2020 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective December 14, 2020, through 2400 hours, Alaska local time (A.l.t.), December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2020 Pacific cod TAC specified for vessels using jig gear in the BSAI is 178 metric tons (mt), the 2020 Pacific cod TAC specified for trawl CVs in the BSAI is 30,707 mt, the 2020 Pacific cod

TAC specified for CVs less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 4,807 mt, and the 2020 Pacific cod TAC specified for AFA CPs in the BSAI is 3,196 mt as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and reallocations (85 FR 4601, January 27, 2020 and 85 FR 49976, August 17, 2020).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 160 mt of the 2020 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(1) and trawl CVs will not be able to harvest 1,014 mt of the 2020 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(9).

Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 160 mt of Pacific cod from the jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Also, in accordance with § 679.20(a)(7)(iii)(B), NMFS reallocates 1,014 mt from trawl CVs to the annual amount specified for AFA CPs.

The harvest specifications for 2020 Pacific cod included in final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and reallocations (85 FR 4601, January 27, 2020 and 85 FR 49976, August 17, 2020) are revised as

follows: 18 mt to vessels using jig gear, 29,693 mt to trawl CVs, 4,967 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and 4,210 mt to AFA CPs.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 1, 2020.

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

Dated: December 10, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020-27526 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 85, No. 241

Tuesday, December 15, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1131; Project Identifier MCAI-2020-00613-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 adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, and AS350D helicopters; Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters; and Model EC130B4 and EC130T2 helicopters. This proposed AD was prompted by a report of failed main rotor hub-to-mast attachment screws. This proposed AD would require determining whether the helicopter has been operated in a severe environment since the last inspection of the main rotor hub-to-mast attachment screws, an inspection of the main rotor hub-to-mast attachment screws if the helicopter has been operated in a severe environment, and replacement of the main rotor hub-to-mast attachment screws if necessary, as specified in a European Aviation Safety Agency (now 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 29, 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; phone: +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-2020-1131.

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-2020-1131; 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: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 470 L'Enfant Plaza SW, Washington, DC 20024; phone: 202-267-9167; email: hal.jensen@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 **ADDRESSES**. Include "Docket No. FAA-2020-1131; Project Identifier

MCAI-2020-00613-R" 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 proposal.

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 Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 470 L'Enfant Plaza SW, Washington DC 20024; phone: 202-267-9167; email: hal.jensen@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017-0032, dated February 17, 2017; corrected February 20, 2017 (EASA AD 2017-0032) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS 350 B, AS 350

BA, AS 350 BB, AS 350 B1, AS 350 B2, AS 350 B3, and AS 350 D helicopters; AS 355 E, AS 355 F, AS 355 F1, AS 355 F2, AS 355 N, and AS 355 NP helicopters; and EC 130 B4 and EC 130 T2 helicopters. Model AS 350 BB helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those helicopters in the applicability. This AD also applies to Airbus Helicopter Model AS 350C helicopters because these helicopters have a similar design and are included on the U.S. type certificate data sheet.

This proposed AD was prompted by a report of failed main rotor hub-to-mast attachment screws on a Model EC130B4 helicopter during a scheduled maintenance inspection. The FAA is proposing this AD to address failed main rotor hub-to-mast attachment screws, which could lead to disconnection of the main rotor hub-to-mast attachment, possibly resulting in loss of control of the helicopter. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2017-0032 describes procedures for determining whether the helicopter has been operated in a severe environment since the last inspection of the main rotor hub-to-mast attachment screws, an inspection of the main rotor hub-to-mast attachment screws for corrosion and damage (damage includes cracks, dents, and bolt distortion) if the helicopter was operated in a severe environment, and replacement of the main rotor hub-to-mast attachment screws if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2017-0032, 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 2017-0032 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2017-0032 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 2017-0032 that is required for compliance with EASA AD 2017-0032 will be available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1131 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

EASA AD 2017-0032 does not apply to Airbus Helicopter Model AS350C helicopters, which are included on the U.S. type certificate data sheet. However, this proposed AD would apply to Airbus Helicopter Model AS350C helicopters because those helicopters have a similar design to the helicopters identified in EASA AD 2017-0032.

Where the service information specified in paragraph (3) of EASA AD 2017-0032 specifies to contact Airbus Helicopters if damage or corrosion exceeds existing criteria, this proposed AD would require replacing the affected screws using a method approved by the Manager, International Validation Branch, FAA.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,220 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED DETERMINATION OF HELICOPTER OPERATION IN A SEVERE ENVIRONMENT

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hours × \$85 per hour = \$85	\$0	\$85	\$103,700

The FAA estimates that it would take about 1 hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is \$85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results

on U.S. operators to be \$103,700, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. If a helicopter is determined to have been operated in a severe environment, an

inspection of the main rotor hub-to-mast attachment screws will be required. If there is corrosion or damage to any of the screws, replacement of the affected screws will be required. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × \$85 per hour = \$340	\$106	\$446

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the

national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2020–1131; Project Identifier MCAI–2020–00613–R.

(a) Comments Due Date

The FAA must receive comments by January 29, 2021.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to all Airbus Helicopters, certificated in any category, as identified in paragraphs (c)(1) through (3) of this AD.

(1) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, and AS350D helicopters.

(2) Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters.

(3) Model EC130B4 and EC130T2 helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 6200, Main Rotor System.

(e) Reason

This AD was prompted by a report of failed main rotor hub-to-mast attachment screws. The FAA is issuing this AD to address failed main rotor hub-to-mast attachment screws, which could lead to disconnection of the main rotor hub-to-mast attachment, possibly resulting in 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 2017–0032, dated February 17, 2017; corrected February 20, 2017 (EASA AD 2017–0032).

(h) Exceptions to EASA AD 2017–0032

(1) Where EASA AD 2017–0032 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2017–0032 does not apply to this AD.

(3) Paragraph (4) of EASA AD 2017–0032 specifies to report inspection results to Airbus Helicopters within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) Where EASA AD 2017–0032 refers to flight hours (FH), this AD requires using hours time-in-service.

(5) Where the service information specified in paragraph (3) of EASA AD 2017–0032 specifies to contact Airbus Helicopters if damage or corrosion exceeds existing criteria, for this AD, replace the affected screws using a method approved by the Manager, International Validation Branch, FAA. For a repair method to be approved by the Manager, International Validation Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(6) Although the service information referenced in EASA AD 2017–0032 specifies to discard certain parts, this AD does not include that requirement.

(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 (k)(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) Paperwork Reduction Act Burden Statement

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

(k) Related Information

(1) For EASA AD 2017-0032, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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-2020-1131.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 470 L'Enfant Plaza SW, Washington, DC 20024; phone: 202-267-9167; email: hal.jensen@faa.gov.

Issued on December 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020-27460 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0309; Product Identifier 2018-SW-014-AD]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Leonardo S.p.a. (Leonardo) Model AW189 helicopters. This proposed AD would require inspecting the tail plane installation forward bolts (bolts) and depending on the results of those inspections, removing certain parts from service or installing a tail plane retromod. This proposed AD would also require torqueing certain part-numbered nuts, inspecting bolts and nuts for wear, and depending on the results of those inspections, removing parts from service. This proposed AD was prompted by two reported failures of the bolts. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 29, 2021.

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

- **Federal eRulemaking Docket:** Go to <https://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Fax:** 202-493-2251.
- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0309; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

www.regulations.gov by searching for and locating Docket No. FAA-2018-0309; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT:

Scott Franke, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5889; email scott.franke@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 **ADDRESSES**. Include "Docket No. FAA-2018-0309; Product Identifier 2018-SW-014-AD" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this 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 proposal.

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 Scott Franke, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5889; email scott.franke@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD No. 2018-0047-E, dated February 28, 2018, to correct an unsafe condition for Leonardo S.p.A. (formerly Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW189 helicopters. EASA advises of two reported incidents of failed bolts and that fretting and wear were identified as the root cause of the failures. EASA states that this condition, if not detected and corrected, could lead to reduced control of the helicopter.

According to EASA, Leonardo Helicopters issued Emergency Alert Service Bulletin No. 189-177, Revision A, dated February 28, 2018 (EASB 189-177), to address this unsafe condition and provide instructions for inspecting each bolt part number (P/N) 8G5510A06251 and 8G5510A05951 and installing an improved tail plane installation retromod P/N 8G5510P00511 (tail plane retromod). However, EASA advises that because the tail plane retromod was previously available in production or through optional Leonardo Service Bulletin No. 189-130, dated January 30, 2017 (SB 189-130), adjustment of the bolt torque is necessary for some helicopters because an incorrect torque value for installation of the bolts was specified. Accordingly, the EASA AD requires repetitive inspections of each bolt, installing a tail plane retromod, adjustment of the bolt torque for some helicopters that had the tail plane

retromod installed either in production or by following SB 189-130, and repetitive torque checks of the bolts.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASB 189-177, which contains procedures for inspecting each bolt and installing the tail plane retromod. This service information also contains procedures for repetitively verifying the torque of the associated nut P/N MS17825-7 (nut).

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

For Model AW189 helicopters without a tail plane retromod installed, this proposed AD would require, before further flight and thereafter before each flight, inspecting each bolt for a missing bolt head, breakage, and correct installation. If there is a missing bolt head, a broken bolt, or an incorrectly installed bolt, this proposed AD would require, before further flight, removing the bolt from service and installing the tail plane retromod.

For Model AW189 helicopters with a tail plane retromod installed with an incorrect torque value (installed either in service in accordance with SB 189-130 or in production, which this proposed AD specifies by serial number), this proposed AD would require, within 10 hours time-in-service (TIS), correcting the torque, installing a cotter pin, and lockwiring each nut on the adjustable rod assembly P/N 4F5510A00232.

Lastly, within 10 hours TIS after installing a tail plane installation retromod, within 10 hours TIS after correcting an incorrect torque value, or within 10 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 50 hours TIS, this proposed AD would require determining the torque of each nut. If the torque is less than 15 Nm (11 ft-lbs) or more than 20 Nm (14.75 ft-lbs),

this proposed AD would require inspecting the bolt and nut for wear, and removing the bolt and nut from service if there is any wear.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires repetitive torque checks at progressively increasing intervals, while this proposed AD would require the repetitive torque check at intervals not to exceed 50 hours TIS. Since there is not enough field data at this time to substantiate progressively increasing the time between inspections up to 400 hours TIS, the FAA has determined an interval of 50 hours TIS is necessary. The FAA may take further rulemaking action to increase this interval should more data become available.

Interim Action

The FAA considers this proposed AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD would affect 4 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at \$85 per work-hour.

Inspecting the bolts before each flight would take about 0.25 work-hour, for an estimated cost of \$21 per helicopter and \$84 for the U.S. fleet per inspection cycle.

If required, installing a tail plane retromod would take about 12 work-hours and parts would cost about \$5,500, for an estimated cost of \$6,520 per helicopter.

Inspecting and verifying the torque of the bolts and nuts would take about 1 work-hour, for an estimated cost of \$85 per helicopter and \$340 for the U.S. fleet per inspection cycle.

If required, replacing a bolt and nut would take about 1 work-hour and parts would cost about \$250, for an estimated cost of \$335 per replacement.

According to Leonardo's service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Leonardo. Accordingly, the FAA has included all costs in its 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Leonardo S.p.a.: Docket No. FAA-2018-0309; Product Identifier 2018-SW-014-AD.

(a) Applicability

This airworthiness directive (AD) applies to Leonardo S.p.a. Model AW189 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a tail plane installation bolt. This condition could result in reduced control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by January 29, 2021.

(d) Compliance

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

(e) Required Actions

(1) For helicopters without a tail plane installation retro-mod part number (P/N) 8G5510P00511 (tail plane retro-mod) installed, before further flight and thereafter before each flight, inspect each forward attachment bolt (bolt) P/N 8G5510A06251 and 8G5510A05951 for a missing bolt head, breakage, and correct installation as depicted in Figure 12 of Leonardo Helicopters Emergency Alert Service Bulletin No. 189-177, Revision A, dated February 28, 2018 (EASB 189-177). If there is a missing bolt head, a broken bolt, or an incorrectly installed bolt, before further flight, remove the bolt from service and install the tail plane retro-mod by following the Accomplishment Instructions, Part II, paragraphs 3.1 through 3.33 of EASB 189-177, except you are not required to discard parts and where EASB 189-177 specifies contacting Leonardo PSE for corrective action, the action must be accomplished using a method approved by the Manager, International Validations Branch, FAA. The Manager's approval letter must specifically refer to this AD.

(2) For helicopters with a tail plane retro-mod installed in accordance with Leonardo Helicopters Service Bulletin No. 189-130, dated January 30, 2017, and for helicopters with serial number 49046, 49053, 89008, 89009, 92007, or 92008, within 10 hours time-in-service (TIS) after the effective date of this AD, loosen and then torque each nut P/N MS17825-7 (nut) to 15 to 20 Nm (11 to 14.75 ft-lbs), and install a cotter pin and lockwire each nut on the adjustable rod assembly P/N 4F5510A00232, as depicted in Figure 7, Detail N Step 6.5 and Figure 9, Detail P Step 7.9 of EASB 189-177.

(3) Within 10 hours TIS after installing a tail plane retro-mod, within 10 hours TIS after complying with paragraph (e)(2) of this AD, or within 10 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 50 hours TIS, do the following:

- (i) Determine the torque of each nut.
- (ii) If the torque is less than 15 Nm (11 ft-lbs) or more than 20 Nm (14.75 ft-lbs), before further flight, remove the bolt and nut and inspect for wear. If there is any wear on the bolt or nut, before further flight, remove the bolt and nut from service.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Scott Franke, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email 9-AVS-AIR-730-AMOC@faa.gov.

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

(g) Additional Information

(1) Leonardo Helicopters Service Bulletin No. 189-130, dated January 30, 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2018-0047-E, dated February 28, 2018. You may view the EASA AD on the internet at <https://www.regulations.gov> in the AD Docket.

(h) Subject

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

Issued on December 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020-27452 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-1116; Project Identifier AD-2020-00784-E]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2012–04–15, which applies to all Pratt & Whitney (PW) JT9D–3A, JT9D–7, JT9D–7A, JT9D–7AH, JT9D–7F, JT9D–7H, JT9D–7J, JT9D–20, JT9D–20J, JT9D–59A, JT9D–70A, JT9D–7Q, JT9D–7Q3, JT9D–7R4D, JT9D–7R4D1, JT9D–7R4E, JT9D–7R4E1, JT9D–7R4E4, JT9D–7R4G2, and JT9D–7R4H1 (JT9D) model turbofan engines. AD 2012–04–15 requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer’s Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. AD 2012–04–15 also requires additional revisions to the JT9D model engines ALS of the manufacturer’s ICA. Since the FAA issued AD 2012–04–15, PW notified the FAA that revisions to the mandatory inspections contained within the ALS of the manufacturer’s ICA were necessary. This proposed AD would revise the required inspections of selected critical life-limited parts specified in the ALS of the manufacturer’s ICA and, for air carriers, to the existing continuous airworthiness air carrier maintenance program (CAMP). 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 29, 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.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1116; 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:

Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7742; fax: (781) 238–7199; email: nicholas.j.paine@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 **ADDRESSES**. Include “Docket No. FAA–2020–1116; Project Identifier AD–2020–00784–E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 Nicholas Paine, 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.

Background

The FAA issued AD 2012–04–15, Amendment 39–16971 (77 FR 15939, March 19, 2012) (AD 2012–04–15) for all PW JT9D model turbofan engines. AD 2012–04–15 was prompted by the need to require enhanced inspection of selected critical life-limited parts. AD 2012–04–15 requires revisions to the ALS of the manufacturer’s ICA to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. The agency issued AD 2012–04–15 to prevent failure of critical life-limited rotating engine parts, which could result in uncontained engine failure and damage to the airplane.

Actions Since AD 2012–04–15 Was Issued

Since the FAA issued AD 2012–04–15, PW identified errors in the list of mandatory inspections to add to the ALS. During review of the AD, PW found that AD 2012–04–15 did not include eddy current inspections of the fan hubs. Additionally, PW identified duplicate inspections of the HPT Stage 2 disk tie rod and web cooling holds. This AD revises the ALS of the manufacturer’s ICA.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2012–04–15. This proposed AD would revise the required inspections of selected critical life-limited parts specified in the ALS of the manufacturer’s ICA and, for air carriers, to the existing CAMP.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 27 engines installed on airplanes of U.S. registry. Based on updated information since the publication of AD 2012–04–15, the FAA revised the estimated number of engines installed on airplanes of U.S. registry from 438 in AD 2012–04–15 to 27 in this proposed rule.

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 ALS	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$2,295

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 2012–04–15, Amendment 39–16971 (77 FR 15939, March 19, 2012); and

■ b. Adding the following new airworthiness directive:

Pratt & Whitney: Docket No. FAA–2020–1116; Project Identifier AD–2020–00784–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by January 29, 2021.

(b) Affected ADs

This AD replaces AD 2012–04–15, Amendment 39–16971 (77 FR 15939, March 19, 2012).

(c) Applicability

This AD applies to all Pratt & Whitney (PW) JT9D–3A, JT9D–7, JT9D–7A, JT9D–7AH, JT9D–7F, JT9D–7H, JT9D–7J, JT9D–20, JT9D–20J, JT9D–59A, JT9D–70A, JT9D–7Q, JT9D–7Q3, JT9D–7R4D, JT9D–7R4D1, JT9D–7R4E, JT9D–7R4E1, JT9D–7R4E4, JT9D–7R4G2, and JT9D–7R4H1 (JT9D) model turbofan engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the need to require enhanced inspection of selected critical life-limited parts of PW JT9D model turbofan engines. The FAA is issuing this AD to prevent the failure of critical life-limited rotating engine parts. The unsafe condition, if not addressed, could result in uncontained part release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within the 30 days after the effective date of this AD, add Figure 1 to paragraph (g) of this AD to the Airworthiness Limitations Section (ALS) of the manufacturer’s Instructions for Continued Airworthiness (ICA) and, for air carrier operations, to the existing continuous airworthiness air carrier maintenance program.

BILLING CODE 4910–13–P

Mandatory Inspections

(1) Inspect the following life-limited parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine Model (JT9D-xxx)	Engine Manual Part Number (P/N)	Part Nomenclature	Inspect per Manual Section	<HDI>Inspection/Check
3A/7/7A/7AH/7F/7H/7J/20/20J	*646028 (or the equivalent customized versions, 770407 and 770408)	All Fan Hubs	72-31-04	Inspection-03
		All Fan Hubs	72-31-04	Inspection-02
		All HPC Stage 5 – 15 Disks and Rear Compressor Drive Turbine Shafts	72-35-00	Inspection-03
		All HPT Stage 1-2 Disks and Hubs	72-51-00	Inspection-03
		**All HPT Stage 1 Disk Web Cooling Holes	72-51-02	Inspection -06
		All HPT Stage 2 Disk Web Tie rod Holes	72-51-02	Inspection- 05
		All LPT Stage 3 – 6 Disks and Hubs	72-52-00	Inspection-03
		All Fan Hubs	72-31-04	Check-00
		All Fan Hubs	72-31-00	Check-00
		All HPC Stage 5 – 15 Disks and Rear Compressor Drive Turbine Shafts	72-35-00	Check-00
59A/70A	754459	All HPT Stage 1-2 Disks and Hubs	72-51-00	Check-03
		All HPT Stage 1 Disk Web Cooling Holes	72-51-02	Check-03
		**All HPT Stage 2 Disk Tie rod and Web Cooling Holes	72-51-02	Check-04
		All LPT Stage 3 – 6 Disks and Hubs	72-52-00	Check-03

Engine Model (JT9D-xxx)	Engine Manual (P/N)	Part Nomenclature	Inspect per Manual Section	Inspection/ Check		
7Q/7Q3	777210	All Fan Hubs	72-31-02	Inspection-02		
		All Fan Hubs	72-31-00	Inspection-03		
		All HPC Stage 5 – 15 Disks and Rear Compressor Drive Turbine Shafts	72-35-00	Inspection-03		
		All HPT Stage 1-2 Disks and Hubs	72-51-00	Inspection-03		
		All HPT Stage 1 Disk Web Cooling Holes	72-51-06	Inspection-03		
		**All HPT Stage 2 Disk Tie rod and Web Cooling Holes	72-51-07	Inspection-03		
		All LPT Stage 3 – 6 Disks and Hubs	72-52-00	Inspection-03		
		7R4D/7R4D1/7 R4E/7R4E1/7R4 E4	785058, 785059, and 789328	All Fan Hubs	72-31-00	Inspection/Che ck-03
		**All Fan Hub Slots	72-31-01	Inspection/Che ck-02		
		All HPC Stage 5 – 15 Disks and Rear Compressor Drive Turbine Shafts	72-35-00	Inspection/Che ck 03		
All HPT Stage 1-2 Disks and Hubs	72-51-00	Inspection/Che ck 03				
All LPT Stage 3 – 6 Disks and Hubs	72-52-00	Inspection/Che ck 03				
**All HPT Stage 2 Disk Tie rod and Web Cooling Holes	72-51-07	Inspection/Che ck-02				
7R4D/7R4D1/7 R4E/7R4E1	785058 and 785059	All HPT Stage 1 Disk Web Cooling Holes	72-51-06	Inspection/Che ck-02		

* P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.

** Two asterisks identify the part nomenclatures and inspections added to the table.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when disassembly is in accordance with the disassembly instructions in the manufacturer's engine shop manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

BILLING CODE 4910-13-C

(h) 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.

(i) Related Information

For more information about this AD, contact Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7742; fax: (781) 238-7199; email: nicholas.j.paine@faa.gov.

Issued on December 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020-27511 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2020-1072; **Airspace Docket No. 20-ACE-23**]

RIN 2120-AA66

Proposed Establishment of Class E Airspace; Leoti, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Mark Hoard Memorial Airport, Leoti, KS. The establishment of Class E airspace facilitates the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before January 29, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: 1(800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2020-1072; Airspace Docket No. 20-ACE-23, at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

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 would establish Class E airspace to support the airport's transition from VFR to IFR operations at Mark Hoard Memorial Airport, Leoti, KS.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2020-1072; Airspace Docket No. 20-ACE-23". The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments

will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours, except federal holidays, at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at the Mark Hoard Memorial Airport, Leoti, KS. The establishment of Class E airspace facilitates the airport's transition from VFR to IFR operations. The airspace is designed to contain IFR departures to 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. The area would be described as follows: That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mark Hoard Memorial Airport.

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 designation listed in this document will be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this 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

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 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 6005. Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Leoti, KS [New]

Mark Hoard Memorial Airport, KS
(Lat. 38°27'27" N, long. 101°21'03" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mark Hoard Memorial Airport.

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

B.G. Chew,

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

[FR Doc. 2020–27477 Filed 12–14–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 201123–0312]

RIN 0648–BF90

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Amendment to the Atlantic Pelagic Longline Take Reduction Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Pelagic Longline Take Reduction Plan (hereinafter called the PLTRP or the Plan) to reduce mortalities and serious injuries of short-finned pilot whales incidental to the Atlantic pelagic longline fishery to meet the long-term goal of the Plan as required by the Marine Mammal Protection Act (MMPA). The PLTRP currently contains both regulatory and non-regulatory management measures to reduce mortality and serious injury of pilot whales (*Globicephala* spp.) and Risso’s dolphins (*Grampus griseus*), in the Atlantic portion of the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery (hereinafter called Atlantic pelagic

longline fishery). The proposed amendments to the PLTRP are based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (hereinafter called the PLTRT or the Team) and include: Removing the Cape Hatteras Special Research Area and the associated special observer and research participation requirements for fishermen operating in that area, modifying the mainline length restrictions for pelagic longline sets in the U.S. exclusive economic zone (EEZ) portion of the Mid-Atlantic Bight, and implementing required hook and gangion modifications in the EEZ portion of the Florida East Coast, South Atlantic Bight, Mid-Atlantic Bight and Northeast Coastal fishing areas. Furthermore, NMFS is removing Risso’s dolphins and long-finned pilot whales from the Plan’s scope.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time on February 16, 2021.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648–BF90, by any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0105, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Erin Fougères, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will generally post for public viewing on to www.regulations.gov without change. All personal identifying information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The draft Environmental Assessment, Regulatory Impact Review, Regulatory Flexibility Act Analysis, and references for the Proposed rule, can be found in the Federal eRulemaking Portal as supplementary document. Background documents for the PLTRP can be downloaded from the Take Reduction

website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/pelagic-longline-take-reduction-plan>, or by submitting a request to the Team coordinator, Erin Fougères, 727-824-5312.

FOR FURTHER INFORMATION CONTACT: Erin Fougères, NMFS, Southeast Region, 727-824-5312, or Kristy Long, NMFS, Office of Protected Resources, 206-526-4792. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 118(f) of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery of, or prevent the depletion of, each strategic marine mammal stock that interacts with Category I or II fisheries. Category I fisheries are fisheries that have frequent incidental mortality and serious injury of marine mammals, and Category II fisheries are fisheries that have occasional incidental mortality and serious injury of marine mammals. The MMPA also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA, or is designated as a depleted species under the MMPA (16 U.S.C. 1362(19)). The PBR level is the maximum number of animals, not including natural mortalities, which can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level (50 CFR 229.2).

In accordance with section 118(f) of the MMPA (16 U.S.C. 1387), the immediate goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine

mammals taken in the course of commercial fishing operations to levels less than the PBR level for the stock. The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate (*i.e.*, insignificance threshold or zero mortality rate goal), which is 10 percent of the PBR level for a marine mammal stock (69 FR 43338, July 20, 2004). The long-term goal takes into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing regulations as needed to meet these requirements and goals.

History of the PLTRT

The impetus for the PLTRP was a 2003 settlement agreement between NMFS and the Center for Biological Diversity that required convening a Take Reduction Team (the PLTRT or the Team) under the MMPA by June 30, 2005, to address mortality and serious injury of Western North Atlantic pilot whales (*Globicephala* spp.) and common dolphins (*Delphinus delphis delphis*) in the Atlantic pelagic longline fishery, which was then, and currently still is, listed as a Category I fishery. At the time of the settlement agreement, the western North Atlantic stocks of these species were identified as strategic stocks.

However, as the Plan was being developed, long-finned pilot whales (*Globicephala melas melas*) and short-finned pilot whales (*Globicephala macrorhynchus*) and common dolphins were all reclassified as non-strategic stocks (Waring *et al.* 2006). Because incidental mortality and serious injury of short-finned and long-finned pilot whales in the Atlantic pelagic longline fishery continued to exceed the insignificance threshold (although not the PBR level) for the stocks, these species were included under the PLTRP. Common dolphins, even though included in the settlement agreement, were not considered in the PLTRP because there had been no recent observed mortalities or serious injuries. Risso's dolphins, on the other hand, were considered within the scope of the PLTRP, even though the species was not included in the settlement agreement and was not a strategic stock at the time, because mortalities and serious injuries incidental to the Atlantic pelagic longline fishery exceeded the

insignificance threshold (although not the PBR level) for the stock, similar to short-finned and long-finned pilot whales.

In accordance with the MMPA and the settlement agreement, NMFS convened the PLTRT in June 2005. NMFS announced the establishment of the PLTRT on June 22, 2005, in the **Federal Register** (70 FR 36120). NMFS selected team members according to guidance provided in section 118(f)(6)(C) of the MMPA. Members of the PLTRT include commercial fishermen and representatives of the Atlantic Pelagic Longline Fishing industry, environmental groups, marine mammal biologists, fisheries biologists, and representatives of the Mid-Atlantic Fishery Management Council, the Marine Mammal Commission, and NMFS.

The incidental mortality and serious injury for both pilot whales and Risso's dolphins exceeded the insignificance threshold, yet remained below the PBR level, and were considered non-strategic stocks that interact with a Category I fishery. Therefore, in accordance with the long-term goal of section 118(f)(2) of the MMPA, NMFS directed the PLTRT to develop and submit a draft Take Reduction Plan to the agency within 11 months that focused on reducing incidental mortalities and serious injuries of pilot whales and Risso's dolphins to a level approaching the insignificance threshold within five years of implementation of the Plan.

Four professionally-facilitated meetings and two full-team conference calls were held between June 2005 and May 2006. The PLTRT reached consensus at the May 2006 meeting, and on June 8, 2006, submitted to NMFS a Draft PLTRP, including recommendations for take reduction measures, as well as research needs and other non-regulatory measures (PLTRT, 2006). Based on the Draft PLTRP, NMFS published a proposed rule (73 FR 35623, June 24, 2008) and a final rule (74 FR 23349, May 19, 2009) implementing the PLTRP, which became effective on June 18, 2009 (50 CFR 229.36). Since implementation of the PLTRP, the Team has continued to monitor the effectiveness of the Plan and review recent research relevant to the PLTRT and new scientific information on updated estimates of abundance and mortality and serious injury for pilot whales and Risso's dolphins.

Western North Atlantic Pilot Whales

The distribution of the western North Atlantic stock of short-finned pilot whale overlaps in some areas with that of the western North Atlantic long-

finned pilot whale stock. The area of overlap between the western North Atlantic stocks of short-finned and long-finned pilot whales occurs primarily along the shelf break between 38°N and 40°N latitude (Garrison and Rosel 2017). The full latitudinal range of each species remains uncertain; however, south of Cape Hatteras, NC, most pilot whale sightings are expected to be short-finned pilot whales, while north of ~42°N most pilot whale sightings are expected to be long-finned pilot whales (Garrison and Rosel 2017). Additionally, these species are difficult to differentiate at sea and cannot be reliably visually identified during either abundance surveys or observations of fishery mortality without high-quality photographs (Rone and Pace 2012). Therefore, the ability to separately assess the two species in U.S. Atlantic waters is complex and requires additional information on seasonal spatial distribution (Hayes *et al.* 2019).

All estimated mortalities and serious injuries of pilot whales incidental to the Atlantic pelagic longline fishery from 2010 to 2013 were assigned exclusively to short-finned pilot whales (Hayes *et al.* 2019). From 2014 to 2016, pilot whale estimated mortalities and serious injuries incidental to the Atlantic pelagic longline fishery were apportioned between the short-finned and long-finned pilot whale stocks according to a logistic regression model (Garrison and Rosel 2017). Short-finned pilot whales made up the majority of the apportioned estimated mortality and serious injury, with only 1 percent and 4 percent of the estimated mortalities and serious injuries between 2014 and 2016 being apportioned to long-finned pilot whales (Hayes *et al.* 2019).

The minimum population estimate for short-finned pilot whales in the western North Atlantic is 23,637 (Hayes *et al.* 2019). Based on the years 2012 through 2016, the short-finned pilot whale PBR level was 236 and the estimated mean annual mortality and serious injury incidental to pelagic longline fishing was 168 short-finned pilot whales (Coefficient of Variation, or CV=0.13; Hayes *et al.*, 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of short-finned pilot whales incidental to the Atlantic pelagic longline fishery is approaching the PBR level (71 percent of the PBR level).

The minimum population estimate for long-finned pilot whales in the western North Atlantic is 3,464 (Hayes *et al.* 2019). Based on the years 2012 through 2016, the long-finned pilot whale PBR level was 35 and the estimated mean annual mortality and serious injury

incidental to pelagic longline fishing was 2.6 long-finned pilot whales (CV=0.34; Hayes *et al.* 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of long-finned pilot whales incidental to the Atlantic pelagic longline fishery is 7.4 percent of the PBR level, which is below the insignificance threshold of 10 percent of the PBR level.

Western North Atlantic Risso's Dolphins

Risso's dolphins occur worldwide in warm temperate and tropical waters, and in the Northwest Atlantic occur from Florida to eastern Newfoundland and in general, in the U.S. Atlantic EEZ, the population occupies the mid-Atlantic continental shelf edge year round, and is rarely seen in the Gulf of Maine (Hayes *et al.* 2019). The minimum population estimate for the western North Atlantic stock of Risso's dolphin is 12,619 (Hayes *et al.*, 2019). Based on the years 2012 through 2016, the Risso's dolphin PBR level for the western North Atlantic stock was 126 and average annual mortality and serious injury incidental to pelagic longline fishing was 9.8 (CV=0.41; Hayes *et al.*, 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of Risso's dolphins incidental to the Atlantic pelagic longline fishery is 7.8 percent of the PBR level, which is below the insignificance threshold of 10 percent of the PBR level.

Removing Long-Finned Pilot Whales and Risso's Dolphins From the PLTRP Scope

At the time the PLTRT was established (70 FR 36120; June 22, 2005) both long-finned and short-finned pilot whales were included in the Plan because the abundance estimate was combined for both species and separate mortality and serious injury estimates incidental to the Atlantic pelagic longline fishery were unknown. However, since the Plan's implementation, abundance estimates for each species have been developed (Waring *et al.*, 2011). Additionally, mortality and serious injury estimates for the two species incidental to the Atlantic pelagic longline fishery have been calculated (Waring *et al.*, 2014). More recent information has revealed that the long-finned pilot whale's mortality and serious injury incidental to the Atlantic pelagic longline fishery (Hayes *et al.* 2019) has been below that stock's insignificance threshold. Therefore, although the initial PLTRP addressed both short-finned and long-

finned pilot whales, NMFS is proposing to remove long-finned pilot whales from consideration under the Plan.

Similarly, the Team originally expanded the scope of the PLTRP to include Risso's dolphins because the estimated mortality and serious injury levels were exceeding the insignificance threshold for the stock (PLTRP, 2006). Since the Plan was implemented in 2009, the level of mortality and serious injury for Risso's dolphins incidental to the Atlantic pelagic longline fishery has been below the stock's insignificance threshold. Therefore, NMFS is proposing to remove Risso's dolphin from consideration under the PLTRP.

Amending the PLTRP

Since implementation of the PLTRP in June 2009, NMFS convened two professionally-facilitated in-person meetings (August 2012 and December 2015) and six webinars/conference calls (September 2010, June 2014, March 2015, September 2016, October 2016, and September 2019) of the PLTRT. During the 2015 in-person meeting of the Team, best available data indicated that the Atlantic pelagic longline fishery had exceeded the insignificance threshold for the incidental takes of short-finned pilot whales since the implementation of the Plan and was expected to continue to exceed the insignificance threshold indicating that the PLTRP had not been effective in meeting the long-term goal of section 118(f)(2) of the MMPA (*i.e.*, to reduce incidental mortalities and serious injuries of short-finned pilot whales to a level approaching the stock's insignificance threshold). As a result, the Team developed a suite of consensus non-regulatory and regulatory recommendations to amend the Plan (PLTRP, 2015; PLTRP, 2016). For more details on these recommended measures, please see the **ADDRESSES** section for where to request the December 2015, September 2016, and October 2016 meeting summaries.

Compliance and Enforcement Monitoring

The PLTRP Monitoring Strategy (NMFS, 2013) is a comprehensive plan that describes the methods for monitoring regulatory compliance and the effectiveness of the PLTRP. Compliance monitoring includes enforcement activities, research, collection of observer data, evaluation of self-reported fishing information, and education and outreach efforts. Effectiveness monitoring examines whether the long-term statutory goals described in the MMPA (*i.e.*, to reduce incidental mortalities and serious

injuries of short-finned pilot whales to a level approaching the stock's insignificance threshold) are being achieved. NMFS intends to update the monitoring strategy to reflect the new regulatory and non-regulatory components of the PLTRP.

Proposed Non-Regulatory Changes to the PLTRP

The non-regulatory changes to the PLTRP recommended by the PLTRT that NMFS proposes to implement include:

1. Convene a safe handling and release work group to develop potential updates to the current safe handling and release protocols for marine mammal interactions in the Atlantic pelagic longline fishery. The work group would include PLTRT members, commercial fishermen, marine mammal health and disentanglement experts, and others with expertise and knowledge related to handling marine mammals and/or pelagic longline fishing practices.

2. Update observer protocols and fishery observer forms to increase information collected from marine mammal interaction and depredation events in the Atlantic pelagic longline fishery.

Proposed Regulatory Changes to the PLTRP

Although not currently exceeding the PBR level, estimated mean annual mortality and serious injury of short-finned pilot whales incidental to the Atlantic pelagic longline fishery remains high at roughly 71 percent of the PBR level (Hayes *et al.* 2019). Consequently, mortality and serious injury of short-finned pilot whales incidental to the Atlantic pelagic longline fishery remains above the insignificance threshold of 10 percent of the PBR level, and the long-term goal of the PLTRP is not being met. Therefore, NMFS proposes to implement the PLTRT's December 2015 and October 2016 consensus recommendations to amend the regulations for the Atlantic pelagic longline fishery. NMFS believes these measures are necessary to remove ineffective regulations and to implement new regulations to reduce mortality and serious injury of the western North Atlantic stock of short-finned pilot whales incidental to the Atlantic pelagic longline fishery. The implementing regulations for the PLTRP are at 50 CFR 229.36, and related definitions are at 50 CFR 229.2.

The regulatory changes recommended by the PLTRT that NMFS proposes to implement include:

1. *Remove the Cape Hatteras Special Research Area, along with the special observer and research participation*

requirements for fishermen operating in that area (50 CFR 229.36(d)).

When the Plan was developed, the area just north of Cape Hatteras, which became the Cape Hatteras Special Research Area (CHSRA), was a "hot-spot" for pilot whale interactions (PLTRT, 2006). Because of this, the Team thought that it was an important area for research on both pilot whale spatial distribution and interactions with the pelagic longline fishery. Based on the Team's recommendations, NMFS created the CHSRA and its special observer and research participation requirements for fishermen operating in that area with the goal of encouraging partnerships between fishermen and researchers in that area. However, NMFS has not used the special observer and research participation requirements to place an observer on a vessel in the CHSRA since the regulations were implemented. Instead, researchers and fishermen have partnered independent of the regulations for research in that area. Thus, the Team recommended that NMFS remove the CHSRA, and the associated special observer and research participation requirement, which also requires vessels to provide at least 48 hours advance notice before fishing with pelagic longline gear in that area, because it is no longer needed (PLTRT, 2015).

2. *Modify the current 20 nm mainline length restrictions at 50 CFR 229.36(e) so that vessels in the EEZ portion of the Mid-Atlantic Bight may set no more than one mainline set in the water at any one time, not to exceed 32 nm (59.26 km). There may be no more than 30 nm (55.56 km) total of active gear (gear with leaders or hooks) deployed along the mainline set. A single length of active gear may not exceed 20 nm (37.04 km) and must be separated from other active gear along the mainline set by a gap without leaders or hooks (i.e., hookless line "interrupt") of at least one nm (1.85 km).*

The 20 nm mainline length restriction in the EEZ portion of the Mid-Atlantic Bight was originally developed because, at the time, data suggested that pilot whale interaction rates were twice as high in pelagic longline sets with total mainline lengths greater than 20 nm than for pelagic longline sets with total mainline lengths less than 20 nm. Operators of individual fishing vessels are allowed to fish multiple mainline sets at one time to "compensate" for the reduction of hooks due to the reduced maximum mainline length of 20 nautical miles (PLTRT, 2006). NMFS initially presumed, based on Team discussions, that there would be minimal compensation by fishing

vessels (less than 50 percent); however, beginning in 2013, fishing vessels in the Mid-Atlantic Bight shifted from setting mostly single mainline sets to also setting sets with multiple mainline (hereinafter also referred to as "multi-sets") (PLTRT, 2015). From 1992 to 2012, multiple mainlines set as part of a multi-set represented 1 percent of all mainlines observed on pelagic longline fishing vessels in the Mid-Atlantic Bight, but increased to 47 percent from 2013 to 2015 (PLTRT, 2015). A multi-set was defined, for analytical purposes, as a pelagic longline set with two mainlines, where the second mainline begins setting 30 minutes or less after the first mainline has finished setting. Analyses showed that the rate of pilot whale interactions were higher in multi-sets compared to single mainline sets and that pelagic longline multi-sets had longer soak durations than a similar length single mainline set (PLTRT, 2015). In light of this information, the Team recommended that NMFS increase the maximum mainline length from 20 nm to 32 nm, but limit vessels to a single mainline set and only 30 nm of active gear (mainline with leaders or hooks attached) in an effort to limit the total length of active gear in the water and reduce soak duration by eliminating the time it takes to set and haul the second mainline associated with multi-sets (PLTRT, 2016). Additionally, the Team recommended a new measure—the hookless line "interrupt"—a gap along the single mainline set of at least 1 nm with no active gear, which the Team believed had the potential to reduce mortalities and serious injuries of marine mammals (PLTRT, 2016).

3. *Implement terminal gear requirements for the EEZ portion of the Florida East Coast, South Atlantic Bight, Mid-Atlantic Bight, and Northeast Coastal fishing areas with the goal of making the hooks the weakest part of the terminal gear. These terminal gear requirements include requirements for circle hooks with a round wire diameter not to exceed 4.05mm if 16/0 and 4.40mm if 18/0 and a straightening force not to exceed 300 lb, and a minimum diameter of 1.8 mm and a breaking strength of at least 300 lb for monofilament leaders and branch lines (i.e., gangions).*

Though not included in the original plan, the Team recommended that NMFS implement terminal gear requirements in order to enable hooks to straighten before leaders break, because interactions with marine mammals are less likely to result in a serious injury when straightened hooks are returned from a hooking event (NMFS, 2014). If the gangions (i.e., leaders and branch

lines) are strong relative to the hook strength during a marine mammal hooking or entanglement, tension could be placed on the line (without the line breaking) to allow the hook to straighten, or the animal could be brought close to the vessel for disentanglement and/or dehooking attempts. Therefore, by limiting wire diameter and the straightening force of hooks, and increasing gangion size and strength, the proposed regulation aims to reduce line breaks and, in the event of lines breaks, increase the likelihood that the hook would straighten beforehand, thereby avoiding serious injury.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule. Specifically, because the intention behind implementing the terminal gear requirements is to ensure that a hook caught on a short-finned pilot whale will straighten before the gangion breaks, NMFS is requesting comments regarding whether the proposed strength for gangions (at least 300 lb, based on manufacturer specifications when new) is sufficient for ensuring that the proposed hooks (with a straightening force not to exceed 300 lb based on manufacturer's specifications when new and a diameter not to exceed 4.05 mm if 16/0 or 4.4 mm if 18/0) will straighten before the gangion breaks. NMFS will consider these comments and the need to make changes in the final rule. Additionally, NMFS will be considering a delayed implementation of the proposed terminal gear requirements. Therefore, NMFS is also requesting comments concerning the length of time necessary for hook manufacturers to produce and supply hooks that meet the new specifications as well as the length of time the industry would need to implement the use of hooks and gangions that meet new specifications in the fishery.

Lastly, the proposed rule defines four fishing areas: Northeast Coast (NEC), Mid-Atlantic Bight (MAB), South Atlantic Bight (SAB), and Florida East Coast (FEC). The proposed definitions are modeled after an existing regulatory definition of the MAB in the Atlantic Highly Migratory Species regulations, 50 CFR 635.2. NMFS is seeking comment on whether it would be helpful to the regulated community to further clarify these definitions in the final rule by providing more specific references to the latitude and longitude coordinates reflected on the charts in the draft Environmental Assessment. NMFS is not proposing changing the geographic areas, but is requesting

comments regarding the clarity of the manner in which the areas are defined as well as the consistency of the definitions.

Classifications

A draft Environmental Assessment has been prepared, analyzing the impacts on the human environment that would result from this action and determining that the action will not have significant environmental impacts upon implementation of the action.

Pursuant to section 307 of the Coastal Zone Management Act, NMFS has determined that this proposed rule is consistent with the enforceable policies of the approved coastal management programs of Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, New Hampshire, Massachusetts, and Maine. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications under Executive Order 13132. The proposed rule would apply in the Exclusive Economic Zone beyond state jurisdiction.

This proposed rule does not contain any new collection-of-information requirements for the purposes of the Paperwork Reduction Act.

This rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This rulemaking would directly apply to commercial fishing businesses (NAICS 11411) that operate vessels that use pelagic longline gear to harvest Atlantic HMS species within four specific areas of the EEZ. Any business with a vessel that uses pelagic longline to harvest tuna or swordfish must have an Atlantic tuna longline permit, a shark (directed or incidental) permit, and a swordfish (directed or incidental) permit.

The number of Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline fishery vessels in the Gulf of Mexico and the Atlantic, with annual landings of HMS is substantially

less than the number of vessels permitted to do so. In 2016, 85 (33.7 percent) of 252 pelagic longline vessels were active, and in 2017, 88 (34.8 percent) of 253 pelagic longline vessels were active. This analysis uses the 2017 figure of 88 active vessels, which can be found in the Regulatory Flexibility Analysis done for Amendment 11 to the 2006 Consolidated Highly Migratory Fishery Management Plan. NMFS estimates that 76 businesses operate the 88 active vessels.

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliated operations, whose primary industry is commercial fishing (see 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. The maximum annual revenue for any pelagic longline vessel between 2006 and 2016 was less than \$1.9 million, well below the \$11 million small business size standard for commercial fishing businesses established by NMFS. Therefore, 76 small commercial fishing businesses operate the 88 pelagic longline fishing vessels that could be directly affected by the rulemaking.

Currently, a pelagic longline fishing vessel cannot fish in the CHSRA if it does not or cannot accommodate an observer assigned under the special observer requirements (50 CFR 229.36(d)). Additionally, fishermen must call NMFS SEFSC at least 48 hours (and no more than 96 hours) prior to embarking on their fishing trip to provide sufficient notice and time to arrange for special observers, who may conduct scientific research aboard the fishing vessel. If upon calling in, the vessel is assigned an observer, it must take the observer during that fishing trip. If the vessel does not take the observer, it is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that trip. The proposed rule removes the CHSRA and its associated special observer and research participation requirements, including the advance notice requirements, which would give the small commercial fishing businesses flexibility to fish in those waters at times more effective for them. Therefore, the removal of the CHSRA is expected to have no adverse, and slightly beneficial, economic impacts on any of the small businesses that operate the 88 pelagic longline fishing vessels.

Operators of Atlantic pelagic longline fishing vessels are currently allowed to deploy sets with multiple mainlines at one time, but each mainline length must not exceed 20 nm (37.04 km) in the EEZ portion of the MAB (50 CFR 229.36(e)). That has allowed pelagic longline fishing vessels to use longer lengths of active gear (leaders and hooks in the water) across sets with multiple mainlines. Consequently, there have been pelagic longline fishing vessels deploying pelagic longline fishing sets with two mainline and more than 20 nm of active gear. The proposed rule would, in the MAB, prohibit pelagic longline sets with more than one mainline in the water at a time. It would also increase both the maximum length of a single mainline set from 20 nm (37.04 km) to 32 nm (59.26 km) and maximum length of active gear from 20 nm (37.04 km) to 30 nm (55.56 km), but require that any active gear in excess of 20 nm (37.04 km) be separated from other active gear by a gap of at least 1 nm with no active gear. The proposed rule is expected to have an adverse impact on 101 reported multiple mainline sets deployed in the MAB by reducing the length of active gear by 4 nm per mainline set (because these mainline sets are currently deployed two at a time and collectively have more than 30 nm of active gear). The combined 404 nm reduction represents a reduction of total active gear in the MAB by 1.4 percent. If there is a one-to-one correspondence between the length of active gear and dockside revenue from HMS harvested by that gear, there would be a corresponding 1.4 percent decrease in dockside revenue annually from HMS harvested within the MAB. When mainline sets and landings from outside the MAB are included, that percentage declines significantly. The proposed rule would also affect 1,200 reported single mainline sets deployed in the MAB by increasing the active gear from 1 nm up to a maximum of 10 nm per mainline set. Those increases would result in an increase in total active gear deployed in the MAB by those 1,200 reported single mainline sets ranging from 180 to 1,800 nm, and those increases represent a range from 0.6 percent to 6.2 percent of total annual active gear deployed in the MAB, and potentially 0.6 percent to 6.2 percent increases in dockside revenue from HMS landed from the pelagic longline sets. When all 1,573 average reported pelagic longline sets in the MAB are combined, the proposed rule would result in a change in the amount of active gear deployed in the MAB by the 88 pelagic longline fishing vessels ranging from a reduction of 0.7 percent

to a gain of 4.8 percent. When pelagic longline sets and active gear deployed outside the MAB by these vessels are included in the total from all areas, these percentages decline significantly.

The proposed rule would implement terminal gear requirements for leaders and hooks designed to make the hook the weakest part of the terminal gear in the EEZ portion of the FEC, MAB, NEC, and SAB areas. Hooks used in these areas would be required to meet the following criteria: To (i) 16/0 or 18/0 circle hooks with hook shanks containing round wire that can be measured with a caliper or other appropriate gauge, with a wire diameter not to exceed 4.05 mm if 16/0 or 4.4 mm if 18/0; and (ii) a straightening force not to exceed 300 lb, based on manufacturer's specifications. The proposed action would affect the small businesses with pelagic longline fishing vessels that presently use hooks in the FEC, MAB, NEC and SAB that do not meet the additional specifications. Currently manufactured hooks that meet the additional specifications include the Mustad 39960D 16/0, Mustad 39988D 16/0, and Eagle-Claw L2048LM 16/0. NMFS assumes that none of the sets deployed in the four areas use hooks that meet the proposed criteria, although 25 percent or more may be a more likely figure. The price of a box or pack of 1,000 of the new hooks is estimated to range from \$450 to \$550 per box and is expected to be, on average, \$20 to \$25 more than a box of 1,000 of the currently used hooks. The average number of hooks per set in each of the four areas (FEC, MAB, NEC, and SAB) is much less than 1,000: 671 (FEC), 622 (MAB), 905 (NEC), and 808 (SAB). Thus, NMFS expects that one box of hooks is sufficient to equip a pelagic longline fishing vessel for its first trip with the new hooks. The combined additional annual cost to 88 pelagic longline fishing vessels would be \$1,760 to \$2,200 (2018 \$) for the first boxes of new hooks. Hooks are lost or damaged during a trip and need replacement. NMFS estimates that the difference in the costs of replacing the new hooks versus replacing the currently used hooks is approximately equivalent to the cost of purchasing a box of the new hooks every sixth to seventh trip, which is \$20 to \$25 (2018 \$) more per sixth or seventh trip. An annual average of 937 trips are made in the combined areas, and NMFS estimates that each of the 88 pelagic longline fishing vessels makes 10 to 11 trips in the areas annually. Hence, the average pelagic longline fishing vessel has to buy an additional two boxes to

replace hooks that are lost or damaged a year. The component of the proposed rule to require hooks meeting new specifications is expected to result in increased annual costs ranging from 0.07 percent to 0.09 percent per vessel.

Currently, pelagic longline fishing vessels that fish in the EEZ portion of the FEC, MAB, NEC and SAB can use monofilament nylon leaders of unspecified diameters, which can result in leaders being the weakest component of active gear. The proposed rule would require the pelagic longline fishing vessels in the EEZ portion of the FEC, MAB, NEC and SAB to use monofilament nylon leaders and/or branch lines that all have a diameter of 1.8 mm or larger (certified by the manufacturer to at least 300 lb test strength when new) in those areas. No other line material could be used, but crimps and chafing gear would be allowed. NMFS expects that almost all to all of the pelagic longline fishing vessels that fish in the four areas use monofilament nylon leaders with diameters and a breaking force of at least 300 lb. Consequently, this component of the proposed rule is expected to have little to no additional economic effects.

In summary, an estimated 88 pelagic longline fishing vessels owned by 76 small businesses would be directly affected by this proposed rule, and they represent approximately 36 percent of the 248 permitted vessels and 214 small businesses in the pelagic longline fleet. The elimination of the CHSRA and associated requirements and the monofilament leader and/or branch line requirement, combined, are expected to have little to no additional economic impacts. The changes to mainline length restrictions would cause a change in the amount of active gear deployed within the MAB ranging from a 0.7 percent decrease to a 4.8 percent increase. Assuming a constant one-to-one correspondence between the length of active gear and dockside revenue, a corresponding change in dockside revenue from HMS harvested from the MAB would range from a 0.7 percent reduction to a 4.8 percent increase. When dockside revenues from HMS harvested from outside the MAB are included, however, the percentages of the net reduction or net gain decline significantly. Implementing the hook requirements could increase the annual hook cost of 88 pelagic longline vessels that fish in the FEC, MAB, NEC, and SAB by \$60 to \$75 per vessel, which represents from 0.07 percent to 0.08 percent of annual trip costs. Combined, the actions are expected to have a net benefit for the affected small businesses.

Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

References

A complete list of all references cited in this proposed rule, along with other supporting documents can be found in the Federal eRulemaking Portal at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0105 and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure; Fisheries; Marine mammals; Pelagic Longline.

Dated: November 23, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.3, revise paragraph (t)(2) and paragraph (u) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(t) * * *

(2) Complies with the requirements specified in § 229.36(d) and (e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Northeast Coastal, South Atlantic Bight, or Florida East Coast fishing areas unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the requirements specified in § 229.36(d).

* * * * *

■ 3. In § 229.36:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (b)(1) through (b)(4);

■ c. Add paragraph (b)(5);

■ d. Revise paragraphs (d) and (e).

The additions and revisions read as follows:

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP

to reduce incidental mortality and serious injury of short-finned pilot whales in the Atlantic pelagic longline fishery off the U.S. East Coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The requirements in this section apply to the owner or operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 of this title and that has onboard pelagic longline gear as defined at § 635.2 of this title in the EEZ (as defined in § 600.10 of this title).

(b) * * *

(1) *Northeast Coastal (NEC)* means the area bounded by straight lines connecting the northeast states' internal waters extending between 71° W long. and 60° W long. and between 35° N lat. and 45° N lat. It also includes the box described by straight lines connecting 65° W long. and 60° W long. and between 45° N lat. and 50° N lat.

(2) *Mid-Atlantic Bight (MAB)* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W long. Between 35° N lat. and 43° N lat.

(3) *South Atlantic Bight (SAB)* means the area bounded by straight lines connecting the south-Atlantic states' internal waters and extending to 71° W long. between 30° N lat. and 35° N lat.

(4) *Florida East Coast (FEC)* means the area bounded by straight lines connecting Florida's internal waters and between 82° W long. and 71° W long. and between 22° N lat. and 30° N lat.

(5) *Active Gear* means mainline in the water with gangions or hooks attached.

* * * * *

(d) *Hook and gangion requirements.* Vessels operating in the EEZ (as defined in § 600.10 of this title) portion of the NEC, MAB, SAB and FEC areas can only possess, use, and deploy hooks and gangions that meet the following specifications:

(1) *Hooks.* The hook shank must be constructed of corrodible round wire stock that can be measured with a caliper or other appropriate gauge and meet the following specifications:

(i) The round wire stock of a 16/0 circle hook must not exceed 4.05 mm (0.159 in) in diameter and straighten with a force not to exceed 300 lb, based on manufacturer specifications when new.

(ii) The round wire stock of a 18/0 circle hook must not exceed 4.40 mm (0.173 in) in diameter and straighten with a force not to exceed 300 lb, based on manufacturer specifications when new.

(2) *Gangions.* Any gangion, as defined at 50 CFR 635.2, must meet all of the following specifications:

(i) Made of monofilament nylon. No other line material (e.g., wire) may be used; however, crimps and chafing gear are allowed.

(ii) Have a diameter of 1.8 mm or larger.

(iii) Have a breaking strength of at least 300 lb, based on manufacturer specifications when new.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the NEC, MAB, SAB, and FEC without meeting the gear requirements specified in this paragraph. For the purpose of this paragraph, transit means non-stop progression through an area without any fishing activity occurring. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

(4) *Exception for research.* No person may possess, use, or deploy hooks other than what is described in this section unless they have a written letter of authorization on board from the Southeast Regional Administrator to conduct scientific or gear research for reducing the bycatch in the pelagic longline fishery. In order to obtain a written letter of authorization, the research must be consistent with the regulations at 50 CFR part 635 and be designed to advance the long-term goal of reducing mortalities and serious injuries of short-finned pilot whales in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate, or reduce the bycatch of other listed, threatened, or protected species in the Atlantic pelagic longline fishery.

(e) *Mainline gear restrictions.* Vessels operating in the EEZ (as defined in § 600.10 of this title) portion of the MAB may not deploy pelagic longline gear unless the gear meets the following mainline specifications:

(1) There can only be one piece of mainline in the water at any time. If the gear breaks or parts after setting, the vessel owner or operator must make every effort to remove the additional portions of the gear as soon as possible.

(2) Mainline length cannot exceed 32 nm.

(3) There can be no more than 30 nm of active gear.

(4) A section of active gear cannot exceed 20 nm.

(5) Between any two parts of active gear, there must be a gap of at least 1 mm.

[FR Doc. 2020-26288 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

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 10, 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 and other forms of information technology.

Comments regarding this information collection received by January 14, 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.

Forest Service

Title: Bid for Advertised Timber.

OMB Control Number: 0596–0066.

Summary of Collection: This information collection is necessary to implement the various statutes, regulations, and policies designed to ensure that: (1) National Forest System timber is sold at not less than appraised value; (2) bidders meet specific criteria when submitting a bid; and (3) anti-trust violations do not occur during the bidding process.

Individuals, large and small businesses, and corporations wishing to purchase timber or forest products from national forests must enter into a timber sale or forest product contract with the Forest Service. Several statutes, regulations, and policies impose requirements on the Government and purchasers involved in the bidding process. The Uniform Commercial Code (UCC), although not binding upon the Federal Government, is a useful tool in determining the rights and liabilities of the contacting parties in the contract formation process.

Need and Use of the Information: Pursuant to the Forest Service Small Business Timber Sale Set-Aside Program, developed in cooperation with the Small Business Administration, Forest Service regulations at Title 36 of the Code of Federal Regulations, § 223.84 require that the Forest Service bid form used by potential timber sale bidders include provisions for small business concerns. The data collected will be used by the agency to ensure that National Forest System timber will be sold at not less than appraised value, that bidders will meet specific criteria when submitting a bid, and that anti-trust violations will not occur during the bidding process.

The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or unlawful bidding practices are occurring and is required to process electronic payments to the purchaser.

Respondents will be bidders on National Forest System timber sales. Forest Service sale officers will mail bid forms to potential bidders, and bidders will return the completed forms, dated and signed, to the Forest Service sale officer.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 1,089.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 68,258.

Title: Disposal of Mineral Materials.

OMB Control Number: 0596–0081.

Summary of Collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses form FS–2800–9, "Contract for the Sale of Mineral Materials" to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and Use of the Information: The collected information enables the Forest Service to document planned operations, to prescribe the terms and conditions the agency deems necessary to protect surface resources, and to affect a binding contract agreement. Forest Service employees will evaluate the collected information to ensure that entities applying to mine mineral materials are financially accountable and will conduct their activities in accordance with the mineral regulations of Title 36, Code of Federal Regulations, Part 228, Subpart C (36 CFR part 228).

If this information is not collected, the Forest Service would be unable to comply with Federal regulations to mine mineral materials, and operations could cause undue damage to surface resources.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,617.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,543.

Title: National Visitor Use Monitoring, and Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Control Number: 0596–0110.

Summary of Collection: The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two of the items the Forest Service must measure are: (1) The

number of visits that occur on the National Forest System lands for recreation and other purposes, and (2) the views and satisfaction levels of recreational visitors to National Forest System lands about the services, facilities, and settings. The Agency receives requests for this kind of information from a variety of organizations, including Congressional staffs, newspapers, magazines, and recreational trade organizations.

Need and Use of the Information: The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) study combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use face-to-face interviewing for collecting information on-site as well as English and Spanish written survey instruments to be mailed back by respondents. The NVUM results and data are a source of data and information in addressing forest land management planning, national strategic planning, service to minorities, and identification of a forest's recreation niche. Conducting the collection less frequently puts information updates out of cycle with forest planning and other data preparations and reporting activities.

Description of Respondents: Individuals or households.

Number of Respondents: 45,000.

Frequency of Responses: Reporting; Quarterly; Annually.

Total Burden Hours: 6,386.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020-27574 Filed 12-14-20; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Bitterroot National Forest; Montana; Gold Butterfly Project Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Bitterroot National Forest, Stevensville Ranger District, Montana, intends to prepare a Supplemental Environmental Impact Statement (SEIS) for the Gold Butterfly

Project. Since publication of the original EIS, it was determined that a project-specific forest plan amendment is necessary.

DATES: The Draft SEIS is expected February 2020 and the Final SEIS is expected May 2020.

FOR FURTHER INFORMATION CONTACT:

Steve Brown, Stevensville District Ranger, by telephone at (406) 777-7410, or by email at steve.brown2@usda.gov.

ADDRESSES: Additional information concerning this project may be obtained at <https://www.fs.usda.gov/project/?project=51486>.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the SEIS is to analyze a project-specific Forest Plan Amendment related to management of old growth. The current Bitterroot Forest Plan is from 1987. New and better science is available concerning old growth ecosystems, specifically "Old Growth Forest Types of the Northern Region" or Green et. al as it is more commonly referred to in the Region. This science has already been adopted by the majority of the Forests within R1, including those who have revised or are currently revising their plans using the 2012 Planning Rule.

The purpose of the Gold Butterfly project is to:

- Improve landscape resilience to disturbances (such as insects, diseases, and fire) by modifying forest structure and composition, and fuels.
- Provide timber products and related jobs.
- Reduce chronic sediment sources in the Willow Creek watershed to improve water quality and bull trout habitat in the long-term.
- Restore or improve key habitats such as meadows, aspen, and whitebark pine.

Proposed Action

The project-specific amendment would change the definition of old growth to be consistent with Green et. al. The amendment would also set aside management area direction related to specific percentages of old growth required to be allocated in each management area. There is no scientific basis for the percentages, and they do not align with the principles outlined in Green et. al.

When proposing a Forest Plan amendment, the 2012 Planning Rule (36 CFR 219), as amended, requires the responsible official to provide in the initial notice about the amendment "which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment (§ 219.13(b)(5)) . . ." Whether a rule provision is likely to be directly related to an amendment is determined by the purpose for and the effects of the amendment, and informed by the best available scientific information, effects analysis, monitoring data or other rationale.

Based on the proposed amendment and requirement of the planning rule, the following substantive requirements of the 36 CFR 219 planning regulations would likely be directly related to the proposed amendments: § 219.9 Diversity of plant and animal communities.

The proposed action includes commercial harvest, non-commercial thinning, and prescribed fire on 7,376 acres within the project area. Approximately 90 percent of treatment acres are within the insect and disease treatment area designated under the Healthy Forest Restoration Act Title VI. Commercial harvest includes regeneration treatments on 2,081 acres and intermediate treatments on 3,540 acres. Approximately 392 acres of intermediate harvest would occur in dry site old growth stands. In addition, there are 359 acres of regeneration harvest in old growth that would remove these acres from old growth status. Road decommissioning would occur on 22.3 miles of National Forest System Roads and 21.3 miles of roads would be stored for future management use. Approximately 6.4 miles of permanent road and 17.3 miles of temporary road would be constructed to implement silvicultural prescriptions and provide for wood removal. Best management practices would be implemented on 32.4 miles of haul road to reduce potential sediment runoff and improve water quality. The Burnt Fork and Willow Creek trailheads are proposed to be moved lower in the drainages to address watershed concerns, with the associated 2.4 miles of road being converted to the NFS trail system.

Responsible Official

Bitterroot National Forest Supervisor.

Nature of Decision To Be Made

The decision will authorize vegetation treatments and whether to amend the

Bitterroot Forest Plan site-specifically for the duration of the project.

Christine Dawe,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020-27546 Filed 12-14-20; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Funding Availability, Loan Application Procedures, and Deadlines for the Rural Energy Savings Program (RESP)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), is soliciting Letters of intent for loan applications under the Rural Energy Savings Program (RESP), announcing the application process for those loans and deadlines for applications from eligible entities for funding in fiscal year (FY) 2021, until expended or further notice.

DATES: To be considered for this funding, applications under this NOSA will be accepted immediately. The RESP application process is described in detail pursuant to 7 CFR 1719. In brief, the RESP is comprised of two steps:

Step 1: To be considered for financing, an Applicant seeking financing must submit a Letter of intent, in an electronic portable display format (PDF) not to exceed 10 Megabytes (10 MB) by electronic mail (email) to *RESP@USDA.GOV*. No paper Letters of intent will be accepted. The Letters of intent will be queued as they are received. If it advances program and policy goals, RUS may consider loan applications from Eligible entities that have submitted Letters of intent under prior funding announcements but were not invited to proceed with a loan application.

Step 2: A RESP applicant that has been invited in writing by RUS to proceed with the loan application, will have up to ninety (90) days to complete and submit to RUS the documentation for a complete loan application. The ninety (90) day timeframe will begin on the date the RESP applicant receives RUS' invitation to proceed. If the deadline to submit the completed loan application falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day. The loan application package must be marked

with the subject line "Attention: Christopher McLean, Assistant Administrator for the Electric Program; RESP Loan Application."

FOR FURTHER INFORMATION CONTACT:

Robert Coates, Electric Program, Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, STOP 1568, Room 4121 0257-S, Washington, DC 20250-1510; Telephone: (202) 260-5415; Email: *Robert.Coates@usda.gov*.

SUPPLEMENTARY INFORMATION: Authority:

These loans are made available under the authority of 7 U.S.C. 8107a (Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended,) and the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*

General Information

The purpose of the RESP is to help rural families and small businesses achieve cost savings by providing loans to qualified consumers through eligible entities to implement durable cost-effective energy efficiency measures pursuant to 7 U.S.C. 8107a(a) of the RESP authorizing statute. The Secretary may use this funding to allow eligible entities to offer energy efficiency loans to customers in any part of their service territory in accordance to § 7 CFR part 1719. The Administrator may approve loans proposing to include these eligible activities for entities currently in the queue provided they still meet all of the application requirements. Additionally, subject to appropriations, funding for projects may be used to replace manufactured housing units with another manufactured housing unit if the replacement would be more cost effective in saving energy.

The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America, see <https://www.usda.gov/topics/rural/rural-prosperity>. Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Key strategies include: Achieving e-Connectivity for rural America, developing the rural economy, harnessing technological innovation, supporting a rural workforce, and improving quality of life.

Application and Submission Information

Application Requirements: All requirements for submission of an

application under the RESP are subject to 7 CFR part 1719.

Application Materials/Submission: The Letter of intent must be submitted by the Applicant in an electronic PDF format not to exceed 10 Megabytes (10 MB) by electronic mail (email) to *RESP@USDA.GOV*. No paper letters of intent will be accepted. The completed loan application package must be submitted following the instructions that will be outlined in the RUS Invitation to proceed to the RESP Applicant. The loan application package must be marked with the subject line "Attention: Christopher McLean, Assistant Administrator for the Electric Program; RESP Loan Application."

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), OMB approved this information collection under OMB Control Number 0572-0151. This NOSA contains no new reporting or recordkeeping burdens under OMB control number 0572-0151 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

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info@ascr.usda.gov or calling (866) 632-9992 to request the form.

A letter may also be written containing all of the information requested in the form. Send the completed complaint form or letter by mail to the U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410, or email at program.intake@usda.gov. Additional information can be found online at <https://www.ascr.usda.gov/filing-programdiscrimination-complaint-usdacustomer>.

USDA is an equal opportunity provider, employer, and lender.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020-27576 Filed 12-14-20; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

Request for Comments for the Advisory Committee on Data for Evidence Building

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) requires federal agencies to modernize their data management practices to develop and support evidence-based policymaking. The Act requires the Director of the Office of Management and Budget (OMB), or the head of an agency designated by the Director, to establish the Advisory Committee on Data for Evidence Building (Advisory Committee). In a letter dated September 3, 2019, OMB delegated managerial and administrative responsibility for this Federal advisory committee to the Department of Commerce Office of Under Secretary for Economic Affairs (OUSEA).

DATES: Comments must be received by Tuesday, February 9, 2021.

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

- *Federal eRulemaking Portal:* www.regulations.gov.
- By email directly to Evidence@bea.gov. Include the Docket ID; begin with the phrase "Comments for the Advisory Committee on Data for Evidence Building;" and indicate which numbered questions described in the **SUPPLEMENTARY INFORMATION** of this notice your comments address.

Comments by fax or paper delivery will not be accepted.

Privacy Note: Comments submitted in response to this notice may be made available to the public through relevant websites. Therefore, commenters should only include information they wish to make publicly available on the internet. Do not submit confidential business information or otherwise sensitive or protected information.

Please note the confidentiality of routine communication and responses to this public comment request are treated as public comments and may therefore be made publicly available, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT:

Lucas Hitt, Designated Federal Official, Advisory Committee on Data for Evidence Building, 4600 Silver Hill Road, Washington, DC 20233 by email Lucas.Hitt@bea.gov or by phone (301) 278-9223.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Advisory Committee will review, analyze, and make recommendations on how to promote the use of data for evidence building. The Advisory Committee will evaluate and provide recommendations to the Director of the Office of Management and Budget on how to facilitate data sharing, data linkage, and privacy enhancing techniques in support of evidence building. As part of its evaluation, the Advisory Committee may consider best practices to improve the safe and appropriate access to data. The Advisory Committee will consider the coordination of data sharing and availability of data for evidence building across all agencies and levels of government. The FRN commenters may respond to any question and do not need to respond to all questions.

This request for comments offers researchers, evaluators, contractors, government entities, and other interested parties the opportunity to inform the Committee's work. This is a general solicitation of comments from the public. The Advisory Committee will consider all feedback and recommendations on core topics and central issues such as:

- Capacity needs for secure data access and record linkage
- Areas for research and development on state-of-the-art data access and data protection methods
- How to protect privacy when using personally identifiable information or confidential business information in support of evidence building

- How to promote transparency and facilitate public engagement with the evidence building process
- Agency needs for data management and data stewardship services
- How to best facilitate the needs of researchers, evaluators, and other evidence builders through a national data service or similar approach

Please clearly indicate which question(s) you address in your response and any evidence to support assertions, where practicable.

Round 1

Central Questions—

1. What are the main challenges faced by national, state/provincial, or local governments that are trying to build a basis for evidence-based policy? Briefly describe the bottlenecks and pain-points they face in the evidence-based decision-making process.

2. What are examples of high-impact data uses for evidence-based policy making that successfully effected change, reduced costs, or improved the welfare of citizens?

3. Which frameworks, policies, practices, or methods show promise in overcoming challenges experienced by governments in their evidence building?

4. The Commission on Evidence-Based Policymaking (See: www.cep.gov) recommended the creation of a National Secure Data Service (See Commission Report at www.cep.gov). Do you agree with this recommendation, and if so, what should be the essential features of a National Secure Data Service?

5. How can federal agencies protect individual and organizational privacy when using data for evidence building? Recommend specific actions the Office of Management and Budget and/or other federal agencies can take when using data for evidence building, as well as suggested changes to federal laws, policies, and procedures.

Secure Data Access—

6. If created, how should a data service be structured to best facilitate (1) research and development of secure data access and confidentiality technologies and methods, (2) and agency adoption of those technologies and techniques?

7. Government agencies have argued that secure data access has value because it (1) improves service delivery, (2) improves efficiency (lowers costs), (3) produces metrics for performance measurement, and (4) produces new learnings/insights from the data. Which of these propositions do you agree holds value and why? Do you have examples that demonstrate these benefits? Do you

have other examples of the value of secure data access?

Data Services to Federal, State, Local Agencies and the Public—

8. What are the most pressing data needs of state and local decision makers and how would making data accessible from federal agencies help meet those needs? To share data, what guarantees do data owners (or data controllers) need regarding privacy, data stewardship, and retention?

9. What are the key problems and use cases where collaborative work between federal, state, and local authorities' data analysis can inform decisions? What are key decision support tools? How would greater communication about data and tools benefit expanded evidence building?

Infrastructure for Meeting Public and Evidence Building Needs—

10. What basic public data services are essential for a data service to address existing capacity gaps and needs? What infrastructure or incentives can the federal government create that locals and states cannot?

Dated: December 9, 2020.

Gianna Marrone,

*Assistant Designated Federal Official,
Advisory Committee on Data for Evidence
Building.*

[FR Doc. 2020-27489 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-MN-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-54-2020]

Foreign-Trade Zone (FTZ) 136— Brevard County, Florida; Authorization of Production Activity; Airbus OneWeb Satellites North America LLC (Satellites and Satellite Systems); Merritt Island, Florida

On August 12, 2020, Airbus OneWeb Satellites North America LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 136, in Merritt Island, Florida.

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 51010-51011, August 19, 2020). On December 10, 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 10, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020-27550 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-816]

Oil Country Tubular Goods From the Republic of Turkey: Rescission of Antidumping Duty Administrative Review; 2019-2020

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) covering the period of review (POR) September 1, 2019, through August 31, 2020, based on the timely withdrawal of the request for review.

DATES: Applicable December 15, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Williams, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5166.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2020, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on OCTG from Turkey for the POR September 1, 2019, through August 31, 2020.¹ On September 30, 2020, the petitioners² timely requested an administrative review of the antidumping duty order with respect to seven exporters/producers.³ Commerce received no other requests for an administrative review of the antidumping duty order.

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 54349 (September 1, 2020).

² The petitioners are the United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc.

³ See Petitioners' Letter, "Oil Country Tubular Goods from Turkey: Request for Administrative Review of Antidumping Duty Order," dated September 30, 2020.

On October 30, 2020, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on OCTG from Turkey with respect to the seven companies listed in the petitioners' request for review.⁴ On November 25, 2020, the petitioners timely withdrew their administrative review request for all of the following seven companies for which a review was requested: APL Apollo Tubes Ltd., BAUER Casings Makina San. ve Tic. Ltd. Binayak Hi Tech Engineering Ltd., Goktas Yassi Hadde Mamulleri San. ve Tic. A.S., ISMT Limited, Noksel Celik Boru Sanayi. A.S., and TPAO (Turkiye Petrolleri Anonim Ortakligi).⁵

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners timely withdrew their request for review within 90 days of the publication date of the *Initiation Notice*. No other parties requested an administrative review of the antidumping duty order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the antidumping order on OCTG from Turkey for the period September 1, 2019, through August 31, 2020, in its entirety.

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries of OCTG from Turkey during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 68840 (October 30, 2020) (*Initiation Notice*).

⁵ See Petitioners' Letter, "Oil Country Tubular Goods from Turkey: Withdrawal of Request for Administrative Review," dated November 25, 2020.

of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 10, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020-27557 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet on Wednesday, February 3, 2021, from 10:00 a.m. to 5:00 p.m. Eastern Time.

DATES: The VCAT will meet on Wednesday, February 3, 2021, from 10:00 a.m. to 5:00 p.m. Eastern Time.

ADDRESSES: The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060,

Gaithersburg, Maryland 20899-1060, telephone number 301-975-2667. Ms. Shaw's email address is stephanie.shaw@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the VCAT will meet on Wednesday, February 3, 2021, from 10:00 a.m. to 5:00 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs and issues that the VCAT has been following including facilities, research efforts in key emerging technologies, and technology transfer. The Committee also will present its initial observations, findings, and recommendations for the 2020 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at <http://www.nist.gov/director/vcat/agenda.cfm>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but, is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST website at <http://www.nist.gov/director/vcat/agenda.cfm>. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend via webinar are invited to submit written statements to Stephanie Shaw at stephanie.shaw@nist.gov.

All participants will be attending via webinar and must contact Ms. Shaw at stephanie.shaw@nist.gov by 5:00 p.m. Eastern Time, Wednesday, January 27, 2021 for detailed instructions on how to join the webinar.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2020-27472 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Tuesday, February 23, 2021.

DATES: The meeting will be held Tuesday, February 23, 2021 from 1 p.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be a virtual meeting via webinar.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, telephone number 301-975-2785; email: cheryl.gendron@nist.gov.

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110-69), as amended by the American Innovation and Competitiveness Act, Public Law 114-329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at <http://www.nist.gov/mep>.

www.nist.gov/mep/about/advisory-board.cfm.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Tuesday, February 23, 2021, from 1 p.m. to 5 p.m. Eastern Standard Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the MEP Advisory Board website at <http://www.nist.gov/mep/about/advisory-board.cfm>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board’s business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than three to five minutes each. Requests must be submitted by email to cheryl.gendron@nist.gov and must be received by February 16, 2021 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at <http://www.nist.gov/mep/about/advisory-board.cfm>.

www.nist.gov/mep/about/advisory-board.cfm. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the meeting are invited to submit written statements electronically by email to cheryl.gendron@nist.gov.

Admittance Instructions: All participants will be attending via webinar. Please contact Ms. Gendron at 301–975–2785 or cheryl.gendron@nist.gov for detailed instructions on how to join the webinar. All requests must be received by 5 p.m. Eastern Standard Time, Friday, February 19, 2021.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2020–27471 Filed 12–14–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA719]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; issuance of scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued a scientific research permit (Permit 18761–2R) to the University of California, Santa Cruz, under the Endangered Species Act (ESA). The research is intended to increase knowledge of black abalone listed under the ESA and to help guide management and conservation efforts.

ADDRESSES: Because all West Coast NMFS offices are currently closed, the permit and related documents are only available for review upon written request via email to nmfs.wcr-apps@noaa.gov (please include the permit number in the subject line of the email).

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (phone: 503–231–2314, fax: 503–230–5441, email: Robert.Clapp@noaa.gov).

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** on July 17, 2020, that a request for a permit renewal had been submitted by the University of California, Santa Cruz (UCSC). To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to www.federalregister.gov and search on the permit number and **Federal Register** notice information provided in the table below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous Federal Register notice	Issuance date
18761–2R ..	0648–XA286	University of California, Santa Cruz—Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA 95060 (Responsible Party: Peter Raimondi).	85 FR 43540; July 17, 2020 ..	November 12, 2020.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on finding that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage

of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Dated: December 10, 2020.

Angela Somma,
Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–27577 Filed 12–14–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA682]

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; correction.

SUMMARY: NMFS announces that the date for the Atlantic Shark Identification

workshop originally scheduled for November 12, 2020, in Largo, FL, has been changed. The new date is January 7, 2021. The workshop time and location remain unchanged: 12 p.m. to 4 p.m. on January 7, 2021, in Largo, FL. Atlantic Shark Identification workshops are mandatory for Atlantic shark dealers. Additional free workshops will be conducted during 2021.

DATES: The date for the Atlantic Shark Identification workshop originally scheduled for Largo, FL, on November 12, 2020, is changed to January 7, 2021. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The address of the Atlantic Shark Identification workshop to be held in Largo, FL, remains unchanged. See **SUPPLEMENTARY INFORMATION** for further details.

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 workshops are posted online at: <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops>.

Correction

In the **Federal Register** of August 24, 2020, in FR Doc. 2020-18520, on page 52094, in the third column, correct the date of the second Atlantic Shark Identification workshop listed under the heading “Workshop Dates, Times, and Locations” to read:

“2. January 7, 2021, 12 p.m.–4 p.m., Hampton Inn, 100 East Bay Drive, Largo, FL 33770.”

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. 2020-27501 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA690]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the South Quay Wall Recapitalization Project, Mayport, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the change being a modification to the effective dates. The initial IHA authorizes take of one species of marine mammal, by Level B harassment only, incidental to pile driving associated with the South Quay Wall Recapitalization Project, Naval Station Mayport, Florida. The project has been delayed and none of the work covered in the current IHA has been conducted. The Navy has requested the IHA be re-issued with the following effective dates: January 1, 2021, through December 31, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. Therefore, NMFS re-issued the IHA.

DATES: The authorization is effective from January 1, 2021, through December 31, 2021.

ADDRESSES: An electronic copy of the original and re-issued IHAs, the Navy’s application, and the **Federal Register** notices proposing and issuing the previous and new IHAs may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-south-quay-wall-recapitalization-project-naval-station-mayport>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA); 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On July 26, 2019, NMFS issued an IHA authorizing take of marine mammals incidental to the Navy’s South Quay Wall Recapitalization Project, Mayport, Florida (84 FR 37841; August 2, 2019). The effective dates of that IHA were February 15, 2020 through February 14, 2021. On December 2, 2019, the Navy notified us that the project was delayed and requested we reissue the IHA with effective dates of July 1, 2020 through June 30, 2021, which we did on February 18, 2020 (85 FR 10153, February 21, 2020). However, on September 25, 2020, the Navy indicated the project was further delayed and none of the work considered under the original IHA has occurred; thus, they requested the IHA be re-issued again with new effective dates. The effective dates of this third IHA do not extend beyond one year from the effective dates of the initial IHA. The new effective dates are January 1, 2021 through December 31, 2021. NMFS has issued a new IHA with modified effective dates.

Summary of Specified Activity and Anticipated Impacts

The purpose of the Navy's construction project is to support the existing bulkhead wall that has been weakened by the formation of voids within the wall, by constructing a new bulkhead immediately seaward of the existing bulkhead. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous IHAs. The authorized incidental take and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHAs. The mitigation, monitoring and reporting measures are also identical to those prescribed in the previous IHAs.

The only species of marine mammal expected to be taken by the planned activity is the bottlenose dolphin (*Tursiops truncatus*). The data inputs and methods of estimating take are identical to those used in the initial IHA. As such, the manner and amount of authorized take in the reissued IHA is identical to that in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our initial analysis of impacts or take estimate under the previous IHAs.

We refer to the documents related to the previously issued IHAs, which include the **Federal Register** notice of the issuance of the initial IHA for the Navy's construction work (84 FR 37841, August 2, 2019), the Navy's application, the **Federal Register** notice of the proposed IHA (84 FR 23024, May 21, 2019), the **Federal Register** notice of issuance of the second IHA (85 FR 10153, February 21, 2020), and all associated references and documents.

Determinations

The Navy will conduct activities that have impacts equal to those analyzed in the previous IHAs. As described above, the number of authorized takes of the same species and stocks of marine mammals is identical to the number that we found met the small numbers standard for issuance of the initial and subsequent IHAs. There are no changes to the status of the stock or the conditions under which the taking would occur. Further, the re-issued IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA. For the initial and subsequent IHAs, NMFS found the authorized take would result in a negligible impact to the affected stocks

of bottlenose dolphins. No new information has emerged that would suggest we should change our analysis or findings.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHA are effective dates, the CE on record for issuance of the initial IHA applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed species is anticipated or authorized in the IHA as none occur in the action area. Therefore, NMFS has determined that

formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for in-water construction activities associated with the specified activity effective January 1, 2021, through December 31, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial and second IHA are incorporated.

Dated: December 9, 2020.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2020-27503 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA668]

Pacific Island Pelagic Fisheries; False Killer Whale Take Reduction Plan; New Trigger Value for Southern Exclusion Zone Closure

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

ACTION: Notice.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972 and the False Killer Whale Take Reduction Plan, NMFS is publishing a new trigger value for the Southern Exclusion Zone closure. The new trigger is four observed mortality or serious injuries of false killer whales incidental to the deep-set longline fishery within the U.S. Exclusive Economic Zone.

FOR FURTHER INFORMATION CONTACT: Diana Kramer, NMFS Pacific Islands Region, (808) 725-5167, Diana.Kramer@noaa.gov; or Kristy Long, NMFS Office of Protected Resources, (301) 427-8402, Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

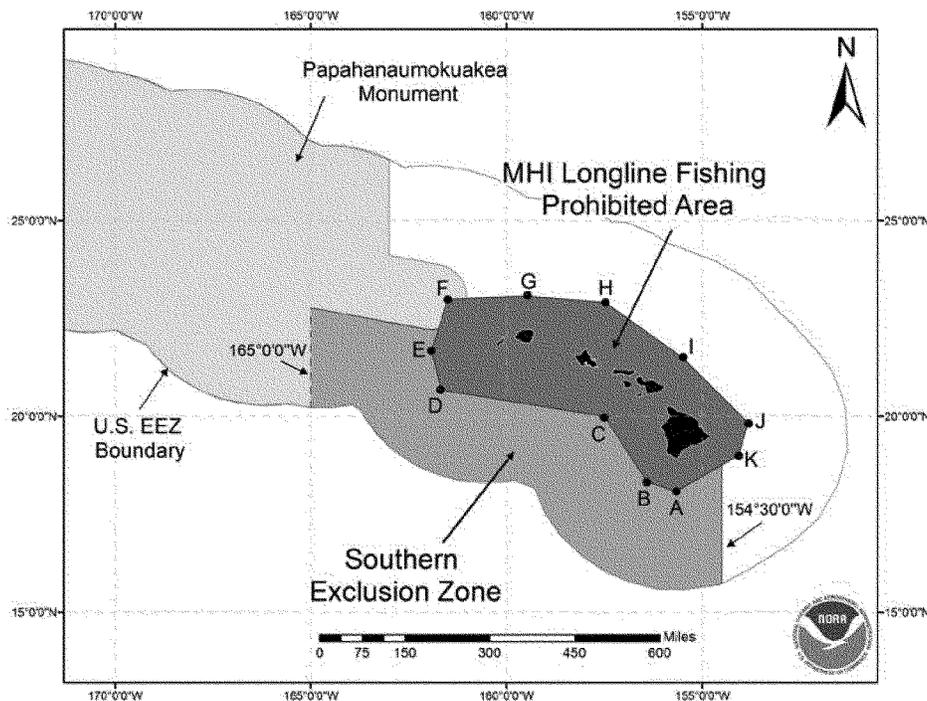
Background

The False Killer Whale Take Reduction Plan (Plan) was implemented on December 31, 2012, pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of incidental mortality and serious injury (M/SI) of the Hawaii pelagic and Hawaii insular stocks of false killer whales in the Hawaii longline fisheries (77 FR 71260; November 29, 2012). The Plan, based on consensus recommendations from the False Killer

Whale Take Reduction Team, was implemented by regulations, which created the Southern Exclusion Zone (SEZ) (50 CFR 229.37(d)(2)) that would be closed to deep-set longline fishing if a certain number (trigger) of false killer whale M/SI were observed in the deep-set fishery in the U.S. Exclusive Economic Zone (EEZ). As described in the Plan regulations, the SEZ is bounded on the east at 154°30' W longitude, on the west at 165° W longitude, on the north by the boundaries of the Main Hawaiian Islands Longline Fishing Prohibited

Area and Papahānaumokuākea Marine National Monument, and on the south by the EEZ boundary (see Figure 1). The regulations at 50 CFR 229.37(e)(2) define the trigger as the larger of either of these two values: (i) Two observed M/SI of false killer whales within the EEZ around Hawaii, or (ii) the smallest number of observed false killer whale M/SI that, when extrapolated based on the percentage observer coverage in the deep-set longline fishery for that year, exceeds the Hawaii Pelagic false killer whale stock's potential biological removal (PBR). NMFS established the

trigger value for the first year of the Plan's implementation as two observed false killer whale M/SI by the deep-set longline fishery within the U.S. EEZ around Hawaii (77 FR 71259, November 29, 2012), based on the potential PBR of 9.1 for the Hawaii pelagic stock of false killer whales, as calculated in the draft 2012 Stock Assessment Report (SAR) (Carretta et al., 2012a). The Plan specifies the trigger value (two) will remain valid until NMFS publishes a new trigger value in the **Federal Register** (50 CFR 229.37(e)(1)).



In June 2020, NMFS published NOAA Administrative Report H-20-06, "Oleson, E.M. 2020. Abundance, potential biological removal, and bycatch estimates for the Hawaii pelagic stock of false killer whales for 2015–2019." This report provided updated abundance information for the Hawaii pelagic stock of false killer whales and is considered the best scientific information available on the stock's abundance and resulting PBR. The abundance estimate for the Hawaii pelagic stock of false killer whales presented in this report is 2,086 (CV = 0.35) individuals in the Hawaii EEZ. The minimum population abundance (N_{min}), used for calculating PBR, is 1,567 animals. The PBR for this stock within the EEZ is calculated to be 16 pelagic false killer whales.

Based on the updated PBR of 16 whales for the Hawaii pelagic stock of

false killer whales, and the 2020 expected observer coverage (20 percent), the trigger value (ii) is calculated as four whales. Trigger value (ii) (four whales) is larger than value (i) (two whales), therefore, NMFS sets the trigger value for SEZ closure at four observed false killer whale M/SI in the deep-set longline fishery in the EEZ around Hawaii.

Information on the False Killer Whale Take Reduction Plan is available on the internet at the following address: <https://www.fisheries.noaa.gov/pacific-islands/marine-mammal-protection/pacific-islands-region-false-killer-whale-take-reduction-team>. NOAA Administrative Report H-20-06 is available on the internet at the following address: <https://doi.org/10.25923/wmg3-ps37>. Copies of reference materials may also be obtained from the NMFS Pacific Islands Regional Office, Protected

Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

This notice serves as a notification to fishermen, the fishing industry, and the general public that the SEZ closure trigger value is four observed false killer whale M/SI in the deep-set longline fishery in the EEZ around Hawaii.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: December 10, 2020.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

[FR Doc. 2020-27548 Filed 12-14-20; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE**Renewal of Department of Defense Federal Advisory Committee**

AGENCY: Department of Defense (DoD).
ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Department of Defense Wage Committee (“the Committee”).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-692-5952.

SUPPLEMENTARY INFORMATION: Based on its decision to renew the Committee, the DoD is filing a new Committee charter in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., App) and 41 CFR 102-3.50(c). The charter and contact information for the Committee’s Designated Federal Officer (DFO) are found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The Committee provides independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas. The Committee, as directed by 5 CFR 532.209, 532.227 and the Office of Personnel Management Operation Manual, Federal Wage System, Appropriated and Non-Appropriated Funds, S3-2 Agency Level, provides the Secretary of Defense or the Deputy Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), independent advice and recommendations on all matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund wage areas of blue-collar employees within the DoD.

a. The Committee considers and makes recommendations to the DoD on any matter involved in developing specifications for a wage survey on which the DoD proposes not to accept the recommendations of a local wage survey committee and any matters on which a minority report has been filed;

b. Upon completion of a wage survey, the Committee considers the survey data, the local wage survey committee’s report and recommendations, and the statistical analyses and proposed pay schedules derived from them, as well as any other data or recommendations pertinent to the survey, and recommends wage schedules to the pay-fixing authority; and

c. A majority of the Committee constitutes a decision and recommendation of the Committee, but a member of the minority may file a report with the Committee’s recommendations. The Committee, pursuant to 5 CFR 532.227, is composed of five members, a chair and four additional members. One member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the DoD. The other two members will have management backgrounds. Committee members who are not full-time or permanent part-time Federal civilian officer or employees, or active duty members of the Uniformed Services will be appointed as an expert or consultant, pursuant to 5 U.S.C. 3109, to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services will be appointed pursuant to 41 CFR 102-3.130(a), to serve as regular government employee (RGE) members. Those who are not full-time or permanent part-time Federal officers or employees and are selected for the purpose of obtaining the point of view or perspective of an outside interest group or stakeholder interest must be appointed pursuant to 41 CFR 102-3.130(a), to serve as representative members.

SGE and RGE members of the Committee are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Committee membership about the Committee’s mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee. All written statements shall be submitted to the DFO for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: December 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020-27587 Filed 12-14-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Revised Non-Foreign Overseas Per Diem Rates**

AGENCY: Defense Human Resources Activity, Department of Defense.

ACTION: Notice of revised per diem rates in non-foreign areas outside the Continental U.S.

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 315. Bulletin Number 315 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States. The Fiscal Year (FY) 2021 lodging rate review did not result in lodging rate changes in any locations.

DATES: The updated rates take effect January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie L. Wells, 571-372-1322.

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2021 lodging rate review for Hawaii, Midway Islands, and Wake Island did not result in lodging rate changes in any locations. Bulletin Number 315 is published in the **Federal Register** to ensure that Government travelers outside the Department of Defense are notified of revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office’s Per Diem Rate Review Frequently Asked Questions (FAQ) page at <https://www.defensetravel.dod.mil/site/faqraterrev.cfm>.

Dated: December 10, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	175	113	288	10/01/2020
ALASKA	ADAK	01/01	12/31	175	117	292	10/01/2020
ALASKA	ANCHORAGE [INCL NAV RES]	01/01	12/31	229	125	354	10/01/2020
ALASKA	BARROW	05/15	09/14	326	129	455	10/01/2020
ALASKA	BARROW	09/15	05/14	252	129	381	10/01/2020
ALASKA	BARTER ISLAND LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	BETHEL	01/01	12/31	219	101	320	10/01/2020
ALASKA	BETTLES	01/01	12/31	175	113	*288	10/01/2020
ALASKA	CAPE LISBURNE LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	CAPE NEWENHAM LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	CAPE ROMANZOF LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	CLEAR AB	01/01	12/31	175	113	288	10/01/2020
ALASKA	COLD BAY	01/01	12/31	175	113	288	10/01/2020
ALASKA	COLD BAY LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	COLDFOOT	01/01	12/31	219	93	312	10/01/2020
ALASKA	COPPER CENTER	01/01	12/31	175	115	290	10/01/2020
ALASKA	CORDOVA	03/01	10/31	175	106	281	10/01/2020
ALASKA	CORDOVA	11/01	02/28	150	106	256	10/01/2020
ALASKA	CRAIG	05/01	09/30	139	94	233	10/01/2020
ALASKA	CRAIG	10/01	04/30	109	94	203	10/01/2020
ALASKA	DEADHORSE	01/01	12/31	120	113	*233	10/01/2020
ALASKA	DELTA JUNCTION	01/01	12/31	175	101	276	10/01/2020
ALASKA	DENALI NATIONAL PARK	06/01	09/30	164	98	258	10/01/2020
ALASKA	DENALI NATIONAL PARK	10/01	05/31	114	98	188	10/01/2020
ALASKA	DILLINGHAM	07/01	08/31	320	113	433	10/01/2020
ALASKA	DILLINGHAM	09/01	06/30	298	113	411	10/01/2020
ALASKA	DUTCH HARBOR-UNALASKA	01/01	12/31	175	129	304	10/01/2020
ALASKA	EARECKSON AIR STATION	01/01	12/31	146	74	220	10/01/2020
ALASKA	EIELSON AFB	05/01	09/15	154	100	254	10/01/2020
ALASKA	EIELSON AFB	09/16	04/30	79	100	179	10/01/2020
ALASKA	ELFIN COVE	01/01	12/31	175	113	288	10/01/2020
ALASKA	ELMENDORF AFB	01/01	12/31	229	125	354	10/01/2020
ALASKA	FAIRBANKS	05/01	09/15	154	100	254	10/01/2020
ALASKA	FAIRBANKS	09/16	04/30	79	100	179	10/01/2020
ALASKA	FORT YUKON LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	FT. GREELY	01/01	12/31	175	101	276	10/01/2020
ALASKA	FT. RICHARDSON	01/01	12/31	229	125	354	10/01/2020
ALASKA	FT. WAINWRIGHT	05/01	09/15	154	100	254	10/01/2020
ALASKA	FT. WAINWRIGHT	09/16	04/30	79	100	179	10/01/2020
ALASKA	GAMBELL	01/01	12/31	175	113	288	10/01/2020
ALASKA	GLENNALLEN	01/01	12/31	175	115	290	10/01/2020
ALASKA	HAINES	01/01	12/31	149	113	262	10/01/2020
ALASKA	HEALY	06/01	09/30	164	98	262	10/01/2020
ALASKA	HEALY	10/01	05/31	114	98	212	10/01/2020
ALASKA	HOMER	05/01	09/30	189	124	313	10/01/2020
ALASKA	HOMER	10/01	04/30	104	124	228	10/01/2020
ALASKA	JB ELMENDORF-RICHARDSON	01/01	12/31	229	125	354	10/01/2020
ALASKA	JUNEAU	02/01	09/30	249	118	367	10/01/2020
ALASKA	JUNEAU	10/01	01/31	175	118	293	10/01/2020
ALASKA	KAKTOVIK	01/01	12/31	175	129	*304	10/01/2020
ALASKA	KAVIK CAMP	01/01	12/31	175	113	*288	10/01/2020
ALASKA	KENAI-SOLDOTNA	05/01	09/30	151	113	264	10/01/2020
ALASKA	KENAI-SOLDOTNA	10/01	04/30	99	113	212	10/01/2020
ALASKA	KENNICOTT	01/01	12/31	175	85	260	10/01/2020
ALASKA	KETCHIKAN	04/01	09/30	250	118	368	10/01/2020
ALASKA	KETCHIKAN	10/01	03/31	140	118	258	10/01/2020
ALASKA	KING SALMON	01/01	12/31	175	89	264	10/01/2020
ALASKA	KING SALMON LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	KLAWOCK	05/01	09/30	139	94	233	10/01/2020
ALASKA	KLAWOCK	10/01	04/30	109	94	203	10/01/2020
ALASKA	KODIAK	04/01	09/30	207	109	316	10/01/2020
ALASKA	KODIAK	10/01	03/31	123	109	232	10/01/2020
ALASKA	KOTZEBUE	01/01	12/31	175	121	296	10/01/2020
ALASKA	KULIS AGS	01/01	12/31	229	125	354	10/01/2020
ALASKA	MCCARTHY	01/01	12/31	175	85	260	10/01/2020
ALASKA	MCGRATH	01/01	12/31	175	113	*288	10/01/2020
ALASKA	MURPHY DOME	05/01	09/15	154	100	254	10/01/2020
ALASKA	MURPHY DOME	09/16	04/30	79	100	179	10/01/2020
ALASKA	NOME	01/01	12/31	200	118	318	10/01/2020
ALASKA	NOSC ANCHORAGE	01/01	12/31	229	125	354	10/01/2020
ALASKA	NUIQSUT	01/01	12/31	175	113	*288	10/01/2020
ALASKA	OLIKTOK LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	PALMER	01/01	12/31	175	117	292	10/01/2020
ALASKA	PETERSBURG	01/01	12/31	130	108	238	10/01/2020
ALASKA	POINT BARROW LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	POINT HOPE	01/01	12/31	175	113	*288	10/01/2020
ALASKA	POINT LONELY LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	PORT ALEXANDER	01/01	12/31	175	113	*288	10/01/2020
ALASKA	PORT ALSWORTH	01/01	12/31	175	113	288	10/01/2020
ALASKA	PRUDHOE BAY	01/01	12/31	120	113	*233	10/01/2020
ALASKA	SELDOVIA	05/01	09/30	189	124	313	10/01/2020
ALASKA	SELDOVIA	10/01	04/30	104	124	223	10/01/2020
ALASKA	SEWARD	04/01	09/30	299	146	445	10/01/2020

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	SEWARD	10/01	03/31	104	146	250	10/01/2020
ALASKA	SITKA-MT. EDGE CUMBE	04/01	09/30	220	116	336	10/01/2020
ALASKA	SITKA-MT. EDGE CUMBE	10/01	03/31	189	116	305	10/01/2020
ALASKA	SKAGWAY	04/01	09/30	250	118	368	10/01/2020
ALASKA	SKAGWAY	10/01	03/31	140	118	258	10/01/2020
ALASKA	SLANA	01/01	12/31	175	113	288	10/01/2020
ALASKA	SPARREVOHN LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	SPRUCE CAPE	04/01	09/30	207	109	316	10/01/2020
ALASKA	SPRUCE CAPE	10/01	03/31	123	109	232	10/01/2020
ALASKA	ST. GEORGE	01/01	12/31	175	113	288	10/01/2020
ALASKA	TALKEETNA	01/01	12/31	175	120	295	10/01/2020
ALASKA	TANANA	01/01	12/31	200	118	318	10/01/2020
ALASKA	TATALINA LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	TIN CITY LRRS	01/01	12/31	175	113	288	10/01/2020
ALASKA	TOK	01/01	12/31	105	113	218	10/01/2020
ALASKA	VALDEZ	05/16	09/15	212	110	322	10/01/2020
ALASKA	VALDEZ	09/16	05/15	154	110	264	10/01/2020
ALASKA	WAINWRIGHT	01/01	12/31	275	77	352	10/01/2020
ALASKA	WAKE ISLAND DIVERT AIRFIELD	01/01	12/31	175	113	288	10/01/2020
ALASKA	WASILLA	05/01	09/30	190	94	284	10/01/2020
ALASKA	WASILLA	10/01	04/30	100	94	194	10/01/2020
ALASKA	WRANGELL	04/01	09/30	250	118	368	10/01/2020
ALASKA	WRANGELL	10/01	03/31	140	118	258	10/01/2020
ALASKA	YAKUTAT	06/01	09/30	350	111	461	10/01/2020
ALASKA	YAKUTAT	10/01	05/31	150	111	261	10/01/2020
AMERICAN SAMOA	AMERICAN SAMOA	01/01	12/31	139	86	225	07/01/2019
AMERICAN SAMOA	PAGO PAGO	01/01	12/31	139	86	225	07/01/2019
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01	12/31	159	96	255	09/01/2019
GUAM	JOINT REGION MARIANAS (ANDERSEN)	01/01	12/31	159	96	255	09/01/2019
GUAM	JOINT REGION MARIANAS (NAVAL BASE)	01/01	12/31	159	96	255	09/01/2019
GUAM	TAMUNING	01/01	12/31	159	96	255	01/01/2021
HAWAII	[OTHER]	01/01	12/31	218	149	367	01/01/2021
HAWAII	CAMP H M SMITH	01/01	12/31	177	149	326	01/01/2021
HAWAII	CNI NAVMAG PEARL HARBOR-HICKAM	01/01	12/31	177	149	326	01/01/2021
HAWAII	FT. DERUSSEY	01/01	12/31	177	149	326	01/01/2021
HAWAII	FT. SHAFTER	01/01	12/31	177	149	326	01/01/2021
HAWAII	HICKAM AFB	01/01	12/31	177	149	326	01/01/2021
HAWAII	HONOLULU	01/01	12/31	177	149	326	01/01/2021
HAWAII	ISLE OF HAWAII: HILO	01/01	12/31	199	120	319	01/01/2021
HAWAII	ISLE OF HAWAII: LOCATIONS OTHER THAN HILO	01/01	12/31	218	156	374	01/01/2021
HAWAII	ISLE OF KAUAI	01/01	12/31	325	141	466	01/01/2021
HAWAII	ISLE OF LANAI	01/01	12/31	218	134	352	01/01/2021
HAWAII	ISLE OF MAUI	01/01	12/31	304	150	454	01/01/2021
HAWAII	ISLE OF MOLOKAI	01/01	12/31	218	106	324	01/01/2021
HAWAII	ISLE OF OAHU	01/01	12/31	177	149	326	01/01/2021
HAWAII	JB PEARL HARBOR-HICKAM	01/01	12/31	177	149	326	01/01/2021
HAWAII	KAPOLEI	01/01	12/31	177	149	326	01/01/2021
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC	01/01	12/31	325	141	466	01/01/2021
HAWAII	KILAUEA MILITARY CAMP	01/01	12/31	199	120	319	01/01/2021
HAWAII	LIHUE	01/01	12/31	325	141	466	01/01/2021
HAWAII	MCB HAWAII	01/01	12/31	177	149	326	01/01/2021
HAWAII	NCTAMS PAC WAHIAWA	01/01	12/31	177	149	326	01/01/2021
HAWAII	NOSC PEARL HARBOR	01/01	12/31	177	149	326	01/01/2021
HAWAII	PEARL HARBOR	01/01	12/31	177	149	326	01/01/2021
HAWAII	PMRF BARKING SANDS	01/01	12/31	325	141	466	01/01/2021
HAWAII	SCHOFIELD BARRACKS	01/01	12/31	177	149	326	01/01/2021
HAWAII	TRIPLER ARMY MEDICAL CENTER	01/01	12/31	177	149	326	01/01/2021
HAWAII	WHEELER ARMY AIRFIELD	01/01	12/31	177	149	326	01/01/2021
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	01/01/2021
NORTHERN MARIANA ISLANDS	[OTHER]	01/01	12/31	69	113	182	09/01/2019
NORTHERN MARIANA ISLANDS	ROTA	01/01	12/31	130	114	244	09/01/2019
NORTHERN MARIANA ISLANDS	SAIPAN	01/01	12/31	161	113	274	09/01/2019
NORTHERN MARIANA ISLANDS	TINIAN	01/01	12/31	69	93	162	09/01/2019
PUERTO RICO	[OTHER]	01/01	12/31	154	100	254	06/01/2020
PUERTO RICO	AGUADILLA	01/01	12/31	149	90	239	06/01/2020
PUERTO RICO	BAYAMON	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	BAYAMON	06/01	11/30	167	115	282	06/01/2020
PUERTO RICO	CAROLINA	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	CAROLINA	06/01	11/30	167	115	282	06/01/2020
PUERTO RICO	CEIBA	01/01	12/31	159	110	269	06/01/2020
PUERTO RICO	CULEBRA	01/01	12/31	159	105	264	06/01/2020
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT]	01/01	12/31	159	110	269	06/01/2020
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]	06/01	11/30	167	115	282	06/01/2020
PUERTO RICO	HUMACAO	01/01	12/31	159	110	269	06/01/2020
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	06/01	11/30	167	115	282	06/01/2020
PUERTO RICO	LUQUILLO	01/01	12/31	159	110	269	06/01/2020
PUERTO RICO	MAYAGUEZ	01/01	12/31	109	94	203	06/01/2020
PUERTO RICO	PONCE	01/01	12/31	149	130	279	06/01/2020
PUERTO RICO	RIO GRANDE	01/01	12/31	154	85	239	06/01/2020
PUERTO RICO	SABANA SECA [INCL ALL MILITARY]	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	SABANA SECA [INCL ALL MILITARY]	06/01	11/30	167	115	282	06/01/2020

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
PUERTO RICO	SAN JUAN & NAV RES STA	12/01	05/31	195	115	310	06/01/2020
PUERTO RICO	SAN JUAN & NAV RES STA	06/01	11/30	167	115	282	06/01/2020
PUERTO RICO	VIEQUES	01/01	12/31	159	94	253	06/01/2020
VIRGIN ISLANDS (U.S.)	ST. CROIX	12/15	04/14	299	120	419	04/01/2020
VIRGIN ISLANDS (U.S.)	ST. CROIX	04/15	12/14	247	120	367	04/01/2020
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/04	04/30	230	123	353	04/01/2020
VIRGIN ISLANDS (U.S.)	ST. JOHN	05/01	12/03	170	123	293	04/01/2020
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	249	118	367	04/01/2020
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	339	118	457	04/01/2020
WAKE ISLAND	WAKE ISLAND	01/01	12/31	129	70	199	01/01/2021

* Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2020-27586 Filed 12-14-20; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2020-SCC-0189]

Agency Information Collection Activities; Comment Request; Impact Evaluation of Teacher Residency Programs

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 16, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2020-SCC-0189. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Meredith Bachman, 202-245-7494.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Teacher Residency Programs.

OMB Control Number: 1850-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 467.

Total Estimated Number of Annual Burden Hours: 117.

Abstract: The U.S. Department of Education (ED)'s Institute of Education Sciences (IES) requests clearance for data collection activities to support a

study of teacher residency programs. Teacher residency programs aim to better prepare new teachers by combining education coursework with extensive on-the-job training. Program participants complete a full-year apprenticeship, or "residency," under the supervision of an experienced mentor teacher before they become teachers of record. The programs help meet the needs of their partner districts by preparing teachers to fill shortages in high-needs schools and subjects. They offer financial support for residents in exchange for a commitment to teach for at least three to five years in the district, in an effort to improve teacher retention. This financial support may also help expand the pool of teacher candidates by encouraging people to enter the profession who might be deterred by the cost of a traditional teacher preparation program. This request covers collection of classroom rosters from schools to randomly assign students to teachers and to monitor any movement between study classes during the school year. A future request will cover all remaining instruments and data collection activities.

Dated: December 9, 2020.

Stephanie Valentine,
PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-27495 Filed 12-14-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2020-SCC-0190]

Agency Information Collection Activities; Comment Request; HBCU Scholar Recognition Program

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is

proposing a revision of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before February 16, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2020–SCC–0190. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elyse Jones, (202) 453–5627.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the

information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: HBCU Scholar Recognition Program.

OMB Control Number: 1894–0016.

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 202.

Total Estimated Number of Annual Burden Hours: 707.

Abstract: This program was designed to recognize current HBCU students for their dedication to academics, leadership, and civic engagement. Nominees were asked to submit a nomination package containing a signed nomination form, unofficial transcripts, short essay, resume, and endorsement letter. Items in this package provide the tools necessary to select current HBCU students who are excelling academically and making differences in their community.

Dated: December 9, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–27496 Filed 12–14–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0160]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provision—Subpart I—Immigration Status Confirmation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 14, 2021.

ADDRESSES: Written comments and recommendations for proposed

information collection requests should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provision—Subpart I—Immigration Status Confirmation.

OMB Control Number: 1845–0052.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals and Households.

Total Estimated Number of Annual Responses: 81,572.

Total Estimated Number of Annual Burden Hours: 10,197.

Abstract: This request is for approval of a revision of the reporting requirements currently in the Student Assistance General Provisions, 34 CFR 668, Subpart I. This subpart governs the

Immigration-Status Confirmation, as authorized by section 484(g) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1091). The regulations may be reviewed at 34 CFR 668, Subpart I. The regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds. This collection updates the usage by individuals and schools. While the regulations refer to a secondary confirmation process and completion of the paper G-845 form these processes are no longer in use. DHS/USCIS replaced the paper secondary confirmation method with a fully electronic process, SAVE system and the use of the Third Step Verification Process. In April 2018, Federal Student Aid transitioned from the DHS-USCIS paper Form G-845 (for third step verification) to an electronic process via DHS' SAVE system.

Dated: December 10, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020-27575 Filed 12-14-20; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Coordination of Federal Authorizations for Electric Transmission Facilities collection, OMB Control Number 1910-5185. The proposed collection will be used to meet requirements found in the Federal Power Act directing DOE to establish a pre-application process for qualifying electric transmission projects requiring multiple Federal authorizations. DOE published a **Federal Register** notice on September 25, 2020 soliciting 60 days of public comment. DOE received no comments.

DATES: Comments regarding this collection must be received on or before January 14, 2021. If you anticipate that

you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202-395-4718.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher A. Lawrence, U.S. Department of Energy, at Christopher.Lawrence@hq.doe.gov or 202-586-5260.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No.: 1910-5185; (2) *Information Collection Request Title:* Coordination of Federal Authorizations for Electric Transmission Facilities; (3) *Type of Request:* Extension; (4) *Purpose:* To meet requirements found in Section 216(h)(4)(c) of the Federal Power Act directing DOE to establish a pre-application process for qualifying electric transmission projects requiring multiple Federal authorizations. Section 216(h)(3) also allows an applicant to seek assistance for non-qualifying projects. Data supplied will be used to support an Initiation Request necessary to begin DOE's coordination assistance and must include, based on best available information, a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Studies (provided in electronic format), and a Summary of Early Identification of Project Issues. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology. There has been no collection under this authority since its inception. (5) Annual Estimated Number of Respondents: 5, as this collection is addressed to a portion of the electric utility industry; (6) Annual Estimated Number of Burden Hours: 55 hours. (7) Annual Estimated Reporting and Recordkeeping Cost Burden: \$3,113.00.

Statutory Authority: Federal Power Act, Sections 216(h)(3) and 216(h)(4)(c).

Signing Authority

This document of the Department of Energy was signed on December 8, 2020, by Patricia Hoffman, Acting Assistant Secretary, Office of Electricity, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 9, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020-27478 Filed 12-14-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-220-D]

Application To Export Electric Energy; NRG Power Marketing LLC

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: NRG Power Marketing LLC (Applicant or NRG PML) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before January 14, 2021.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov, or by facsimile to (202) 586-8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates

exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 2, 2020, NRGPML filed an application with DOE (Application or App.) for renewal of its authorization to transmit electric energy from the United States to Canada for a term of five years. NRGPML states that it “is a Delaware limited liability company with a principal place of business in Princeton, New Jersey.” App. at 2. NRGPML further represents that it “is a wholly-owned subsidiary of NRG Energy, Inc.” *Id.* at 3. NRGPML adds that it “does not own or any electric generation or transmission facilities, nor does it hold a franchise or service territory for the transmission, distribution, or sale of electricity.” *Id.* at 4.

NRGPML further states that it “will purchase the electricity that it may export, on either a firm or an interruptible basis, from wholesale generators, electric utilities, federal power marketing agencies and affiliates through negotiated agreements that have been voluntarily executed by the selling parties after considering their own need for any such electricity.” App. at 5. NRGPML contends that its proposed exports “will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operations.” *Id.* at 5–6.

NRGPML states that “as a power marketer that does not own or operate a transmission system . . . , [it] does not have the ability to cause a violation of the terms and conditions in the existing authorizations associated with international transmission facilities.” App. at 6. NRGPML also represents that it “will comply with such requirements as may be imposed by the Department on other power marketers with blanket electricity export authorization.” *Id.* at 8.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in

accordance with Rule 211 of the Federal Energy Regulatory Commission’s (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning NRGPML’s application to export electric energy to Canada should be clearly marked with OE Docket No. EA–220–D. Additional copies are to be provided directly to Justin Gilli, 804 Carnegie Center, Princeton, NJ 08540, Justin.Gilli@nrg.com; Catherine Krupka, 700 Sixth St. NW, Suite 700, Washington, DC 20001–3980, catherinekrupka@eversheds-sutherland.com; and Allison E. Speaker, 700 Sixth St. NW, Suite 700, Washington, DC 20001–3980, allisonspeaker@eversheds-sutherland.com.

A final decision will be made on the Application after the environmental impacts have been evaluated pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at <http://energy.gov/node/11845>, or by emailing Matthew Aronoff at matthew.aronoff@hq.doe.gov.

Signed in Washington, DC, on December 9, 2020.

Christopher Lawrence,

Management and Program Analyst, Energy Resilience Division, Office of Electricity.

[FR Doc. 2020–27476 Filed 12–14–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three year extension, without changes, of Form EIA–111 *Quarterly Electricity Imports and Exports Report*, as required by the Paperwork Reduction Act of 1995. Form EIA–111 collects information on U.S.

imports and exports of electricity. Data are used to obtain estimates on the flows of electricity into and out of the United States.

DATES: EIA must receive all comments on this proposed information collection no later than February 16, 2021. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may only be sent electronically by email to EIA111@eia.gov.

FOR FURTHER INFORMATION CONTACT: Tosha Beckford at (202) 287–6597 or by email at tosha.beckford@eia.gov. The form and instructions are available at <http://www.eia.gov/survey/changes/electricity/>.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) *OMB No.:* 1905–0208;
- (2) *Information Collection Request Title:* Quarterly Electricity Imports and Exports Report;
- (3) *Type of Request:* Three year extension without change;
- (4) *Purpose:* Form EIA–111 collects U.S. electricity import and export data on a quarterly basis. The data are used to measure the flow of electricity into and out of the United States. The import and export data are reported by U.S. purchasers, sellers and transmitters of wholesale electricity, including persons authorized by Order to export electric energy from the United States to foreign countries, persons authorized by Presidential Permit to construct, operate, maintain, or connect electric power transmission lines that cross the U.S. international border, and U.S. Balancing Authorities that are directly interconnected with foreign Balancing Authorities. Such entities report monthly flows of electric energy received or delivered across the border, the cost associated with the transactions, and actual and implemented interchange.
- (4a) *Proposed Changes to Information Collection:* No changes;
- (5) *Annual Estimated Number of Respondents:* 180;
- (6) *Annual Estimated Number of Total Responses:* 720;
- (7) *Annual Estimated Number of Burden Hours:* 1080;
- (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$86,551 (1,080 burden hours times \$80.14 per hour). EIA estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information as part of the normal course of business.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on December 9, 2020.

Samson A. Adeshiyan,

Director, Office of Statistical Methods & Research, U.S. Energy Information Administration.

[FR Doc. 2020-27519 Filed 12-14-20; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-6-000]

Spire Storage West, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Clear Creek Expansion Project

On October 9, 2020, Spire Storage West, LLC (Spire Storage) filed an application in Docket No. CP21-6-000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Clear Creek Expansion Project (Project), and would expand Spire Storage's natural gas storage facilities in Uinta County, Wyoming in order to increase the certificated gas capacities from 4.0 billion cubic feet (Bcf) to 20 Bcf, and increase the maximum daily injection and withdrawal capacities from 35 million cubic feet (MMcf) and 50 MMcf per day, to 350 MMcf and 500 MMcf per day, respectively.

On October 22, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on

a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.¹

Schedule for Environmental Review

Issuance of EA May 13, 2021
90-day Federal Authorization Decision Deadline August 11, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Clear Creek Expansion Project would consist of the following facilities in Uinta County, Wyoming:

- Four compressor units at the Clear Creek Plant;
- a tank storage and natural gas liquids fueling equipment facility on an existing pad;
- 11 new injection/withdrawal wells, one new water disposal well, and associated lines;
- approximately 10.6 miles of 20-inch-diameter pipeline;
- approximately 3.5 miles of 4,160-volt powerline; and
- other related appurtenances.

Background

On November 9, 2020, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Clear Creek Expansion Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the Wyoming Department of Environmental Quality. The primary issues raised by the commenter are permitting, stream crossings, wetland impacts, and spill reporting. All substantive comments will be addressed in the EA.

The U.S. Bureau of Land Management is a cooperating agency in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of

formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP21-6), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-27531 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: December 17, 2020, 10:00 a.m.

PLACE: Open to the public via audio Webcast only.¹

STATUS: OPEN.

MATTERS TO BE CONSIDERED: Agenda, * NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502-8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502-8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents

¹ Join FERC online to listen live at <http://ferc.capitolconnection.org/>.

relevant to the items on the agenda. All public documents, however, may be

viewed on line at the Commission's website at <http://>

ferc.capitolconnection.org/ using the eLibrary link.

1073rd MEETING—OPEN MEETING

[December 17, 2020 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A-1	AD21-1-000	Agency Administrative Matters.
A-2	AD21-2-000	Customer Matters, Reliability, Security and Market Operations.
A-3	AD21-3-000	Inquiry into California Heat Storm, August 2020.
Electric		
E-1	OMITTED.	
E-2	RM21-3-000	Cybersecurity Incentives.
E-3	EL21-19-000	California Independent System Operator Corporation.
E-4	ER20-2046-001	PJM Interconnection, L.L.C.; American Transmission Systems Inc.
E-5	ER20-2308-000	PJM Interconnection, L.L.C.
E-6	RM20-8-000	Virtualization and Cloud Computing Services.
E-7	OMITTED.	
E-8	RM21-2-000, RM20-20-000	Fuel Cell Thermal Energy Output; Bloom Energy Corporation.
E-9	ER21-155-000	Southern California Edison Company.
E-10	ER21-161-000	Midcontinent Independent System Operator, Inc. and MidAmerican Energy Company.
E-11	ER20-2590-000	Basin Electric Power Cooperative.
E-12	EF20-7-000	Western Area Power Administration.
E-13	ER20-687-001	Tri-State Generation and Transmission Association, Inc.
E-14	OMITTED.	
E-15	ER19-2722-000, ER19-2722-001, ER19-2722-002.	PJM Interconnection, L.L.C.
E-16	EC20-94-000	IIF US Holding LP and IIF US Holding 2 LP.
E-17	OMITTED.	
E-18	EL20-18-000, QF20-184-001, QF20-185-001, QF20-186-001, QF20-187-001, QF20-188-001, QF20-189-001, QF20-190-001, QF20-191-001, QF20-192-001, QF20-193-001, QF20-194-001, QF20-195-001, QF20-196-001, QF20-197-001, QF20-198-001, QF20-199-001, QF20-200-001.	Curry Solar Farm, LLC.
E-19	EL20-64-000	IIF US Holding 2 GP, LLC.
E-20	EL20-15-001	North Carolina Eastern Municipal Power Agency.
Gas		
G-1	RM20-14-000	Five-Year Review of the Oil Pipeline Index.
G-2	PL20-3-000	Actions Regarding the Commission's Policy on Price Index, Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs.
G-3	RM20-7-000	Safe Harbor Policy for Data Providers to Price Index Developers.
G-4	RP17-811-002, RP18-271-000	<i>Peregrine Oil & Gas II, LLC v. Texas Eastern Transmission, LP.</i>
G-5	OMITTED.	
G-6	RP19-1634-002, RP20-788-000, RP13-1116-000, RP19-54-000.	Kinetica Deepwater Express, LLC; Kinetica Energy Express, LLC.
G-7	FA15-16-000	Dominion Energy Transmission, Inc.
G-8	IS20-171-001, IS20-169-001, IS20-166-001.	BP Pipelines (Alaska) Inc.; ConocoPhillips Transportation Alaska, Inc.; ExxonMobil Pipeline Company.
G-9	IN13-15-000, IN13-15-001, IN13-15-002.	BP America Inc.; BP Corporation North America Inc.; BP America Production Company, BP Energy Company.
G-10	PL21-1-000	Oil Pipeline Affiliate Contracts.
Hydro		
H-1	P-2197-135	Cube Yadkin Generation LLC.
Certificates		
C-1	CP20-471-000	Texas Eastern Transmission, LP.
C-2	CP16-10-000	Mountain Valley Pipeline LLC.
C-3	CP19-118-000	Trans-Foreland Pipeline Company LLC.
C-4	OMITTED.	
C-5	OMITTED.	
C-6	OMITTED.	
C-7	CP16-9-011	Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, LLC.

1073rd MEETING—OPEN MEETING—Continued

[December 17, 2020 10:00 a.m.]

Item No.	Docket No.	Company
C-8	CP17-458-006, CP19-17-002	Midship Pipeline Company, LLC.
C-9	OMITTED.	
C-10	OMITTED.	
C-11	OMITTED.	
C-12	OMITTED.	
C-13	CP15-17-005	Sabal Trail Transmission, LLC.

Issued: December 10, 2020.

Kimberly D. Bose,
Secretary.

The public is invited to listen to the meeting live at <http://ferc.capitolconnection.org/>. Anyone with internet access who desires to hear this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its audio webcast. The Capitol Connection provides technical support for this free audio webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit <http://ferc.capitolconnection.org/> or contact Shirley Al-Jarani at 703-993-3104.

[FR Doc. 2020-27656 Filed 12-11-20; 11:15 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Project No. 5944-024]

**Ampersand Moretown Hydro, LLC;
Notice of Application Tendered for
Filing With the Commission and
Soliciting Additional Study Requests
and Establishing Procedural Schedule
for Relicensing and a 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 Minor License.

b. *Project No.:* 5944-024.

c. *Date Filed:* November 30, 2020.

d. *Applicant:* Ampersand Moretown Hydro, LLC (AMH).

e. *Name of Project:* Moretown #8 Hydroelectric Project.

f. *Location:* The existing project is located on the Mad River in the town of Moretown, Washington County, Vermont. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Sayad Moudachirou, Licensing Manager, Ampersand Moretown Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111; Telephone (617) 933-7206.

i. *FERC Contact:* Maryam Zavareh, (202) 502-8474 or maryam.zavareh@ferc.gov.

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 29, 2021. The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOnline.aspx>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Moretown Project consists of a 36-acre impoundment at normal maximum elevation of 524.7 feet above mean sea

level (msl); a 159-foot-long overflow spillway dam with a crest elevation of 524.7 msl; a concrete intake structure with a 12.5-foot-wide, 15.1-foot-high trashrack; a 169-foot-long wingwall adjacent to spillway; a 39.4-foot-long, 8.5-foot-diameter steel penstock; a 39.4-foot-long, 19.7-foot-wide concrete powerhouse containing a single 1.25-megawatt turbine-generator unit; a tailrace; a 106-foot-long, 12.5-kilovolt transmission line; and appurtenant facilities. The project generates an annual average of 2,094 megawatt-hours.

AMH proposes to continue to operate the project in an automated run-of-river mode. The project operates within a flow range of 100 cubic feet per second (cfs) (minimum hydraulic capacity of the turbine) and 459 cfs (maximum hydraulic capacity of the turbine).

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) 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 (P-5944). A copy of the application is typically available to be viewed at the Commission in the Public Reference Room. 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 (202) 502-8659 (TTY).

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.

p. *Procedural Schedule*: The application will be processed according to the following preliminary Hydro

Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Notice of Acceptance	January 2021.
Issue Scoping Document 1 for comments	May 2021.
Comments on Scoping Document 1 Due	July 2021.
Issue Scoping Document 2	August 2021.
Issue Notice of Ready for Environmental Analysis	August 2021.

q. 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 9, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-27534 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC21-21-000]

Empire Pipeline, Inc.; Notice of Petition for Waiver

Take notice that on December 8, 2020, Empire Pipeline, Inc. (Petitioner), filed a petition for waiver of the Federal Energy Regulatory Commission’s (Commission) requirement to provide its certified public accountant (CPA) certification statement for the 2020 FERC Form No. 2 on the basis of the calendar year ending December 31. Empire seeks this waiver because it utilizes a September 30 fiscal year end, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal

Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://ferc.gov>) using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Comments: 5:00 p.m. Eastern Time on January 8, 2021.

Dated: December 9, 2020.

Kimberly D. Bose,
Secretary.

[FR Doc. 2020-27536 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21-1-000]

Golden Pass Pipeline LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Compression Relocation and Modification Project

On October 2, 2020, Golden Pass Pipeline LLC (Golden Pass) filed an amendment application in Docket No. CP21-1-000 requesting a Certificate of Public Convenience and Necessity

pursuant to Section 7(c) of the Natural Gas Act to modify certain pipeline facilities in Louisiana transporting natural gas to the Golden Pass LNG Terminal. The proposed project amendment is known as the Compression Relocation and Modification Project, and would enable Golden Pass to relocate and modify certain facilities approved in the Federal Energy Regulatory Commission’s (Commission or FERC) *Order Granting Authorizations under Section 3 and Section 7 of the Natural Gas Act* issued on December 21, 2016 in Docket Nos. CP14-517-000 and CP14-518-000.

On October 19, 2020, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff’s environmental document for the Project.

This notice identifies Commission staff’s intention to prepare an environmental assessment (EA) for the project amendment and the planned schedule for the completion of the environmental review.¹

Schedule for Environmental Review

Issuance of EA February 26, 2021
90-day Federal Authorization Decision Deadline May 27, 2021

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the project amendment’s progress.

Project Description

Specifically, Golden Pass seeks to modify previously authorized facilities, including:

- Relocate the approved compressor station at Milepost 66 approximately 3 miles, to MilePost 69, and increase the amount of compression at the relocated facility;

¹ 40 CFR 1501.10 (2020).

- add a meter station near MilePost 69 to support a new interconnection with a proposed interstate pipeline to be constructed and operated by Enable Gulf Run Transmission, LLC;

- elimination of the approved 24-inch diameter looping facilities between Milepost 63 and Milepost 66;

- remove any bi-directional piping modification to the Tennessee Gas Pipeline Company interconnect; and

- install minor modifications to existing interconnects at MilePost 66 and MilePost 68.

Background

On November 19, 2020, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Compression Relocation and Modification Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. No comments have been received to date; however, all substantive comments filed in response to the Notice of Scoping will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP21-1), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FERCOnlineSupport@ferc.gov.

The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-27530 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-1883-010; ER10-1841-020; ER10-1845-020; ER10-1846-016; ER10-1849-022; ER10-1851-013; ER10-1852-045; ER10-1857-015; ER10-1890-016; ER10-1899-015; ER10-2005-020; ER11-2160-016; ER11-26-020; ER12-2227-022; ER12-569-023; ER13-1991-015; ER13-1992-015; ER13-712-024; ER13-752-014; ER15-1418-010; ER15-1883-010; ER15-1925-016; ER15-2582-008; ER15-2676-015; ER16-1672-013; ER16-2190-012; ER16-2191-012; ER16-2453-013; ER16-632-008; ER16-91-010; ER17-2152-009; ER18-1534-007; ER18-1863-007; ER18-1978-006; ER18-2118-008; ER18-882-008; ER19-1003-007; ER19-1393-007; ER19-1394-007; ER19-2269-003; ER19-2373-003; ER19-2437-003; ER19-2461-003; ER19-2901-004; ER19-987-007; ER20-1769-001; ER20-1980-002; ER20-1987-001; ER20-2027-001; ER20-2049-001; ER20-2179-001; ER20-819-002; ER20-820-002.

Applicants: Adelanto Solar, LLC, Adelanto Solar II, LLC, Armadillo Flats Wind Project, LLC, Ashtabula Wind I, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Baldwin Wind Energy, LLC, Blackwell Wind, LLC, Blythe Solar 110, LLC, Blythe Solar II, LLC, Blythe Solar III, LLC, Blythe Solar IV, LLC, Breckinridge Wind Project, LLC, Brady Interconnection, LLC, Brady Wind, LLC, Brady Wind II, LLC, Bronco Plains Wind, LLC, Butler Ridge Wind Energy Center, LLC, Carousel Wind Farm, LLC, Casa Mesa Wind, LLC, Cedar Bluff Wind, LLC, Cedar Springs Wind, LLC, Cedar Springs Wind III, LLC, Cedar Springs Transmission, LLC, Cerro Gordo Wind, LLC, Chaves County Solar, LLC, Chicot Solar, LLC, Cimarron Wind Energy, LLC, Coolidge Solar I, LLC, Cottonwood Wind Project, LLC, Crowned Ridge Wind, LLC, Crystal Lake Wind Energy I, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind III, LLC, Dougherty County Solar, LLC, Day County Wind, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, East

Hampton Energy Storage Center, LLC, Elk City Renewables II, LLC, Elk City Wind, LLC, Emmons-Logan Wind, LLC, Endeavor Wind I, LLC, Endeavor Wind II, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Cape, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Montezuma Wind, LLC.

Description: Notice of Change in Status of the NextEra MBR Sellers (Part 1) under ER15-1883, et al.

Filed Date: 12/7/20.

Accession Number: 20201207-5235.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER19-2259-002.

Applicants: Turquoise Nevada LLC.

Description: Notice of Non-Material Change in Status of Turquoise Nevada LLC.

Filed Date: 12/7/20.

Accession Number: 20201207-5222.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER21-513-001.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Amendment to Western November 2020 Biannual (WDT SA 17) to be effective 2/1/2021.

Filed Date: 12/9/20.

Accession Number: 20201209-5001.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21-514-001.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Amendment to Western November 2020 Biannual (TO SA 59) to be effective 2/1/2021.

Filed Date: 12/9/20.

Accession Number: 20201209-5000.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21-607-000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP submits ILDSA SA No. Paint Creek FA to be effective 2/7/2021.

Filed Date: 12/8/20.

Accession Number: 20201208-5170.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21-608-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1139R7 Southwestern Public Service Company NITSA NOA to be effective 10/1/2019.

Filed Date: 12/9/20.

Accession Number: 20201209-5036.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21-609-000.

Applicants: Elmwood Park Power, LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 3/12/2021.

Filed Date: 12/9/20.

Accession Number: 20201209–5037.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21–610–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Correction to First Revised ISA, SA No. 1503; Queue No. AD2–001 (amend) to be effective 8/31/2020.

Filed Date: 12/9/20.

Accession Number: 20201209–5042.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21–611–000.

Applicants: Golden Springs Development Company LLC.

Description: Appeal for Relief from Assessed Penalty of Electric of Golden Springs Development Company LLC.

Filed Date: 12/8/20.

Accession Number: 20201208–5186.

Comments Due: 5 p.m. ET 12/29/20.

Docket Numbers: ER21–612–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3749 WAPA and NPPD Interconnection Agreement to be effective 12/8/2020.

Filed Date: 12/9/20.

Accession Number: 20201209–5080.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21–613–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: E&P Agreement among Niagara Mohawk Power Corporation and KCE NY 6 LLC to be effective 11/24/2020.

Filed Date: 12/9/20.

Accession Number: 20201209–5096.

Comments Due: 5 p.m. ET 12/30/20.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27527 Filed 12–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–921–002.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Compliance filing Maritimes & Northeast Pipeline, L.L.C. Rate Case Compliance Filing RP20–921 to be effective 12/1/2020.

Filed Date: 12/1/20.

Accession Number: 20201201–5006.

Comments Due: 5 p.m. ET 12/14/20.

Docket Numbers: RP21–303–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Yankee Gas 510802 eff 12–9–2020 to be effective 12/9/2020.

Filed Date: 12/8/20.

Accession Number: 20201208–5041.

Comments Due: 5 p.m. ET 12/21/20.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27528 Filed 12–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS21–138–000]

SFPP, L.P.; Notice Shortening Comment Period Regarding Offer of Settlement

Take notice that on December 7, 2020, SFPP, L.P. (SFPP), HollyFrontier Refining & Marketing LLC, Navajo Refining Company, LLC, Valero Marketing and Supply Company, Tesoro Refining & Marketing Company LLC, Western Refining Pipeline Co., Western Refining Company, L.P., Chevron Products Company, Phillips 66 Company, BP West Coast Products LLC, ExxonMobil Oil Corporation, American Airlines, Inc., Southwest Airlines Co., and US Airways, Inc., (collectively, Parties) filed a joint Offer of Settlement (Settlement). The Settlement seeks to resolve all issues pending before the Commission with regard to SFPP's East Line interstate rates in Docket Nos. IS09–437, *et al.* The Parties request that the Commission shorten the comment period so that initial comments are due on December 14, 2020, and reply comments are due on December 17, 2020.

Notice is hereby given that initial comments on the Settlement are due on December 14, 2020, and reply comments are due on December 17, 2020.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–27532 Filed 12–14–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ21–4–000]

Western Area Power Administration; Notice of Petition for Declaratory Order

Take notice that on December 2, 2020, pursuant to the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Western Area Power Administration (WAPA), submitted revisions to its non-jurisdictional Open Access Transmission Tariff (OATT) and petitions the Commission for a declaratory order finding that these modifications to WAPA's OATT substantially conform to, or are superior to, the Commission's pro forma OATT

and that these WAPA modifications satisfy the requirements for reciprocity status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://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 the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 4, 2021.

Dated: December 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-27535 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21-33-000.

Applicants: Altavista Solar, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Altavista Solar, LLC under EC21-33.

Filed Date: 12/8/20.

Accession Number: 20201208-5199.

Comments Due: 5 p.m. ET 12/29/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-632-010; ER15-634-010; ER14-2465-011; ER14-2466-011; ER15-1952-008; ER14-2939-008; ER15-2728-010; ER14-2140-010; ER14-2141-010.

Applicants: CID Solar, LLC, Cottonwood Solar, LLC, RE Columbia Two, LLC, RE Camelot, LLC, Pavant Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Maricopa West Solar PV, LLC, Mulberry Farm, LLC, Selmer Farm, LLC.

Description: Response to November 6, 2020 Deficiency Letter of Dominion Energy Companies, et al.

Filed Date: 12/7/20.

Accession Number: 20201207-5236.

Comments Due: 5 p.m. ET 12/28/20.

Docket Numbers: ER19-1474-002; ER19-1473-002; ER20-1629-001; ER19-1179-002.

Applicants: AES Huntington Beach Energy, LLC, AES Alamitos Energy, LLC, AES ES Alamitos, LLC, AES ES Gilbert, LLC.

Description: Notice of Non-Material Change in Status of AES Huntington Beach Energy, LLC et al.

Filed Date: 12/9/20.

Accession Number: 20201209-5103.

Comments Due: 5 p.m. ET 12/30/20.

Docket Numbers: ER21-614-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 5855; Queue No. AF2-100 to be effective 11/10/2020.

Filed Date: 12/9/20.

Accession Number: 20201209-5133.

Comments Due: 5 p.m. ET 12/30/20.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM21-1-000.

Applicants: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative Inc.

Description: Application of East Texas Electric Cooperative, Inc. and Northeast Texas Electric Cooperative, Inc. to Terminate Their Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 12/9/20.

Accession Number: 20201209-5144.

Comments Due: 5 p.m. ET 1/6/21.

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 9, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020-27529 Filed 12-14-20; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2020-0570; FRL-10016-95]

Broflanilide; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington State Department of Agriculture to use the pesticide broflanilide (CAS No. 1207727-04-5) to treat an amount of spring wheat seed sufficient to plant up to 206,000 acres to control wireworms. The applicant proposes the use of a new chemical which has not been registered by EPA.

DATES: Comments must be received on or before December 30, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2020-0570, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

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

SUPPLEMENTARY INFORMATION: In accordance with the regulations at 40 CFR 166.24(a)(1), EPA is soliciting public comment before making the decision whether or not to grant the exemption.

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Washington State Department of Agriculture (WSDA) has requested the EPA Administrator to issue a specific exemption for the use of broflanilide (CAS No. 1207727-04-5) as a seed treatment on spring wheat to control wireworms. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant stated that the currently registered products do not provide adequate control of wireworms, which are having a devastating and severe impact upon wheat fields and growers, especially in the dryland wheat growing counties of eastern Washington. Approximately 1,029 lbs. of the active ingredient broflanilide would be needed for this

emergency exemption program. Additional information regarding the critical need for the emergency and the proposed use pattern can be found in the section 18 emergency exemption application request at <http://www.regulations.gov>, under the docket number EPA-HQ-OPP-2020-0570.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 emergency exemptions require publication of a notice of receipt of an application for an emergency exemption if it proposes the use of a new chemical which has not been registered by EPA. Broflanilide is not currently registered.

This notice provides an opportunity for public comment on this application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by WSDA.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 23, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020-27539 Filed 12-14-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2020-0077; FRL-10016-83]

Certain New Chemicals; Receipt and Status Information for October 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently

under EPA review or have recently concluded review. This document covers the period from 10/01/2020 to 10/31/2020.

DATES: Comments identified by the specific case number provided in this document must be received on or before January 14, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0077, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Jim Rahai, Information Management Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: rahai.jim@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 10/01/2020 to 10/31/2020. The Agency is providing notice of receipt of PMNs,

SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of

injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchemicals>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and

an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals->

under-toxic-substances-control-act-tsca/status-pre-manufacture-notices. This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information

in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.* P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED * FROM 10/01/2020 TO 10/31/2020

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-17-0301A ..	5	10/06/2020	CBI	(G) Used as a surface drier in clear and pigmented coatings systems to replace other primary driers, particularly cobalt.	(G) Manganese heterocyclic-amine carboxylate complexes.
P-18-0175A ..	9	10/01/2020	Hexion Inc	(S) Food can coating Non-food contact can coating.	(S) Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol and phenol, Bu ether.
P-18-0301A ..	2	10/01/2020	CBI	(G) Coating component	(G) Alkanedioic acid, polymer with cycloalkyl dimethanol, alkyl and cycloalkyl diisocyanates, dimethyl-alkanediol, dihydroxyalkanoic acid methylenebis[isocyanatocyclohexane, hydroxyethyl acrylate- and polyalkyl glycol monoalkyl ether blocked.
P-18-0349A ..	5	10/05/2020	Lanxess Solutions US, Inc.	(S) Two component adhesives and protective coatings for marine, infrastructure, etc. The urethane prepolymer is designed to react with epoxy materials to create a flexible coating or adhesive.	(S) Oxirane, 2-methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), polymer with 2,4-diisocyanato-1-methylbenzene, branched 4-nonylphenol-blocked.
P-18-0383A ..	4	10/01/2020	CBI	(G) Coatings and inks for commercial use	(G) Dialkyl-alkanediamine, polymer with [(oxo-alkenyl)oxy]poly(oxy-alkanediyl)ether with bis(hydroxyalkyl)-alkanediol.
P-19-0011A ..	7	10/16/2020	Shin etsu Silicones of America.	(G) Additive to the EPDM rubber compounds	(G) Polysulfides, bis[3-(trialkoxysilyl)propyl].
P-19-0082A ..	4	10/06/2020	Bedoukian Research Inc.	(S) Fragrance uses per FFDC: Fine fragrance, creams, lotions, etc, Fragrance uses per TSCA: Scented papers, candles, detergents, cleaners, etc.	(S) Heptanal, 6-hydroxy-2,6-dimethyl-.
P-19-0167A ..	5	10/09/2020	Santolubes Manufacturing, LLC.	(S) synthetic engine, gear and lubricating oils and greases.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, hexanoate.
P-20-0001A ..	5	10/09/2020	Santolubes Manufacturing, LLC.	(S) Synthetic engine, gear & lubricating oils & greases.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-w-hydroxy-, nonanoate.
P-20-0010A ..	10	10/14/2020	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, reaction products with metal hydroxide, inorganic dioxide and metal.
P-20-0014A ..	2	10/06/2020	McTron Technologies	(G) Water resistant resin additive, Heat resistant binder additive.	(G) Sugars, polymer with alkanetriamine.
P-20-0046A ..	5	10/07/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminumoxanes and {(pentaalkylphenyl-(pentaalkylphenyl-amino)alkyl]alkanediaminato}bis(aralkyl) transition metal coordination compound.
P-20-0046A ..	6	10/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminumoxanes and {(pentaalkylphenyl-(pentaalkylphenyl-amino)alkyl]alkanediaminato}bis(aralkyl) transition metal coordination compound.
P-20-0048A ..	5	10/07/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminumoxanes and dihalogeno (alkylcyclopentadienyl) (tetraalkylcyclopentadienyl)transition metal coordination compound.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 10/01/2020 TO 10/31/2020—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-20-0048A ..	6	10/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-terminated alkylaluminumoxanes and dihalogeno (alkylcyclopentadienyl) (tetraalkylcyclopentadienyl)transition metal coordination compound.
P-20-0049A ..	5	10/07/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-aluminumoxanes and bis(alkylcycloalkylene) dihalogenozirconium.
P-20-0049A ..	6	10/27/2020	CBI	(G) Catalyst	(G) Reaction products of alkyl-aluminumoxanes and bis(alkylcycloalkylene) dihalogenozirconium.
P-20-0061A ..	4	10/13/2020	Allnex USA Inc	(S) Coating resin crosslinking agent	(G) Formaldehyde, polymer with alkylphenols, alkyl ether.
P-20-0085A ..	7	09/30/2020	Luna Innovations Incorporated.	(S) Fluid resistant coatings	(G) Bis(triethoxysilylpropyl carbamate) perfluoropolyether.
P-20-0098A ..	4	10/21/2020	CBI	(S) property modifier for polymers	(G) Calcium cycloalkylcarboxylate.
P-20-0102A ..	3	10/01/2020	Novihum Technologies, Inc.	(S) Fertilizer/Soil amendment	(S) Chemical Abstract (CA) index name: Coal, brown, ammoxidized.
P-20-0102A ..	4	10/08/2020	Novihum Technologies, Inc.	(S) Fertilizer/Soil amendment	(S) Chemical Abstract (CA) index name: Coal, brown, ammoxidized.
P-20-0118A ..	3	10/26/2020	CBI	(G) Additive in household consumer products. ...	(S) Pyridine, 4-methyl-2-pentyl-
P-20-0138	3	10/14/2020	Gurit (USA) Inc	(S) The substance is part of a mixture with other amines to act as a curative for a 2-part epoxy adhesive formulation. The new substance will be used within an adhesive formulation for use within an industrial setting primarily but not limited to industries such as marine, automotive and wind energy. The adhesive is "cured" at either ambient conditions or using heat and a chemical reaction occurs forming a solid composite structure.	(G) Alkane diglycidyl ether, polymer with alkyl-cycloalkane diamines.
P-20-0143A ..	3	10/22/2020	CBI	(S) Binder for Thermoplastic Coatings, Binder or Ink/Adhesive.	(S) Cyclohexanemethanamine, 5-amino-1,3,3-trimethyl-, polymer with a-hydro-w-hydroxypoly(oxy-1,4-butanediyl), 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1-methylenebis[4-isocyanatobenzene].
P-20-0167A ..	3	10/22/2020	W.R. Grace & CO.—Conn.	(G) Catalyst	(G) Phenylene, alkyl and polycarbomonocycle substituted, 1,2-dicarboxylate.
P-20-0174A ..	4	10/16/2020	P2 Science, Inc	(S) For use in consumer products, as well as direct addition to consumer products. Specific functions would be as solubilizer, rheology modifier and fragrance oil.	(S) 6-Octen-1-ol, 3,7-dimethyl-, homopolymer, monoacetate.
P-20-0184A ..	2	10/16/2020	P2 Science, Inc	(S) For use in fragrances for consumer products, as well as direct addition to consumer products. Specific functions would be as solubilizer, rheology modifier and fragrance oil.	(S) 6-Octen-1-ol, 3,7-dimethyl-, homopolymer.
P-20-0185	3	10/08/2020	Designer Molecules, Inc.	(G) Dielectric film forming material for use in microelectronic assembly applications.	(S) Amines, C36-alkylenedi-, polymers with bicyclo[2.2.1]heptanedimethanamine, [5,5'-biisobenzofuran]-1,1',3,3'-tetrone and 3a,4,5,7a-tetrahydro-7-methyl-5-(tetrahydro-2,5-dioxo-3-furanyl)-1,3-isobenzofurandione, maleated.
P-21-0001	1	10/01/2020	CBI	(G) Flame retardant	(S) Phosphinic acid, aluminum salt (3:1).
P-21-0002	2	10/08/2020	CBI	(G) Polymer in coatings and ink	(G) Octadecanoic acid, 12-hydroxy-, polymer with aziridine, 2-oxepanone and tetrahydro-2H-pyran-2-one, reaction products with disubstituted heteropolycycle.
P-21-0006	1	10/21/2020	CBI	(G) The PMN Substance is used in froth flotation to treat rare earth minerals and to remove deleterious substances.	(G) Naphthalene derivative.
SN-19-0002A	6	10/14/2020	CBI	(G) Friction and wear stabilizer in certain solid composite articles.	(G) Potassium Titanate.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no-way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED * FROM 10/01/2020 TO 10/31/2020

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-16-0449	10/01/2020	09/28/2020	N	(S) 2,7-decadienal, (2e,7z)-.
P-16-0539	10/07/2020	09/17/2020	N	(G) Organic sulfonate compound.
P-18-0234A	10/20/2020	12/09/2019	CBI Substantiation provided ..	(G) Alkenoic acid, reaction products with bis substituted alkane and ether polyol.
P-18-0310	10/20/2020	10/12/2020	N	(S) Benzenepropanoic acid, 3-(2h-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, 2,2-bis(hydroxymethyl)butyl ester.
P-18-0359	10/20/2020	10/14/2020	N	(S) Ethene, 1-[difluoro(trifluoromethoxy)methoxy]-1,2,2-trifluoro-, polymer with 1,1-difluoroethene.
P-18-0376	10/26/2020	10/15/2020	N	(G) Thiosulfuric acid, aminoalkyl ester.
P-18-0382	10/20/2020	10/06/2020	N	(G) Xanthylium, bis[dicarboxycyclic]sulfonylamino-alkylcyclicamino-disulfo-sulfocyclic-, inner salt, monocationic salt.
P-18-0393	10/23/2020	10/22/2020	N	(G) Alkenoic acid, alkyl, alkyl ester, polymer with alkyl propenoate, vinyl carbomonocyle, substituted alkyl propenoate, alkyl 2-alkyl 2-propenoate, alkanediol mono(2-alkyl-2-propenoate) and bicarbomonocycle alkyl 2-alkyl-2-alkenoate, tertiary alkyl substituted alkane peroxyate initiated.
P-18-0405	09/29/2020	09/27/2020	N	(S) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 3,6,9,12-tetraoxatetradeca-1,13-diene, glycidyl ether.
P-20-0011	10/20/2020	10/12/2020	N	(G) Tetraoxaspiro[5.5]alkyl-3,9-diylobis(alkyl-2,1-diylobis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate).
P-20-0035	10/20/2020	10/06/2020	N	(G) Substituted aromatic, 3,3'-[[6-[(substituted alkyl amino)]-1,3,5-triazine-2,4-diylobis]imino[2-(substituted)-5-[substituted alkoxy]-4,1-phenylene]-2,1-diazenediylobis]substituted, sodium salt].
P-20-0061	10/27/2020	10/25/2020	N	(G) Formaldehyde, polymer with alkylphenols, alkyl ether.
P-20-0066	10/29/2020	10/29/2020	N	(G) 2-propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 10/01/2020 TO 10/31/2020

Case No.	Received date	Type of test information	Chemical substance
P-14-0712	10/02/2020	Quarterly PCDD/F Test of PMN Substance using EPA Test Method 8290A.	(G) Plastics, wastes, pyrolyzed, bulk pyrolysate.
P-16-0543	10/13/2020	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P-17-0345	10/08/2020	Physical Chemical Properties Report (OECD Test Guideline 104 and 122; EC Methods A.9, A.14, A.15 and A.21), Acute Dermal Irritation (OECD Test Guideline 404), Acute Eye Irritation (OECD Test Guideline 405), Skin Sensitization, LLNA (OECD Test Guideline 422B), Acute Oral Toxicity (OECD Test Guideline 423), and Bacterial Reverse Mutation Assay (OECD Test Guideline 471).	(G) Polyurethane, methacrylate blocked.
P-18-0154	10/12/2020	Algal Toxicity (OECD Test Guideline 201), Acute Oral Toxicity Study in Rats (OECD Test guideline 423), and Water Extractability Study. All test submitted on analog data.	(G) Isocyanic acid, polyalkylenepolycycloalkylene ester, 2-alkoxy alkanol and 1-alkoxy alkanol and alkylene diol blocked.
P-20-0066	09/29/2020	Reproductive/development Toxicity Screening Study in the Han Wistar Rat by Oral Gavage Administration.	(G) 2-propenoic acid, 2-hydroxyethyl ester, reaction products with dialkyl hydrogen heterosubstituted phosphate and dimethyl phosphonate.
P-20-0162	10/07/2020	Acute Oral Toxicity Study in Rats (OCED Test Guideline 420) and Bacterial Reverse Mutation Test (Ames Assay, OECD Test Guideline 471).	(G) Substituted, triaryl-, 3-substituted-2-substituted alkyl tricycloalkane-1-carboxylate (1:1).
P-20-0162	10/07/2020	Acute Oral Toxicity Study in Rats (OCED Test Guideline 420) and Bacterial Reverse Mutation Test (Ames Assay, OECD Test Guideline 471).	(G) Sulfonium, triaryl-, 3,3,3-trihalo-2-sulfoalkyl polycycloalkane-1-carboxylate (1:1).

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 12, 2020.

Pamela Myrick,

*Director, Information Management Division,
Office of Pollution Prevention and Toxics.*

[FR Doc. 2020-27540 Filed 12-14-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0612; FRL 10017-99-OGC]

Proposed Settlement Agreement; Biological Evaluations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed settlement agreement in the five consolidated petitions for review in *Center for Biological Diversity, et al. v. EPA* (D.C. Cir. Nos. 15-1054, 15-1176, 15-1389, 15-1462 and 16-1351) in the United States Court of Appeals for the District of Columbia. In 2015 and 2016, the Center for Biological Diversity and other Petitioners (collectively, "Petitioners") filed five petitions for review of registrations containing five active ingredients: flupyradifurone, bicyclopyrone, benzovindiflupyr, cuprous iodide, and haluaxifen-methyl. The five petitions for review alleged that EPA violated the Endangered Species Act ("ESA") by failing to consult on the effects to listed species when registering products containing the five new active ingredients. The Court consolidated the cases on June 20, 2018. The registrants for each active ingredient other than cuprous iodide sought and were granted intervention.

EPA, the Petitioners and the Defendant-Intervenors (collectively, "the Parties") are proposing to enter into an out-of-court settlement agreement, which, among other things, calls for the Parties to file a Joint Motion for Order on Consent requesting that the

Court order EPA to: complete a final effects determination for any use of cuprous iodide that is approved for sale and distribution by August 13, 2021; complete final Biological Evaluations for two of the other active ingredients by September 30, 2025 and the remaining two active ingredients by September 30, 2027; and initiate consultation with the National Marine Fisheries Service and/or the Fish and Wildlife Service (Services) as appropriate based on the outcome of the Biological Evaluations.

DATES: Written comments on the proposed settlement agreement must be received by *January 14, 2021*.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2020-0612 online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Erin S. Koch, Pesticides and Toxic Substances Law Office (2333A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564-1718; email address: koch.erin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

In 2015 and 2016, Petitioners filed five petitions for review in the Court of Appeals for the D.C. Circuit as EPA issued registrations for five new active ingredients, namely flupyradifurone,

bicyclopyrone, benzovindiflupyr, cuprous iodide, and haluaxifen-methyl. The petitions for review alleged that EPA violated Section 7(a)(2) of the ESA by failing to consult on the effects to listed species of the five new active ingredients. The Court consolidated the cases on June 20, 2018. The registrants for each active ingredient other than cuprous iodide sought and were granted intervention.

The Parties have been engaged in settlement negotiations to reach an agreement in this case. The proposed settlement agreement between the Parties calls for, among other things, the Parties to file a Joint Motion for Order on Consent requesting that the Court order EPA to: (1) Complete a final effects determination for any use of cuprous iodide that is approved for sale and distribution by August 13, 2021; (2) complete final Biological Evaluations (BEs) for two of the other active ingredients by September 30, 2025 and the remaining two active ingredients by September 30, 2027; and (3) initiate consultation as appropriate based on the outcome of the BEs.

Similar to the settlement agreement in *CBD, et al. v. EPA, et al.* (Case No. CV-11-0293-JCS (N.D. Cal.)), this proposed settlement agreement provides for the possibility of extending these dates if specific events occur, such as an extension of a comment period.

In addition to the commitments above, the settlement agreement provides that within three months of issuance of draft BEs or no later than December of 2024 and 2026, the Parties will meet and discuss potential interim measures. The settlement agreement also provides that EPA will maintain a web page that includes the settlement agreement, associated court orders, and a link to an independent 3rd-party web page hosted, maintained, and funded by Defendant-Intervenors.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who are not named as parties to the litigation in question. EPA may withdraw or withhold consent to the proposed settlement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the ESA or the Federal Insecticide, Fungicide, and Rodenticide Act. Unless EPA determines that consent should be withdrawn, the terms of the proposed settlement agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by EPA–HQ–OGC–2020–0612) contains a copy of the proposed settlement agreement and proposed order that will be filed with the Joint Motion for Order on Consent. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

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

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and proposed order that will be filed with the Joint Motion for Order on Consent, and is available through <https://www.regulations.gov>. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public

docket but will be available only in printed, paper form in the official public docket. Please refer to the information above about the current status of the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (email) system is not an “anonymous access” system. If you send an email comment directly to the Docket without going through www.regulations.gov, your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Joseph E. Cole,

Associate General Counsel.

[FR Doc. 2020–27541 Filed 12–14–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Annual Report for Fiscal Year 2020 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its *Annual Report for Fiscal Year 2020 and Three-Year Plan*.

The *Annual Report for Fiscal Year 2020 and Three-Year Plan* is available on the FASAB website at <https://www.fasab.gov/our-annual-reports/>. Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on the content of the annual report, FASAB’s project priorities for the next three years, and the potential projects the Board will consider moving forward. Written comments are requested by January 21, 2021, and should be sent to fasab@fasab.gov or Ms. Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

Authority: Federal Advisory Committee Act (5 U.S.C. App.), 31 U.S.C. 3511(d).

Dated: December 8, 2020.

Monica R. Valentine,
Executive Director.

[FR Doc. 2020–27566 Filed 12–14–20; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m. on Tuesday, December 15, 2020.

PLACE: The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public’s means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one

week after the event. Visit <http://fdic.windrosemedia.com> to view the live event. Visit <http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings> after the meeting. If you need any technical assistance, please visit our Video Help page at: <https://www.fdic.gov/video.html>.

Observers requiring auxiliary aids (e.g., sign language interpretation) for this meeting should call 703-562-2404 (Voice) or 703-649-4354 (Video Phone) to make necessary arrangements.

STATUS: Open.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule on Revising the FDIC's Regulations Concerning Collection of Delinquent Civil Money Penalties.

Memorandum and resolution re: Notice of Proposed Rulemaking on Computer-Security Incident Notification.

Memorandum and resolution re: Notice of Proposed Rulemaking on Additional Exemptions to Suspicious Activity Report Requirements (12 CFR part 353).

Memorandum and resolution re: Final Rule on the Removal of Transferred OTS Regulations Regarding Application Processing Procedures for State Savings Associations and Conforming Amendments to Other Regulations (part 390, Subpart F).

Memorandum and resolution re: Final Rule on Rescission of Regulations Transferred from the Office of Thrift Supervision contained in 12 CFR part 390, subpart G, and Conforming Amendments to Existing FDIC Regulations.

Memorandum and resolution re: Final Rule on the Removal of Transferred OTS Regulations Regarding Subordinate Organizations (part 390, Subpart O).

Memorandum and resolution re: Final Rule on Removal of Transferred OTS Regulations Regarding Prompt Corrective Action Directives (part 390,

Subpart Y) and Conforming Amendments to part 308, Subpart Q.

Report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Combined Final Rule on Brokered Deposits and Interest Rate Restrictions.

Memorandum and resolution re: Final Rule on Parent Companies of Industrial Banks and Industrial Loan Companies.

Memorandum and resolution re: Proposed 2021 FDIC Operating Budget.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Ms. Debra A. Decker, Deputy Executive Secretary of the Corporation, at 202-898-8748.

Dated at Washington, DC, on December 11, 2020.

Federal Deposit Insurance Corporation.

James P. Sheesley,
Assistant Executive Secretary.

[FR Doc. 2020-27700 Filed 12-11-20; 4:15 pm]

BILLING CODE 6714-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sending Case Issuances Through Electronic Mail

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: On a temporary basis, the Federal Mine Safety and Health Review Commission will be sending most issuances through electronic mail and will not be monitoring incoming physical mail or facsimile transmissions.

DATES: *Applicable:* December 9, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935; sstewart@fmshrc.gov.

SUPPLEMENTARY INFORMATION: Until May 31, 2021, most case issuances of the Federal Mine Safety and Health Review Commission (FMSHRC), including inter alia notices, decisions, and orders, will be sent only through electronic mail.

Further, FMSHRC will not be monitoring incoming physical mail or facsimile described in 29 CFR 2700.5(c)(2). If possible, all filings should be e-filed as described in 29 CFR 2700.5(c)(1).

Authority: 30 U.S.C. 823.

Dated: December 9, 2020.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2020-27490 Filed 12-14-20; 8:45 am]

BILLING CODE 6735-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Temporary Suspension of In-Person Hearings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is suspending all in-person hearings, settlement judge conferences, and mediations until May 31, 2021.

DATES: *Applicable:* December 9, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

SUPPLEMENTARY INFORMATION: In view of the risks presented by the novel coronavirus COVID-19, the Commission's Office of the Chief Administrative Law Judge ("OCALJ") is, effective December 9, 2020, suspending all in-person hearings, settlement judge conferences, and mediations until May 31, 2021.

At the discretion of the presiding administrative law judge and in coordination with the parties, hearings may proceed by videoconference or by telephone. Similarly, settlement judge conferences and mediations may be held by videoconference or by telephone. If the parties agree that an evidentiary hearing is not needed, cases may also be presented for a decision on the record.

The parties will be notified if the hearing needs to be rescheduled. OCALJ will reassess the risks presented by in-person hearings prior to May 31, 2021, and issue a subsequent order informing the public as to whether the suspension of in-person hearings will continue.

The presiding administrative law judge may be contacted with questions regarding this notice.

Authority: 30 U.S.C. 823.

Dated: December 9, 2020.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2020-27491 Filed 12-14-20; 8:45 am]

BILLING CODE 6735-01-P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than December 30, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001.

1. *Nathan C. Buerge, Joplin, Missouri, and Summer K. Timperley, Overland Park, Kansas*; to become members of the Buerge Family Group, a group acting in concert, to retain voting shares of Grand Capital Corporation, and thereby indirectly retain voting shares of Grand Capital Bank, both of Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, December 10, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020-27570 Filed 12-14-20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM**Notice of Proposals To Engage In or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 14, 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. *Community First Bancorporation, Walhalla, South Carolina*; to acquire SFB Bancorp, Inc., and thereby indirectly acquire Security Federal Bank, both of Elizabethton, Tennessee, and thereby engage in operating a savings association pursuant to Section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 10, 2020.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2020-27583 Filed 12-14-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10765]

Agency Information Collection Activities: Proposed Collection; 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 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 16, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.
SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10765 Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services; *Use:* Section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1(a)(1)(J)) authorizes the Secretary to "develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act (the Act)." Pursuant to this authority, the CMS seeks to develop and implement a Medicare

demonstration project, which CMS believes will help assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among IRFs providing services to Medicare beneficiaries.

This demonstration will assist in developing improved procedures for the identification, investigation, and prosecution of potential Medicare fraud. The demonstration will ensure that payments for IRF services are appropriate through either pre-claim or postpayment review, thereby working towards the prevention and identification of potential fraud, waste, and abuse, as well as protecting the Medicare Trust Funds from improper payments while reducing Medicare appeals. CMS proposes implementing the demonstration in Alabama, then expand to Pennsylvania, Texas, and California. After the initial four states, CMS will expand the demonstration to include the IRFs in any state that bill to Medicare Administrative Contractor (MAC) jurisdictions JJ, JL, JH, and JE. Under this demonstration, CMS proposes to offer choices for providers to demonstrate their compliance with CMS' IRF policies. Providers in the demonstration states may participate in either 100 percent pre-claim review, or 100 percent postpayment review. These providers will continue to be subject to the selected review method until the IRF reaches the target affirmation or claim approval rate (90 percent, based on a minimum of 10 pre-claim requests or claims submitted). Once an IRF reaches the target pre-claim review affirmation or postpayment review claim approval rate, it may choose to be relieved from claim reviews under the demonstration, except for a spot check of five percent of their claims to ensure continued compliance.

The information required under this collection is required by Medicare contractors to determine proper payment or if there is a suspicion of fraud. Under the pre-claim review choice, IRFs will send the pre-claim review request along with all required documentation to the Medicare contractor for review prior to submitting the final claim for payment. If a claim is submitted without a pre-claim review decision on file, the Medicare contractor will request the information from the IRF to determine if payment is appropriate. For the postpayment review option, the Medicare contractor will also request the information from the IRF provider who submitted the claim for payment from the Medicare program to determine if payment was appropriate. *Form Number:* CMS-10765

(OMB Control Number: 0938-NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits and Not-for-profits); *Number of Respondents:* 526; *Number of Responses:* 179,910; *Total Annual Hours:* 89,955. (For questions regarding this collection contact Jaclyn Gray (410) 786-3744.)

Dated: December 10, 2020.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020-27579 Filed 12-14-20; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Child Care and Development Fund Plan for States/Territories for FFY 2022-2024 (ACF-118; OMB #0970-0114)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF-118: Child Care and Development Fund Plan for States/Territories (OMB #0970-0114, expiration 12/31/2021) for FFY 2022-2024. There are minor changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

SUPPLEMENTARY INFORMATION:

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the

Child Care and Development Block Grant Act of 1990 (CCDBG Act), as amended, CCDBG Act of 2014 (Pub. L. 113–186), and 42 U.S.C. 9858. The Plan, submitted on the ACF–118, is required triennially, and remains in effect for 3 years. The Plan provides ACF and the public with a description of, and assurance about the states’ and territories’ child care programs. These

Plans are the applications for CCDF funds.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received and has made changes to the Plan Preprint document following the publication of the 60-day public comment period. The comments and changes are addressed in the request package to the OMB.

Consistent with the statute and regulations, ACF requests revision of the ACF–118A with minor modifications. This 30-day second Public Comment Period provides an opportunity for the public to submit comments to the OMB.

Respondents: State and Territory Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Child Care and Development Fund Plan for States and Territories (ACF–118)	56	1	200	11,200	3,733

Estimated Total Annual Burden Hours: 3,733.

Authority: Pub. L. 113–186 and 42 U.S.C. 9858.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2020–27466 Filed 12–14–20; 8:45 am]

BILLING CODE 4184–43–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: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration, OMB No. 0915–0212—Extension

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 must be received no later than February 16, 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: Voluntary Partner Surveys to Implement Executive Order 12862 in the Health Resources and Services Administration, OMB No. 0915–0212—Extension

Abstract: In response to Executive Order 12862, HRSA is proposing to conduct voluntary customer surveys of its partners to assess strengths and weaknesses in program services and processes. HRSA partners are typically state or local governments, health care facilities, health care consortia, health care providers, and researchers. HRSA is requesting continued approval for a generic clearance from OMB to conduct the partner surveys.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with grant processes or technical assistance

provided by a contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve services and processes.

Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred data collection methods.

A generic approval allows HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If this generic received continued approval, information on each individual partner survey will not be published in the **Federal Register**.

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

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
In-class evaluations	40,000	1	40,000	.05	2,000
Mail/Telephone surveys	12,000	1	12,000	.25	3,000
Focus groups	250	1	250	1.50	375
Total	52,250	.....	52,250	.....	5,375

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. 2020-27500 Filed 12-14-20; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-New]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is announcing it has submitted to the Office of Management and Budget (OMB) for review and clearance the following collection of information.

DATES: Comments on the ICR must be received on or before January 14, 2021.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795-7714. When submitting comments or requesting information, please include the document identifier 0990-New and project title for reference.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, OS/DHHS has submitted the following proposed collection of information to OMB for review and clearance.

OMB No. 0990-New—HHS Teletracking COVID-19 Portal

OMB Control Number

Abstract: The data collected through this ICR informs the Federal Government's understanding of disease patterns and furthers the development of policies for prevention and control of disease spread and impact related to the 2019 Novel Coronavirus (COVID-19). One of the most important uses of the data collected through this ICR is to determine critical allocations of limited supplies (e.g., protective equipment and medication). For instance, this collection has been used to distribute Remdesivir, a vital therapeutic that HHS distributes to the American healthcare system, via distinct data calls on regular intervals. As of July 10, HHS reduced the number requests for data from hospitals to support allocations of Remdesivir. HHS has stopped sending out one-time requests for data to aid in

the distribution of Remdesivir or any other treatments or supplies. This consolidated daily reporting is the only mechanism used for the distribution calculations, and daily reports are needed to ensure accurate calculations.

Type of Respondent: We acknowledge the burden placed on many hospitals, including resource constraints, and have allowed for some flexibilities, such as back-submissions or submitting every business days, with the understanding that respondents may not have sufficient staff working over the weekend. It is our belief that collection of this information daily is the most effective way to detect outbreaks and needs for Federal assistance over time, by hospital and geographical area, and to alert the appropriate officials for action. It's requested that 5,500 hospitals, submit data daily on the number of patients tested for COVID-19, as well as information on bed capacity and requirements for other supplies.

The HHS Teletracking COVID-19 Portal (U.S. Healthcare COVID-19 Portal) includes some data that were initially submitted by hospitals to HHS through CDC's National Healthcare Safety Network (NHSN) COVID-19 Module (OMB Control No. 0920-1290, approved 03/26/2020). Over the last several months time, the guidance for which data elements should be sent to HHS and through which method was updated at the request of the White House Coronavirus Task Force and other leaders to better inform the response.

ESTIMATED ANNUALIZED BURDEN HOURS

Number of respondents	Form name (electronic portal)	Number of responses per respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
5500	HHS Teletracking COVID-19 Portal	365	2,007,500	1.75	3,513,125

Terry Clark,
Office of the Secretary, Paperwork Reduction
Act Reports Clearance Officer.

[FR Doc. 2020-27473 Filed 12-14-20; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Network of Older Persons with Superior Cognition Performance.

Date: January 14, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Two Democracy Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Alexander Parsadonian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9666, parsadoniana@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: January 22, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Alexander Parsadonian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9666, parsadoniana@nia.nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel; Neural Network Dysfunction in AD.

Date: February 2, 2021.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Alexander Parsadonian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-9666, parsadoniana@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27494 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Oxidative Stress.

Date: January 19, 2021.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496-9667, nijaguna.prasad@nih.gov.

Name of Committee: National Institute on Aging Special Emphasis Panel; Pepper Center May 2021 Council.

Date: February 26, 2021.

Time: 7:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Two Democracy Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Anita H. Undale, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827-7428, anita.undale@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27469 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK20-016: Human Pancreas Analysis Program for Type 1 Diabetes—HPAP-T1D.

Date: February 1, 2021.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, begumn@nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Business Applications T1D Open/Closed Loop Platforms.

Date: February 12, 2021.

Time: 1:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892-2542, (301) 594-4721, ryan.morris@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR18-886 New Paradigms in Tissue Communication: From mediators to metabolic function (RC2).

Date: February 22, 2021.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7347, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7791, charlene.repique@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27497 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 19, 2021.

Open: 12:00 p.m. to 3:00 p.m.

Agenda: Report from the Institute Director and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David T. George, Ph.D., Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, georged@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nibib.nih.gov/about-nibib/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

Dated: December 9, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27474 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Review.

Date: March 16, 2021.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7799, yangj@extra.nidk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27492 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Network Management Core (NEMO) for the Pulmonary Trials Cooperative (PTC).

Date: January 14, 2021.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209-B, Bethesda, MD 20892, (301) 827-7953, kristen.page@nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Stimulating Access to Research in Residency Transition Scholar.

Date: January 27, 2021.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209-B, Bethesda, MD 20892, (301) 827-7953, kristen.page@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 9, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27493 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as

patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: February 2, 2021.

Open: 12:30 p.m. to 05:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, Division of Extramural Research Report, and other business of the Council.

Place: National Institutes of Health (Teleconference), 6710B Rockledge Dr., Bethesda, MD 21157.

Date: February 3, 2021.

Closed: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health (Teleconference), 6710B Rockledge Dr., Bethesda, MD 21157.

Contact Person: Robert Borie, Committee Management Specialist, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, 2221A, Bethesda, MD 20892, 301.827.6244, robert.borie@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person. Any member of the public may submit written comments no later than 15 days after the meeting.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: <http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx>.

Information is also available on the Institute's/Center's home page: <https://www.nichd.nih.gov/about/advisory/council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 9, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27470 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

The meeting will be open to the public as indicated below, viewing virtually by WebEx. Individuals can register to view and access the meeting by the links below:

January 14, 2021 WebEx: <https://nih.webex.com/nih/onstage/g.php?MTID=efd5d81157ca86678111c546ced7a91fa>.

January 15, 2021 WebEx: <https://nih.webex.com/nih/onstage/g.php?MTID=eda63cdefa13a124ac49e7cfdac33aac>.

1. Go to "Event Status" on the left-hand side of page, then click "Register". On the registration form, enter your information and then click "Submit" to complete the required registration.

2. You will receive a personalized email with the live event link.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: January 14-15, 2021.

Closed: January 14, 2021, 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: January 14, 2021, 1:00 p.m. to 4:00 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: January 15, 2021, 1:00 p.m. to 5:00 p.m.

Agenda: To view and discuss Clearance of Concepts.

Place: National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Rooms 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, One Democracy Plaza, Room 1072, Bethesda, MD 20892, (301) 435-0809, anna.ramseyewing@nih.gov.

Attendees and interested parties may submit questions and comments through written Q&A during the meeting, and for 15 days after the meeting, to NCATSCouncilInput@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS).

Dated: December 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020-27547 Filed 12-14-20; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2020-N126;
FXES11140200000-201-FF02ENEH00]

Draft Amendment to the Environmental Assessment/Habitat Conservation Plan Previously Associated With the 440-acre Schlumberger Property for Concordia University, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Concordia University has applied to the U.S. Fish and Wildlife Service for an amended incidental take permit (ITP) under the Endangered Species Act. The requested amended ITP, if granted, would authorize incidental take of the Jollyville Plateau salamander, in addition to the already existing ITP for golden-cheeked warbler. The proposed incidental take would result from activities associated with otherwise lawful activities, including construction, operation, and maintenance of Concordia University, that result in water quality and habitat degradation. Under the National

Environmental Policy Act, we invite public comment on the draft environmental assessment on the proposed amended habitat conservation plan and application.

DATES: To ensure consideration, written comments must be received or postmarked on or before January 14, 2021. We may not consider any comments we receive after the closing date in the final decision on this action.

ADDRESSES: *Accessing Documents:*

Internet: The dEA and HCP: You may obtain electronic copies of these documents at <http://www.fws.gov/southwest/es/AustinTexas/>.

U.S. Mail: You may obtain the documents by writing to the following addresses. In your request for documents, please reference Concordia University HCP and ITP Amendment (TE827597-4).

- *DEA and HCP:* A limited number of CD-ROM and printed copies of the dEA and HCP are available, by request, from Mr. Jacob Ogdee; Austin Ecological Services Field Office; U.S. Fish and Wildlife Service; 10711 Burnet Road, Suite 200; Austin, TX 78758; telephone 512-490-0057; fax 512-490-0974.

- *ITP application:* The ITP application is available from the Assistant Regional Director—Ecological Services; U.S. Fish and Wildlife Service; P.O. Box 1306, Room 6034; Albuquerque, NM 87103; Attention: Environmental Review Branch.

Submitting Comments: Regarding any of the three documents available for review, you may submit written comments by one of the following methods. In your comments, please reference Concordia University HCP and ITP Amendment (TE-827597-4).

Email: FW2_AUES_Consult@fws.gov.

U.S. Mail: Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758-4460; telephone 512-490-0057; fax 512-490-0974.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner Field Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; via phone at 512-490-0057 or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), make available a draft environmental assessment (dEA) under the National Environmental Policy Act for the Habitat Conservation Plan for an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit for

the Golden-cheeked Warbler Previously Associated with the 440-acre Schlumberger Property to Include Incidental Take of the Jollyville Plateau Salamander Due to Activities Associated with the Construction, Operation, and Maintenance of Concordia University Texas, in Travis County, Texas. Concordia University applied for an amendment to their existing HCP and incidental take permit (ITP) under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) that would add authorization for incidental take of the Jollyville Plateau salamander (*Eurycea tonkawae*) to the already permitted incidental take of golden-cheeked warbler (*Setophaga chrysoparia*). The dEA evaluates the impacts of, and alternatives to, implementation of the proposed HCP.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Alternatives

Proposed Action

The proposed action involves the issuance of an amended ITP by the Service for the covered activities in the permit area, under section 10(a)(1)(B) of the ESA. The ITP would cover “take” of the covered species associated with construction, operation, and maintenance of Concordia University within the permit area. An application for an ITP must include a HCP that describes the conservation measures the applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed taking of covered species to the maximum extent practicable. The applicant will fully implement the HCP if approved by the Service. The terms of the HCP and ITP will also ensure that incidental take will not appreciably reduce the likelihood of

the survival and recovery of the species in the wild.

No Action Alternative

We have considered one alternative to the proposed action as part of this process: No Action. Under a No Action alternative, the Service would not issue the requested amended ITP, and applicant either would not continue with the construction, operation, and maintenance of Concordia University or would conduct those activities in a manner that avoids incidental take. Therefore, the applicant would not implement the conservation measures described in the HCP.

Next Steps

We will evaluate the EA, HCP, and comments we receive, to determine whether the ITP application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of an ESA section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue an ITP. If all necessary requirements are met, we will issue the ITP to the applicant.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its

implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

*Regional Director, Southwest Region,
Albuquerque, New Mexico.*

[FR Doc. 2020–27582 Filed 12–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS–R2–ES–2020–N079;
FXES11130200000–201–FF02ENEH00]**

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Texas Hornshell

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan for Texas hornshell, a medium sized freshwater mussel that is listed as endangered under the Endangered Species Act. This species is native to the Rio Grande drainage in Texas, New Mexico, and Mexico. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: To ensure consideration, we must receive written comments on or before February 16, 2021. However, we will accept information about any species at any time.

ADDRESSES:

Reviewing document: You may obtain a copy of the draft recovery plan, the recovery implementation strategy, and the species status assessment by any one of the following methods:

- *Internet:* Download a copy at <https://ecos.fws.gov/ecp0/profile/speciesProfile?slId=919> or <https://www.fws.gov/southwest/es/TexasCoastal/>.

- *U.S. mail:* Send a request to U.S. Fish and Wildlife Service, Texas Coastal Ecological Services Field Office, 17629 El Camino Real, #211, Houston, TX 77058.

- *Telephone:* 281–286–8282.

Submitting comments: Submit your comments on the draft recovery plan in writing by any one of the following methods:

- *U.S. mail:* Project Leader, at the above U.S. mail address;

- *Email:* houstonesfo@fws.gov.

For additional information about submitting comments, see Request for Public Comments and Public

Availability of Comments under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Chuck Ardizzone, Field Supervisor, at the above address and phone number, or by email at houstonesfo@fws.gov. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, announce the availability of our draft recovery plan for Texas hornshell (*Popenaias popeii*), a freshwater mussel species listed as endangered under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). We request review and comment on this plan from local, State, and Federal agencies; Tribes; and the public. We will also accept any new information on the status of Texas hornshell throughout the species' range to assist in finalizing the recovery plan.

Texas hornshell is a medium-sized freshwater mussel species native to the Rio Grande drainage in Texas, New Mexico, and Mexico. Currently, five known populations of Texas hornshell remain in the United States: Black River (Eddy County, New Mexico), Pecos River (Val Verde County, Texas), Devils River (Val Verde County, Texas), Lower Canyons of the Rio Grande (Brewster and Terrell Counties, Texas), and Lower Rio Grande near Laredo (Webb County, Texas). After the species was listed, a small population was discovered in the confluence of Rio San Diego in Mexico. The draft recovery plan includes specific recovery objectives and criteria that, when achieved, will enable us to consider removing the Texas hornshell from the Federal List of Endangered and Threatened Wildlife (List).

Background

Recovery of endangered or threatened animals and plants to the point at which they are again secure, self-sustaining members of their ecosystems is a primary goal of the ESA and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. The ESA requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

We used a streamlined approach to recovery planning and implementation by first conducting a species status assessment (SSA) of Texas hornshell (Service 2018). An SSA is a

comprehensive analysis of the species' needs, current condition, threats, and future viability. The information in the SSA provides the biological background, a threats assessment, and a basis for a strategy for recovery of Texas hornshell. We then used this information to prepare an abbreviated draft recovery plan for Texas hornshell that includes prioritized recovery actions, criteria for reclassifying the species from endangered to threatened, criteria for removing the species from the List, and the estimated time and cost to recovery.

Summary of Species Information

We published the final rule to list the Texas hornshell as endangered (83 FR 5720) under the ESA on February 9, 2018. The Texas hornshell historically ranged throughout the Rio Grande drainage in the United States (New Mexico and Texas) and Mexico. Overall distribution has declined significantly, with the species currently occupying approximately 15 percent of its historical range in the United States. The resulting remnant stream populations occupy relatively shorter reaches compared to presumed historical stream populations, and they are isolated from one another primarily by reservoirs and unsuitable water quality (*i.e.*, saline waters). There are five known populations within the species' historical range in the United States (Black River, Lower Pecos River, Rio Grande—Lower Canyons, Rio Grande—Laredo, and Devils River), and one in Mexico (Rio San Diego).

Texas hornshell need seams of fine sediment in crevices, undercut riverbanks, travertine shelves, and large boulders in riverine ecosystems with flowing water and periodic cleansing flows to keep the substrate free of excess fine sediment accumulation. They need water quality parameters to be within a suitable range (Randklev et al. 2017, p. 5) (*i.e.*, dissolved oxygen above 3 milligrams/liter (mg/L), salinity below 0.9 parts per thousand, and ammonia below 0.7 mg/L (Sparks and Strayer 1998, p. 132; Augspurger et al. 2003, p. 2574; Augspurger et al. 2007, p. 2025; Carman 2007, p. 6)), and phytoplankton and bacteria as food. Finally, Texas hornshell need host fishes to be present during times of spawning.

The factors influencing the current and future health of populations include increased fine sediment, changes in water quality, loss of flowing water, and barriers to fish movement. These influences pose the largest risks to the future viability of this species and are primarily related to habitat changes such as the accretion of fine sediments,

low water flows, and poor water quality. Furthermore, each of these factors is exacerbated by changing climatic conditions.

Recovery Plan Goals

The objective of a recovery plan is to provide a framework for the recovery of a species so that protection under the ESA is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to reclassify the species to threatened status or remove it from the List. Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation and by estimating time and costs for implementing needed recovery measures.

The recovery strategy for the Texas hornshell involves stemming any further range contraction in extant stream populations, restoring and managing watersheds and stream habitat to support additional resilient stream populations, and increasing redundancy and representation within those stream populations. The recovery strategy primarily focuses on habitat restoration and preservation, and is based on an increased understanding of the relationship of Texas hornshell life history requirements within the physical, chemical, and ecological conditions of their environments. Information on this species and its habitats (*e.g.* population dynamics, alterations in stream flow, and/or responses to identified threats) is important for providing for future science-based management decisions and conservation actions.

Implementation of the recovery plan will necessitate adaptive management strategies to use the most up-to-date information as it becomes available. Texas hornshell recovery will involve cooperation among Federal, State, and local agencies, private landowners, academia, and other stakeholders. Therefore, the success of the recovery strategy presented below will rely heavily on the implementation of recovery actions conducted by, and through coordination with, our conservation partners in Texas, New Mexico, and Mexico.

The recovery objectives of this plan are to ensure long-term viability of the Texas hornshell by stabilizing and protecting existing and new Texas hornshell stream populations, host fish populations, and stream population and habitat connectivity, and restoring and enhancing the habitats and watersheds necessary to support resilient Texas hornshell stream populations.

The criteria for removing the species from the List are based on the following:

- Protect and expand existing populations and establish at least one additional population so that there are at least seven stream populations (four with high resiliency and three with moderate to high resiliency).
- Each of these populations should exhibit evidence of recruitment, persistence, and positive or stable population trends over six generations (90 years).
- Ensure there are adequate stream flows and habitat features supporting both the Texas hornshell and its host fishes, within each of the populations.
- Ensure surface and ground water quality through compliance with water quality standards and implementation of water quality controls within each of the populations.
- Increase connectivity by incorporating fish passages and removal of anthropogenic barriers within each population to allow for the free movement of all life stages of Texas hornshell host fishes.

Recovery of these species through implementation of recovery actions is estimated to occur in 2110; total costs for all partners are estimated at approximately \$783 million over the next 90 years.

Request for Public Comments

Section 4(f) of the ESA requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (July 1, 1994; 59 FR 34270). In an appendix to the final recovery plan, we will summarize and respond to the issues raised by the public and peer reviewers. Comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementation of recovery actions. Responses to individual commenters will not be provided, but we will provide a summary of how we addressed substantive comments in an appendix to the final recovery plan.

We invite written comments on this draft recovery plan. In particular, we are interested in additional information regarding the current threats to the species, ongoing beneficial management efforts, and the costs associated with implementing the recommended recovery actions. The species status assessment and recovery implementation strategy are accessible

as supporting documents for the draft recovery plan, but we are not seeking comments on those documents.

Public Availability of Comments

All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive will be available, by appointment, for public inspection during normal business hours at our office (see **ADDRESSES**).

Authority

We developed our draft recovery plan and publish this notice under the authority of section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2020–27542 Filed 12–14–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2020–N098;
FXRS1261070000 FF07J00000 201]

Alaska Subsistence Regional Advisory Council Meetings for 2021

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Federal Subsistence Board (Board) announces the public meetings of the 10 Alaska Subsistence Regional Advisory Councils (hereafter, Councils or RACs) for the winter and fall cycles of 2021. The 10 Councils each meet approximately twice a year to provide advice and recommendations to the Federal Subsistence Board about subsistence hunting and fishing issues on Federal public lands in Alaska.

DATES:

Winter 2021 Meetings: The Alaska Subsistence RACs will meet between February 9, 2021, and March 18, 2021, as shown in Table 1. All meetings will commence at 9:00 a.m. A teleconference may substitute for an in-person meeting if public health or safety restrictions are in effect.

TABLE 1—WINTER 2021 MEETINGS OF THE ALASKA SUBSISTENCE RACS

Regional Advisory Council	Dates	Location
Southeast AK—Region 1	March 16–18	Juneau.
Southcentral AK—Region 2	February 24–25	Cordova.
Kodiak/Aleutians—Region 3	March 9–10	Kodiak.
Bristol Bay—Region 4	February 9–10	Naknek.
Yukon-Kuskokwim Delta—Region 5	March 3–4	Bethel.
Western Interior—Region 6	February 17–18	Fairbanks.
Seward Peninsula—Region 7	March 11–12	Nome.
Northwest Arctic—Region 8	February 18–19	Kotzebue.
Eastern Interior—Region 9	March 4–5	Fairbanks.
North Slope—Region 10	February 22–23	Utqiagvik.

Fall 2021 Meetings: The Alaska Subsistence RACs will meet between September 27, 2021, and November 4,

2021, as shown in Table 2. All meetings will commence at 9:00 a.m.

TABLE 2—FALL 2021 MEETINGS OF THE ALASKA SUBSISTENCE RACS

Regional Advisory Council	Dates	Location
Southeast AK—Region 1	October 19–21	Craig.
Southcentral AK—Region 2	October 13–14	Anchorage.
Kodiak/Aleutians—Region 3	September 27–28	Unalaska.
Bristol Bay—Region 4	October 27–28	Dillingham.
Yukon-Kuskokwim Delta—Region 5	October 6–7	Bethel.
Western Interior—Region 6	October 13–14	Anchorage.
Seward Peninsula—Region 7	October 26–27	Nome.
Northwest Arctic—Region 8	November 1–2	Kotzebue.
Eastern Interior—Region 9	October 7–8	Fairbanks.
North Slope—Region 10	November 3–4	Utqiagvik.

The meetings are open to the public. For more information see **FOR FURTHER INFORMATION CONTACT**, below.

ADDRESSES: See **DATES** above. Specific information about meeting locations and

the final agendas can be found on the Federal Subsistence Program website at: <https://www.doi.gov/subsistence/regions>.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Sue Detwiler, Assistant Regional Director, Office of Subsistence

Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Wayne Owen, Director of Wildlife, Fisheries, Ecology, Watershed, & Subsistence, U.S. Department of Agriculture (USDA), Forest Service, Alaska Region; (907) 586-7916 or wayne.owen@usda.gov.

Reasonable Accommodations: The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Caron McKee, (907) 786-3880, subsistence@fws.gov, or 800-877-8339 (TTY), 7 business days prior to the meeting you would like to attend.

SUPPLEMENTARY INFORMATION: The Federal Subsistence Board announces the 2021 public meeting schedule for the 10 Alaska Subsistence Regional Advisory Councils, in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2). Established in 1993, the Councils are statutory Federal advisory committees that provide advice and recommendations to the Federal Subsistence Board about subsistence hunting and fishing issues on Federal public lands in Alaska, as authorized by section 805 of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111-3126).

The Councils are a crucial link between federally qualified subsistence users and the Board. The Board is a multi-agency body with representation from a Chair and two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture, U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the USDA Forest Service.

Each Council meets approximately two times per calendar year, once in the winter and once in the fall, to attend to business and develop proposals and recommendations to the Board.

Meeting Agendas

Winter Meetings

- General Council business: Review and adoption of agenda; election of officers; review and approval of previous meeting minutes; Chair and Council member reports; public and Tribal comments on non-agenda items.
- Develop proposals and accept public comment to change subsistence hunting and trapping regulations.
- Review and approval of Annual Report.
- Agency reports.

- Future meeting dates.

Fall Meetings

- General Council business: Review and adoption of agenda; review and approval of previous meeting minutes; Chair and Council member reports; public and Tribal comments on non-agenda items.
- Prepare recommendations and accept public comments on proposals to change subsistence hunting and trapping regulations.
- Define issues for upcoming Annual Report.
- Agency reports.
- Future meeting dates.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings; in addition, announcements will be made on local radio stations and posted on social media and the program website. Locations and dates may change based on weather or local circumstances. The final agendas and other related meeting information will be posted on the Federal Subsistence Program website at <https://www.doi.gov/subsistence/regions>. Detailed minutes of the meetings are maintained by the Designated Federal Officers and will be available for public inspection within 90 days after each meeting at <https://www.doi.gov/subsistence/regions>.

Public Disclosure of Comments: Time will be allowed for any individual or organization wishing to make extemporaneous and/or formal oral comments. Any written comments received will be provided to the Council members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix.

Sue Detwiler,

Assistant Regional Director, U.S. Fish and Wildlife Service.

Dated: 10 December 2020.

Wayne Owen,

Director, Wildlife, Fisheries, Ecology, Watershed, & Subsistence, Alaska Region, USDA—Forest Service.

[FR Doc. 2020-27568 Filed 12-14-20; 8:45 am]

BILLING CODE 4333-15-P; 3411-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLAZAG02000.L54400000.EU0000. LVCLA19A5450; AZA-018673]

Notice of Realty Action: Non-Competitive (Direct) Sale and Conveyance of Reversionary Interests of Public Land in Cochise County, Arizona, for Fry Fire District, Arizona, Recreation and Public Purposes Act Patent 02-85-0038

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing a noncompetitive (direct) sale of the Federal reversionary interest of 2.50 acres of previously patented land in a Recreation and Public Purposes Act patent in Cochise, Arizona, at no less than the appraised fair market value, to the Fry Fire District, Arizona.

DATES: Interested parties may submit written comments regarding this proposed conveyance on or before January 29, 2021.

ADDRESSES: Comments concerning this notice should be addressed to Jayme Lopez, Field Office Manager, BLM Tucson Field Office, 3201 East Universal Way, Tucson, AZ 85756. Comments may also be faxed to 520-258-7238, or emailed to: blm_az_gdo_comments@blm.gov.

FOR FURTHER INFORMATION CONTACT: Bill Werner, Realty Specialist, at the above address; telephone 520-258-7228; email wwerner@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to 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 for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has examined and found the sale of the Federal reversionary interest in Recreation and Public Purposes Act Patent 02-85-0038 suitable for conveyance under Section 203 of the Federal Land Policy and Management Act (Pub. L. 94-579; 43 U.S.C. 1713):

Gila and Salt River Meridian, Arizona

T. 22 S., R. 21 E.,
Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 2.50 acres.

A map delineating the parcel is available for public review at the BLM Tucson Field Office at the address above

and online at <https://eplanning.blm.gov/eplanning-ui/project/2000251/510>.

This Notice informs the public of an application submitted by the Fry Fire District, Arizona, for a non-competitive sale and conveyance of the reversionary interests of public land in Cochise County for the District's Recreation and Public Purposes Act patent 02-85-0038, held since 1985, for a fire station.

The conveyance is requested by the Fry Fire District in order to commercially lease its facilities, which is currently prohibited under the Recreation and Public Purposes patent it holds. This would enable the Fry Fire District to commercially lease its facilities, including placement of infrastructure such as cell towers, generating revenue to support its firefighting and emergency medical services to the public.

Issuance of the document of conveyance, a new patent, is in accordance with the 1992 Safford District Resource Management Plan (DOI-BLM-AZ-G010-1992-RMP-EIS) and the 1994 Land Tenure Amendment to the Safford District Resource Management Plan (EA/Decision Record No. AZ-040-04-12). Conveyance of the reversionary interest in the land is consistent with applicable Federal and county land use plans and meets the needs of the community. The land is not required for any other Federal purpose. This disposal would not impede access to Federal lands used for recreation, as the Federal lands in the vicinity would continue to have public access.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application or any other factor not directly related to the sale of the reversionary interest. The BLM will review and determine the validity of any adverse comments. In the absence of any adverse comments, the decision will become final. The lands will not be offered for conveyance until a determination of significance and Decision Record have been signed for the completed Environmental Assessment DOI-BLM-AZ-A020-2020-0029-EA found at: <https://eplanning.blm.gov/eplanning-ui/project/2000251/510>.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made available to the public at any time. While you can ask in your comment to withhold your personal identifying information from public

review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.

Jaime M. Lopez,
Field Manager.

[FR Doc. 2020-27556 Filed 12-14-20; 8:45 am]

BILLING CODE 4310-32-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-755]

Bulk Manufacturer of Controlled Substances Application: Sterling Wisconsin, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sterling Wisconsin, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 16, 2021. Such persons may also file a written request for a hearing on the application on or before February 16, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 15, 2020, Sterling Wisconsin, LLC, W130N10497 Washington Drive, Germantown, Wisconsin 53022-4448, applied to be registered as an bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
5-Methoxy-N-N-Dimethyltryptamine.	7431	I
Oliceridine	9245	II
Thebaine	9333	II
Afentanil	9737	II

The company plans to bulk manufacture the listed controlled substances to be commercially sold to registered manufacturers/suppliers. In

reference to dug codes 7350 (Marihuana Extract), 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2020-27512 Filed 12-14-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-753]

Importer of Controlled Substances Application: Adiramedica LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Adiramedica LLC has applied to be registered as an importer of a basic class of a controlled substance. Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 14, 2021. Such persons may also file a written request for a hearing on the application on or before January 14, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 14, 2020, Adiramedica LLC, 585 Turner Industrial Way, Aston, Pennsylvania 19014, applied to be registered as an importer of the following basic class of a controlled substance:

Controlled substance	Drug code	Schedule
Tapentadol	9780	II

The company plans to import Tapentadol in dosage form for clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,
Assistant Administrator.

[FR Doc. 2020-27509 Filed 12-14-20; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2021

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2021 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment so that the wages and working conditions of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, the Department announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology established in the *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958, 63067-63068 (Oct. 16, 2015); 20 CFR 655.211.

DATES: The rate is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office

of Foreign Labor Certification, Employment and Training Administration, Department of Labor, N-5311, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 513-7350 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H-2A labor certification from the Department. The H-2A labor certification provides that (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate for 2021

The Department's H-2A regulations covering the herding or production of livestock on the range (H-2A Herder Rule) at 20 CFR 655.210(g) and 655.211(a)(1) provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200-655.235 a wage that is at least the highest of (1) the monthly AEWR, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by federal or state law or judicial action. Further, when the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by federal or state law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by the Department in the **Federal Register**. 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2) of the H-2A Herder Rule, the monthly AEWR for range occupations in all states for a calendar year is based on the monthly AEWR for the previous calendar year, adjusted by the Employment Cost Index (ECI) for wages

and salaries published by the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2019 and September 2020 was 2.7 percent, resulting in a monthly AEWR for range occupations in effect for 2021 of \$1,727.75.¹ The national monthly AEWR rate for all range occupations in the H-2A program in 2021 is calculated by multiplying the monthly AEWR for calendar year 2020 by the October 2020 ECI adjustment ($\$1,682.33 \times 1.027 = \$1,727.75$) or \$1,727.75. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the monthly AEWR of \$1,727.75, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by federal or state legislation or judicial action at the time work is performed on or after the effective date of this notice.

John Pallasch,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2020-27468 Filed 12-14-20; 8:45 am]

BILLING CODE 4510-FP-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Hall of Fame and Successful Graduate Nomination

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

¹ The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries "for the preceding October-October period." This regulatory language was intended to identify the Bureau of Labor Statistics' October publication of ECI for wages and salaries, which presents data for the September-September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 30, 2020, by the Bureau of Labor Statistics was used for establishing the monthly AEWR under the regulations. See https://www.bls.gov/news.release/archives/eci_10302020.pdf. The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H-2A herder workforce.

(PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 14, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Job Corps is the nation’s largest residential, educational, and career technical training program for young Americans. Job Corps was established in 1964 by the Economic Opportunity Act and is currently authorized by Title I–C of the Workforce Innovation Opportunity Act (WIOA) (29 U.S. Code § 3196). Since its inception, Job Corps has helped prepare over 3 million at-risk young people between the ages of 16 and 24 for success in our nation’s workforce. The Job Corps Hall of Fame Candidate and Successful Graduate Nomination forms would gather information about program graduates’ post-enrollment outcomes and reviewed by the National Office of Job Corps for selection of one graduate annually to the Job Corps Hall of Fame and two recent graduates recognizing their career success after leaving the program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 22, 2020 (85 FR 44325).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Job Corps Hall of Fame and Successful Graduate Nomination.

OMB Control Number: 1205–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 400.

Total Estimated Number of Responses: 400.

Total Estimated Annual Time Burden: 500 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 9, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020–27584 Filed 12–14–20; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request; Equal Access to Justice Act

AGENCY: Department of Labor—Office of the Assistant Secretary for Administration and Management (DOL–OASAM).

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the DOL is soliciting public comments regarding this OASAM-sponsored information collection to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments pertaining to this information collection are due on or before February 16, 2021.

ADDRESSES:

Electronic submission: You may submit comments and attachments

electronically at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Mail submission: 200 Constitution Ave. NW, Room S–5315, Washington, DC 2020.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the DOL, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the DOL’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Anthony May by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION:

The Equal Access to Justice Act (EAJA) (5 United States Code Section 504(a)(2)) provides payment of fees and expenses to eligible parties who have prevailed against a Federal agency in certain administrative proceedings. These requirements are codified in the Department of Labor’s regulations in 29 Code of Federal Regulations Part 16, Subpart B. In order to obtain an award, the statute and associated DOL regulations require parties to file an application. Other agencies may have their own EAJA regulations.

The DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an Information Collection Review cannot be for more than three (3) years without renewal. The DOL notes that currently approved information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Agency: DOL–OASAM.

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 1225–0013.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: \$25.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: December 9, 2020.

Anthony May,

Management and Program Analyst.

[FR Doc. 2020-27585 Filed 12-14-20; 8:45 am]

BILLING CODE 4510-23-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, December 17, 2020.

PLACE: Due to the COVID-19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (www.ncua.gov) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. NCUA Rules and Regulations, Field of Membership Shared Facility Requirements.
2. NCUA Rules and Regulations, Regulatory Relief in Response to COVID-19.
3. NCUA Rules and Regulations, Mortgage Servicing Rights.
4. NCUA Rules and Regulations, Overdraft Policy.
5. NCUA Rules and Regulations, Subordinated Debt.
6. Board Briefing, Share Insurance Fund 2021 Normal Operating Level.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703-518-6304.

Melane Conyers-Ausbrooks,
Secretary of the Board.

[FR Doc. 2020-27616 Filed 12-11-20; 11:15 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE:

10:00 a.m., Friday, December 18, 2020

Recess: 12:00 p.m.

12:15 p.m., Friday, December 18, 2020

PLACE: Due to the COVID-19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (www.ncua.gov) and access the provided webcast link.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. NCUA Rules and Regulations, Annual Operating Fee Assessment.
2. NCUA's 2021-2022 Budget.
3. Board Briefing, NCUA Operating Fee Schedule and Overhead Transfer Rate (OTR).

Portions Closed to the Public

1. Supervisory Action. Closed pursuant to Exemptions (7), (8), and (9)(ii).
2. Personnel Action. Closed pursuant to Exemption (2).

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703-518-6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2020-27614 Filed 12-11-20; 11:15 am]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2020-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 14, 21, 28, 2020, January 4, 11, 18, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 14, 2020

Thursday, December 17, 2020

2:30 p.m. Affirmation Session (Public Meeting) (Tentative)

- a. Interim Storage Partners, LLC (WCS Consolidated Interim Storage Facility), Appeals Of LBP-19-7: Fasken Proposed New Contention Based on Draft Environmental Impact Statement (Tentative) (Contact: Denise McGovern: 301-415-0681)

Additional Information: Due to COVID-19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live via teleconference. Details for joining the teleconference in listen only mode can be found at <https://www.nrc.gov/pmns/mtg>.

Week of December 21, 2020—Tentative

There are no meetings scheduled for the week of December 21, 2020.

Week of December 28, 2020—Tentative

There are no meetings scheduled for the week of December 28, 2020.

Week of January 4, 2021—Tentative

There are no meetings scheduled for the week of January 4, 2021.

Week of January 11, 2021—Tentative

There are no meetings scheduled for the week of January 11, 2021.

Week of January 18, 2021—Tentative

There are no meetings scheduled for the week of January 18, 2021.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at Denise.McGovern@nrc.gov. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or by email at Tyesha.Bush@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 10, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020-27630 Filed 12-11-20; 11:15 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-43 and CP2021-44]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning

a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s),

applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

1. *Docket No(s):* MC2021-43 and CP2021-44; Filing Title: USPS Request to Add Priority Mail Express Contract 86 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 9, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: December 17, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2020-27516 Filed 12-14-20; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Modified System of Records

AGENCY: Postal Service.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify a Customer Privacy Act System of Records (SOR) to enhance an ongoing initiative to identify, prevent and mitigate potentially fraudulent activity within the Change-of-Address and Hold Mail processes.

DATES: These revisions will become effective without further notice on January 14, 2021, unless, in response to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (privacy@usps.gov). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202-268-3069 or privacy@usps.gov.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish

their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing revisions to an existing system of records (SOR) to support and enhance the Address Mapping Directory initiative, previously referred to as the Address Matching Database initiative. USPS SOR 800.050, was implemented on January 4, 2019, to facilitate the detection and prevention of fraudulent Change-of-Address and Hold Mail service requests.

I. Background

In a continuing effort to enhance the security of mailing and shipping services, the Postal Service utilizes an Address Mapping Directory to identify, prevent and mitigate potentially fraudulent activity within the Change-of-Address and Hold Mail processes. With the exception of Change-of-Address requests subject to protective court orders, the Address Mapping Directory initiative sends an email notification to customers who submit a Change-of-Address request or a Hold Mail request. The Address Mapping Directory initiative enhances the confidentiality and privacy of mail and package delivery services by improving the security of both the Change-of-Address and Hold Mail processes. The Address Mapping Directory also protects Postal Service customers from becoming potential victims of mail fraud and identity theft. Other policies that ensure the security and confidentiality of personal information are described below in the Safeguards section of this SOR.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service currently maintains the Address Mapping Directory (AMD), previously referred to as the Address Matching Database, to detect and prevent potential fraud for Change-of-Address (COA) and Hold Mail service requests, through address mapping comparisons and cross-checks between multiple Postal Service customer systems. In order to enhance the accuracy and functionality of address mapping comparisons and cross-checks, the Postal Service is proposing to modify SOR 800.050 Address Matching for Mail Fraud Detection and Prevention, to revise the System Name, include customer names, options selected for type of move by customers, and online user information in the Categories of Records, to reduce retention time for records, and to provide a more descriptive version of

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

existing purpose 5, to promote transparency.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to this SOR has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this modified system of records to have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions to this system of records as follows:

SYSTEM NAME AND NUMBER:

USPS 800.050, Address Mapping Directory for Mail Fraud Detection and Prevention.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS National Customer Support Center (NCSC) and USPS IT Eagan Host Computing Services Center.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Product Innovation, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 1341, 1343 and 3061; 39 U.S.C. 401, 403, 404, 3003 and 3005.

PURPOSE(S):

1. To enhance the customer experience by improving the security of Change-of-Address (COA) and Hold Mail processes.

2. To protect USPS customers from becoming potential victims of mail fraud and identity theft.

3. To identify and mitigate potential fraud in the COA and Hold Mail processes.

4. To verify a customer's identity when applying for COA and Hold Mail services.

5. To facilitate mail fraud detection and prevention for COA and Hold Mail service requests through address mapping comparisons and cross-checks between multiple USPS customer systems.

6. To facilitate the provision of accurate and reliable mail and package delivery services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers requesting Change-of-Address mail forwarding services or Hold Mail services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: For Change-of-Address requests, customer name(s), including first name, middle name or initial, last name and suffix, old and new address, email address(es), options selected for type of move (individual, family, or business) and (permanent), telephone numbers and device identification; for Hold Mail requests, customer name(s), including first name, middle name or initial, last name and suffix, address, email address(es), and telephone numbers.

2. Online user information: Device identification, internet Protocol (IP) address.

RECORD SOURCE CATEGORIES:

Individual customers requesting Change-of-Address, mail forwarding, or Hold Mail services and other USPS Products, Services and features from USPS customer systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7, 10 and 11. apply.

STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Retrieval is accomplished by a computer-based system, using one or more of the following elements: By customer name(s), ZIP Code(s), address, telephone number, email address, device identification and/or IP address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

COA and Hold Mail records are retained in an electronic database for 5 years from the effective date.

Electronic records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to records is limited to individuals whose official duties require

such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

Online data transmission and storage is protected by encryption, dedicated lines, and authorized access codes.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, email, and other identifying information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

December 4, 2018, 83 FR 62631.

* * * * *

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020-27514 Filed 12-14-20; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90622; File No. SR-NASDAQ-2020-083]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 1, Section 1; Options 2, Section 5; Options 3, Sections 5, 7, 10, 15 and 23

December 9, 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 30, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I 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 rules of The Nasdaq Options Market LLC (“NOM”) at Options 1, Section 1 (Definitions); Options 2, Section 5 (Market Maker Quotations); Options 3, Section 5 (Entry and Display of Orders); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); Options 3, Section 15 (Risk Protections); and Options 3, Section 23 (Data Feeds and Trade Information).

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NOM Rules at Options 1, Section 1 (Definitions); Options 2, Section 5 (Market Maker Quotations); Options 3, Section 5 (Entry and Display of Orders); Options 3, Section 7 (Types of Orders and Order and Quote Protocols); Options 3, Section 10 (Order Book Allocation); Options 3, Section 15 (Risk

Protections); and Options 3, Section 23 (Data Feeds and Trade Information). Each change is described below.

Options 1, Section 1

The Exchange proposes to amend the definition of “Public Customer” to conform to Nasdaq Phlx LLC’s (“Phlx”) definition at Options 1, Section 1(b)(46). The Exchange believes that making clear that a Public Customer could be a person or entity and clarifying that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47),³ will make clear what it meant by that term. Today, a Public Customer is not a Professional. In order to properly represent orders entered on the Exchange, Participants are required to indicate whether orders are “Professional Orders.” To comply with this requirement, Participants are required to review their Public Customers’ activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.⁴ A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order.

The Exchange also proposes to remove a sentence within Options 1, Section 1(a)(47) which provides, “A Participant or a Public Customers may, without limitation, be a Professional.” This sentence is confusing, unnecessary, and adds no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.’s (“BX”) Rules.⁵ The Exchange adopted a Professional

³ NOM Options 1, Section 1(a)(47) provides that, “The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.”

⁴ Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer’s orders within five days.

⁵ See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

designation in 2010⁶ and has differentiated Public and Professional customers since that time.

The Exchange also proposes to remove a sentence, within Options 3, Section 10(a)(1)(C)(i), which provides that a Public Customer order does not include a Professional order. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. Today, the definition of a Public Customer does not explicitly exclude a Professional. The language that the Exchange proposes to delete currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

Bid/Ask Differentials

Currently, NOM Market Maker intra-day quoting requirements, within Options 2, Section 5(d)(2), provide,

Bid/ask Differentials (Quote Spread Parameters). Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend NOM Options 2, Section 5(d)(2) to add the words “Intra-Day” before the title “Bid/ask Differentials (Quote Spread Parameters)” to make clear that these requirements are intra-day. Also, the Exchange proposes to amend this paragraph to remove the phrase, “including before and during the opening.” The bid/ask differentials, within NOM Options 2, Section 5(d)(2), will continue to apply intra-day. This is consistent with the Exchange’s existing practice. Today, the bid/ask differentials applicable to the opening are noted

⁶ See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

within Options 3, Section 8(a)(6).⁷ As noted within the rule, NOM publishes its specified bid/ask differential on its system settings page.⁸ The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule.

Options 3, Section 5

The Exchange proposes to amend Options 3, Section 5(c) to add additional rule text similar to Phlx Options 3, Section 5(c).⁹ NOM's current Options 3, Section 5(c) states, "The System automatically executes eligible orders using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO")." The Exchange proposes to state, "The System automatically executes eligible orders using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO") if the best bid and/or offer on the Exchange has been repriced pursuant to subsection (d) below." Today, NOM reprices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.¹⁰ Orders which lock or

cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.¹¹ The re-priced order is displayed on OPRA. The order remains on NOM's Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on NOM by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will provide additional clarity.

Options 3, Section 7

The Exchange proposes to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1). By way of background with respect to cancelling and replacing an order, a Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a single cancel and replace order in one message ("Cancel-Replacement Order"). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order.

Currently, the rule text for Cancel-Replacement Order provides, "Cancel-Replacement Order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained." The Exchange proposes to replace the words "shall mean" with "is" and remove the final sentence of the rule text.¹² The

Exchange proposes to add a new sentence to the end of the rule which provides, "The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, and the size is not increased." Unlike the sentence proposed for deletion, the proposed sentence states in the affirmative the conditions under which the Cancel-Replacement Order will retain priority. Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange is not amending the current System functionality of a Cancel-Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.¹³ The proposed rule reverses the phrasing in the current rule and, instead, describes changes to priority when size is increased. Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX's Cancel-Replacement Order.¹⁴

The Exchange proposes to amend "Limit Orders," within Options 3, Section 7(a)(2). The Exchange proposes to style "Limit Orders" in the singular and change "are" to "is an" and "orders" to "order." A Limit Order on NOM operates in the same manner as a Limit Order on BX. The Exchange proposes to conform the rule text of NOM's Limit Order to BX Options 3, Section 7(a)(3) by adding a sentence describing marketable limit orders. BX recently amended its rule to similarly

will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained."

¹³ Options 3, Section 7(a)(1) provides, "The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained."

¹⁴ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁷ NOM Options 3, Section 8(a)(6) provides, "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation."

⁸ NOM's System Settings page is located at: https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf.

⁹ Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx's All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

¹⁰ NOM Options 3, Section 5(d) provides, "An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets

restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price."

¹¹ See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

¹² The final sentence of current NOM Options 3, Section 7(a)(1) provides, "The replacement order

change its description of Limit Order.¹⁵ The Exchange proposes to state, “A marketable limit order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Exchange.” The Exchange believes that the rule amendment more aptly describes a marketable limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM’s description with BX’s description.

The Exchange proposes to amend “Minimum Quantity Orders,” within Options 3, Section 7(a)(3). The Exchange proposes to style “Minimum Quantity Orders” in the singular and change “are” to “is an” and “orders” to “order.” These amendments are technical and non-substantive. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange proposes to amend “Market Orders,” within Options 3, Section 7(a)(4). The Exchange proposes to style “Market Orders” in the singular and change “are” to “is an” and “orders” to “order.” These amendments are technical and non-substantive. The Exchange also proposes to amend a current sentence to state, “Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant, once an option series has opened for trading.” Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those Market Orders that remained on the Order Book once an option series opened.¹⁶ The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange proposes to make clear that while the opening is on-going, and the intra-day trading session has not commenced, the pre-established period of time would not commence. Further, the Exchange proposes to note that “Market Orders on the Order Book would be immediately cancelled if an options series halted, provided the Participant designated the cancellation

of Market Orders.” Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend “Price Improving Orders,” within Options 3, Section 7(a)(5). The Exchange proposes to style “Price Improving Orders” in the singular and change “are” to “is an” and “orders” to “order.”

The Exchange proposes to amend “On the Open Order,” within Options 3, Section 7(a)(6) by removing the words “The term” at the beginning of the sentence and change “shall mean” to “is.”

The Exchange proposes to amend “Intermarket Sweep Order” or “ISO,” within Options 3, Section 7(a)(7). Today, the rule text provides,

“Intermarket Sweep Order” or “ISO” are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Options 5, Section 1. ISOs may have any time-in-force designation except WAIT, are handled within the System pursuant to Options 3, Section 10 and shall not be eligible for routing as set out in Options 3, Section 19. ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day.

(1) Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Options 5, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Options 5, Section 1). These additional routed orders must be identified as ISOs.

The Exchange proposes to replace the current rule, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as “A,” with the following rule text which is similar to BX Options 3, Section 7(a)(6),¹⁷ to describe an ISO Order, “is a Limit Order that meets the requirements of Options 5, Section 1(8). Orders submitted to the Exchange as ISO are not routable and

will ignore the ABBO and trade at allowable prices on the Exchange. ISOs may be entered on the Order Book. ISOs may have any time-in-force designation and are handled within the System pursuant to Options 3, Section 10 and shall not be eligible for routing as set out in Options 5, Section 4. ISO Orders may not be submitted during the opening.”

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text, “. . . will ignore the ABBO and trade at allowable prices on the Exchange” is more precise than the current rule text and describes current functionality. The Exchange further proposes to state, “ISOs may be entered on the Order Book.” That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the functionality of an ISO Order. The Exchange believes the proposed description provides a more succinct description.

Today, ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited.

Further, today, NOM’s System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM’s current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate.

The Exchange proposes to amend “One-Cancels-the-Other Order” at renumbered Options 3, Section 7(a)(8) by changing “shall mean” to “is.”

The Exchange proposes to amend the “All-or-None Order,” within renumbered Options 3, Section 7(a)(9). The Exchange proposes to replace “shall

¹⁵ *Id.*

¹⁶ See NOM’s Trading Halts rule at Options 3, Section 9(d)(2), “After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection.”

¹⁷ BX’s rule describes the PRISM mechanism, while NOM has no auction mechanisms.

mean” with “is” and capitalize market order and limit orders.

The Exchange proposes to amend the “Post-Only Orders,” within renumbered Options 3, Section 7(a)(10). The Exchange proposes to replace “are” with “is an” and make Post-Only Orders singular. An extra space is also being removed.

The Exchange proposes to amend Options 3, Section 7(b) to define “Time in Force” as “TIF”.

With respect to an “On the Open Order,” or “OPG” Order, within Options 3, Section 7(b)(1), the Exchange notes that OPGs may not route. This is the case today. This order type functions in the same way as BX’s OPG Order at Options 3, Section 7(b)(1).¹⁸ The Exchange is adding rule text to make clear the manner in which an OPG Order would be treated, which is similar to how a BX OPG Order is treated today.

The Exchange proposes to amend an “Immediate-Or-Cancel” Order or “IOC,” within Options 3, Section 7(b)(2) to add hyphens and make “Or” lowercase. The Exchange proposes to remove the current description which provides that an IOC Order, “shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.” The Exchange proposes to replace this description with rule text similar to BX Options 3, Section 7(b)(2)¹⁹ as these

¹⁸ BX Options 3, Section 7(b)(1) provides, “An Opening Only order (“OPG”) is entered with a TIF of “OPG”. This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route.”

¹⁹ BX Options 3, Section 7(b)(2) provides, “Immediate-or-Cancel” or “IOC” is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction

order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX’s rule addresses limitations in order protections that do not exist today on NOM. The Exchange proposes to state that an Immediate-or-Cancel Order or “IOC” Order is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled and/or routed pursuant to Participant’s instruction. IOC orders may be entered through FIX, OTTO or SQF; IOC Orders entered through OTTO or SQF may not route. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route. The Exchange is proposing to memorialize this information within the description of an IOC Order to add clarity.

The Exchange proposes to amend the TIF of “DAY” at Options 5, Section 7(b)(3) to remove the words “shall mean for orders so designated” and add “is an order” to conform the rule text to other text in this rule. The Exchange also proposes to conform the description of a TIF of “DAY” similar to Phlx Options 3, Section 7(c)(1).²⁰ The Exchange believes that the remainder of the description for a Day Order, “if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. Day Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close,” is unnecessarily verbose and proposes to remove this rule text. The Exchange proposes to state, “Day” is an order entered with a TIF of “Day” that expires at the end of the day on which it was entered, if not executed. All orders by their terms are Day Orders unless otherwise specified. Day Orders may be

(“PRISM”) Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) Executed after an exposure period, or (2) cancelled.

²⁰ Phlx Options 3, Section 7(c)(1) provides, “Day. If not executed, an order entered with a TIF of “Day” expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX.”

entered through FIX or OTTO. A Day Order on Phlx functions in the same way as a Day Order on NOM. The Phlx rule text is more succinct in describing this order type. Similar changes were recently made on BX.²¹

The Exchange proposes to amend the TIF of “Good Til Cancelled” or “GTC” at Options 5, Section 7(b)(4). The Exchange proposes to remove the words “shall mean for orders” and add “is an order.” The Exchange also proposes to conform the rule text similar to Phlx Options 3, Section 7(c)(4),²² and provide that a “Good Til Cancelled” or “GTC” is “an order entered with a TIF of “GTC” that, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. GTC Orders may only be entered through FIX.” The Exchange would remove the rule text which provides, “that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close.” A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange is not proposing to amend the functionality of a GTC Order, rather the Exchange believes the proposed description is more succinct.

The Exchange proposes to no longer offer a TIF of “WAIT.” The Exchange would remove the rule text at NOM Options 3, Section 7(b)(5). If the Exchange desires to offer this TIF in the future, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act.²³ The Exchange has provided notice of its intention to remove the TIF of

²¹ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

²² Phlx Options 3, Section 7(c)(4) provides, “A Good Til Cancelled (“GTC”) Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close.”

²³ 15 U.S.C. 78s(b)(1).

“WAIT”.²⁴ BX previously offered a WAIT order type recently and discontinued this order types because it was not being utilized to a great extent.²⁵

The Exchange proposes to note, within NOM Options 3, Section 7(c), the various routing options which are available. The Exchange proposes to add rule text which provides, “Routing Strategies. Orders may be entered on the Exchange with a routing strategy of SEEK, SRCH or Do-Not-Route (“DNR”) as provided in Options 5, Section 4 through FIX only.”

Finally, the Exchange proposes to re-letter current Options 3, Section 7(c) and (d).

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15(c) relating to Anti-Internalization to make clear that the Anti-Internalization functionality does not apply during the opening. A similar change was recently made to BX’s Rules.²⁶ The Exchange proposes to clarify that Anti-Internalization does not apply during an opening or reopening following a trading halt, pursuant to Options 3, Section 8, to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not apply during the opening (*i.e.*, the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

Options 3, Section 23

The Exchange proposes to amend Options 3, Section 23, Data Feeds and Trade Information, to update its description of Nasdaq ITCH to Trade Options (“ITTO”). The Exchange proposes to amend ITTO at Options 3, Section 23(a)(1) to more closely align with current System operation. The Exchange proposes a technical amendment to the first sentence to replace a comma with the word “and.”

The Exchange also proposes to relocate rule text concerning order imbalances to the end of the description. The Exchange proposes to amend the first sentence to state that ITTO is a data feed that provides full order and quote depth information for individual orders and quotes on the NOM book, and last sale information for trades executed on NOM. The Exchange would amend and relocate the rule text that provides, “and Order Imbalance Information as set forth in NOM Rules Options 3, Section 8” at the end of the first sentence. The Exchange proposes to add a sentence at the end of the description within Options 3, Section 8 which states, “The feed also provides order imbalances on opening/re-opening (size of matched contracts and size of the imbalance).” This sentence makes clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intraday. Also, the Exchange notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market participants with more complete information about what is contained in the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ 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.

Options 1, Section 1

The Exchange’s proposal to amend the definition of “Public Customer” to conform to Phlx’s definition is intended to provide greater specificity regarding what is meant by the term “Public Customer.” The Exchange believes that making clear that a Public Customer could be a person or entity and clarifying that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47),²⁹ will make

clear what it meant by that term. Today, a Public Customer is not a Professional. In order to properly represent orders entered on the Exchange, Participants are required to indicate whether orders are “Professional Orders.” To comply with this requirement, Participants are required to review their Public Customers’ activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.³⁰ A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order. The Exchange believes that it is consistent with the Act to state within the definition of “Public Customers” that a Professional is not a Public Customer. As noted above, there is a process for determining if a market participant qualifies as a “Professional.” This specificity will serve to protect investors and the public interest in that the terms “Public Customer” and “Professional” are separate categories of market participants, as defined. Also, this definition conforms to Phlx’s definition at Options 1, Section 1(b)(47).

The Exchange’s proposal to remove a sentence within Options 1, Section 1(a)(47) which provides, “A Participant or a Public Customers may, without limitation, be a Professional,” is consistent with the Act. This sentence is confusing, unnecessary, and adds no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.’s (“BX”) Rules.³¹ The Exchange adopted a Professional designation in

entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.”

³⁰ Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer’s orders within five days.

³¹ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

²⁴ See Options Trader Alert #2020-26.

²⁵ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

²⁶ See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ NOM Options 1, Section 1(a)(47) provides that, “The term “Professional” means any person or

2010³² and has differentiated Public and Professional customers since that time. NOM proposes removing this sentence because it does not add useful information to understanding who may qualify as a Professional.

The Exchange's proposal to remove a sentence, within Options 3, Section 10(a)(1)(C)(i), which allocation rule provides that a Public Customer order does not include a Professional order is consistent with the Act. Today, the definition of a Public Customer does not explicitly exclude a Professional. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. The language that the Exchange proposes to delete, currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

Bid/Ask Differentials

The Exchange's proposal to amend NOM Options 2, Section 5(d)(2) to add the words "Intra-Day" before the title "Bid/ask Differentials (Quote Spread Parameters)" and make clear that remove references to the opening, will make clear for Market Makers their intra-day requirements. The bid/ask differentials, within NOM Options 2, Section 5(d)(2), will continue to apply intra-day. This is consistent with the Exchange's existing practice. Today, the bid/ask differentials applicable to the opening are noted within Options 3, Section 8(a)(6).³³ As noted within the rule, NOM publishes its specified bid/ask differential on its system settings

³² See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2020-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

³³ NOM Options 3, Section 8(a)(6) provides, "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation."

page.³⁴ The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule. This clarification is consistent with the Act because it is designed to avoid any confusion for Market Makers as to their intra-day requirements versus their opening requirements.

Options 3, Section 5

The Exchange's proposal to amend Options 3, Section 5(c) to add additional rule text similar to Phlx Options 3, Section 5(c)³⁵ is consistent with the Act. Today, NOM re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.³⁶ Orders which lock or cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.³⁷ The re-priced order is displayed on OPRA. The order remains on NOM's Order Book and is accessible at the non-displayed price. For example, a limit order may be accessed on NOM by a Participant if the limit order is priced better than the NBBO. The Exchange believes that the addition of this rule text will add greater specificity to the rule.

Options 3, Section 7

The Exchange's proposal to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1), is consistent with the Act. A Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a

³⁴ NOM's System Settings page is located at: https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf.

³⁵ Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order is already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx's All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

³⁶ See NOM Options 3, Section 5(d).

³⁷ See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

single cancel and replace order in one message ("Cancel-Replacement Order"). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order. The Exchange's proposal to replace the words "shall mean" with "is" and remove the final sentence of the rule text will bring greater clarity to this rule. The Exchange addition of a new sentence to the end of the rule which provides, "The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended, and the size is not increased" states in the affirmative the conditions under which the Cancel-Replacement Order will retain priority. Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange's proposal is not amending the current System functionality of a Cancel-Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.³⁸ Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX's Cancel-Replacement Order.³⁹ Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange's proposal to amend "Limit Orders," within Options 3, Section 7(a)(3), to add the sentence for marketable limit orders which is currently in BX's rule is consistent with the Act. A Limit Order on NOM operates in the same manner as a Limit

³⁸ Options 3, Section 7(a)(1) provides, "The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained."

³⁹ See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

Order on BX. The Exchange proposes to conform the rule text of NOM's Limit Order to BX Options 3, Section 7(a)(3) by adding the sentence describing marketable limit orders. BX recently amended its rule to similarly change its description of Limit Order.⁴⁰ The Exchange proposes to state, "A marketable limit order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Exchange." The Exchange believes that the rule amendment is consistent with the Act as it more aptly describes a marketable limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM's description with BX's description.

The Exchange's proposal to amend "Minimum Quantity Orders," within Options 3, Section 7(a)(3), is non-substantive and makes technical edits that do not change the meaning of the term. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange's proposal to amend "Market Orders," within Options 3, Section 7(a)(4), is consistent with the Act. The Exchange's proposal to style "Market Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. The Exchange's proposal to amend the current sentence to state, "Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant, once an option series has opened for trading." Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those Market Orders that remained on the Order Book once an option series opened.⁴¹ The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange's proposal makes clear that while the opening is on-going, and the intra-day trading session has not

commenced, the pre-established period of time would not commence.

The proposal to note that "Market Orders on the Order Book would be immediately cancelled if an options series halted, provided the Participant designated the cancellation of Market Orders" is consistent with the Act. Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend "Price Improving Orders," within Options 3, Section 7(a)(5) is consistent with the Act. The Exchange proposes to style "Price Improving Orders" in the singular and change "are" to "is an" and "orders" to "order" are non-substantive amendments.

The Exchange's proposal to amend "On the Open Order," within Options 3, Section 7(a)(6) by removing the words "The term" at the beginning of the sentence and change "shall mean" to "is" are non-substantive amendments.

The Exchange's proposal to amend "Intermarket Sweep Order" or "ISO" Orders, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as "A," and addition of rule text is consistent with the Act. The new rule text is similar to BX Options 3, Section 7(a)(6).⁴²

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text, ". . . will ignore the ABBO and trade at allowable prices on the Exchange" is more precise than the current rule text and describes current functionality. The Exchange further proposes to state, "ISOs may be entered on the Order Book." That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the functionality of an ISO Order. The Exchange believes

the proposed description provides a more succinct description.

Today, the rule provides that ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited. NOM's System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM's current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence is consistent with the Act because it accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate. This proposal is consistent with the protection of investors and the public interest because it will clarify the handling of ISO Orders for market participants.

The Exchange's proposal to amend "One-Cancels-the-Other Order" within renumbered Options 3, Section 7(a)(8) is consistent with the Act because the changes are technical in nature and non-substantive.

The Exchange's amendment to "All-or-None Order," within renumbered Options 3, Section 7(a)(9), is non-substantive and does not change the meaning of the term.

The Exchange's amendment to "Post-Only Orders," within renumbered Options 3, Section 7(a)(10), is non-substantive and does not change the meaning of the term.

Adding "TIF to Options 3, Section 7(b) allows that term to be defined within the Rules.

The Exchange's proposal to amend the "On the Open Order," or "OPG" Order, within Options 3, Section 7(b)(1), to note that OPGs may not route, is consistent with the Act. The System would not route an OPG Order today. This order type functions in the same way as BX's OPG Order at Options 3, Section 7(b)(1).⁴³ The Exchange is

⁴³ BX Options 3, Section 7(b)(1) provides, "An Opening Only order ("OPG") is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route."

⁴⁰ *Id.*

⁴¹ See NOM's opening rule at Options 3, Section 8(d)(2), "After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection."

⁴² BX's rule describes the PRISM mechanism, while NOM has no auction mechanisms.

adding rule text to make clear the manner in which an OPG Order would be treated, which is similar to how a BX OPG Order is treated today. This proposal is consistent with the protection of investors and the public interest because it will clarify the handling of OPG Orders for market participants.

The Exchange's proposal to amend an "Immediate-Or-Cancel" Order or "IOC," within Options 3, Section 7(b)(2), is consistent with the Act. The Exchange's proposal replaces the current description with Phlx's description at Options 3, Section 7(c)(2) as these order types are identical. The Exchange's proposal to state that an Immediate-or-Cancel Order or "IOC" Order is a Market Order or Limit Order to be executed in whole or in part upon receipt will bring greater clarity to the rule. Further the Exchange's proposal to add that any portion not so executed is cancelled is consistent with the current description. The Exchange proposes to replace this description with rule text similar to BX Options 3, Section 7(b)(2)⁴⁴ as these order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX's rule addresses limitations in order protections that do not exist today on NOM. The Exchange proposes to state that an Immediate-or-Cancel Order or "IOC" Order is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled and/or routed pursuant to Participant's instruction. IOC orders may be entered through FIX, OTTO or SQF; IOC Orders entered through OTTO or SQF may not route. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route. The Exchange's amendments are consistent with the Act in that the changes memorialize pertinent

⁴⁴ BX Options 3, Section 7(b)(2) provides, "Immediate-or-Cancel" or "IOC" is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction ("PRISM") Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) Executed after an exposure period, or (2) cancelled.

information within the description of an IOC Order to add clarity.

The Exchange's proposal to amend the TIF of "DAY" at Options 3, Section 7(b)(3) to conform the description of a TIF of "DAY" to Phlx Options 3, Section 7(c)(1)⁴⁵ is consistent with the Act. The Exchange believes the current text describing NOM's Day TIF is unnecessarily verbose and proposes to remove this language. A DAY Order on Phlx functions in the same way as a DAY Order on NOM. The proposal is not amending the System functionality of a DAY Order. The Phlx rule text is more succinct in describing this order type. Similar changes were recently made on BX.⁴⁶

The Exchange's proposal to amend the TIF of "Good Til Cancelled" or "GTC" at Options 3, Section 7(b)(4) is consistent with the Act. The Exchange proposes to conform the rule text to Phlx Options 3, Section 7(c)(4).⁴⁷ The Exchange is not amending the manner in which the System function with respect to GTC Orders. GTC Orders, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open, as specified by the Exchange, until market close, as is the case today. Also, today, a GTC Order may only be entered through FIX. A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange believes that the amended rule text will bring greater transparency to its rules as the proposed description is more succinct and thereby protects investors and the general public.

The Exchange's proposal to no longer offer a TIF of "WAIT" is consistent with the Act because it will remove an order type that is not in demand on NOM and simply the offerings provided by NOM. If the Exchange desires to offer this TIF in the futures, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the

⁴⁵ Phlx Options 3, Section 7(c)(1) provides, "Day. If not executed, an order entered with a TIF of "Day" expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX."

⁴⁶ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁴⁷ Phlx Options 3, Section 7(c)(4) provides, "A Good Til Cancelled ("GTC") Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close."

Act.⁴⁸ The Exchange has provided notice of its intention to remove the TIF of "WAIT".⁴⁹ BX previously offered a WAIT order type recently and discontinued this order types because it was not being utilized to a great extent.⁵⁰

The Exchange's proposal to note, within NOM Options 3, Section 7(c), the various routing options which are available is consistent with the Act.

Options 3, Section 15

The Exchange believes its proposal to clarify that Anti-Internalization will not apply during an opening is consistent with the Act as it would provide more specificity on how this functionality currently operates. A similar change was recently made to BX's Rules.⁵¹ The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not apply during the opening (*i.e.*, the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

Options 3, Section 23

The Exchange's proposal to amend Options 3, Section 23, Data Feeds and Trade Information, to update its descriptions of the ITTO data feed is consistent with the Act because the updated descriptions will bring greater transparency to the Exchange's rules and more closely align with current System operation.

The Exchange's proposal will make clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intra-day. Also, the Exchange's proposal notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market participants with more complete information about what is contained in

⁴⁸ 15 U.S.C. 78s(b)(1).

⁴⁹ See Options Trader Alert #2020-26.

⁵⁰ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁵¹ See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

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.

Options 1, Section 1

The Exchange's proposal to amend the definition of "Public Customer" to conform to Phlx's definition is intended to provide greater specificity regarding what is meant by the term "Public Customer." This proposal does not impose an undue burden on competition, rather it makes clear that a Public Customer could be a person or entity and clarifies that a Public Customer is not a Professional, as defined within Options 1, Section (a)(47).⁵² Today, a Public Customer is not a Professional. In order to properly represent orders entered on the Exchange, Participants are required to indicate whether orders are "Professional Orders." To comply with this requirement, Participants are required to review their Public Customers' activity on at least a quarterly basis to determine whether orders, which are not for the account of a broker-dealer, should be represented as Public Customer Orders or Professional Orders.⁵³ A Public Customer may be a Professional, provided they meet the requirements specified within NOM Options 1, Section 1(a)(47). If the Professional definition is not met, the order is treated as a Public Customer order. The process for determining if a market participant qualifies as a "Professional" is applicable to all Participants. Also, this

⁵² NOM Options 1, Section 1(a)(47) provides that, "The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants."

⁵³ Participants conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Participants only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Public Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five days.

definition conforms to Phlx's definition at Options 1, Section 1(b)(47).

The Exchange's proposal to remove a sentence within Options 1, Section 1(a)(47) which provides, "A Participant or a Public Customers may, without limitation, be a Professional," does not impose an undue burden on competition. This sentence is confusing, unnecessary, and adds no information to this defined term. By way of comparison, Phlx Options 1, Section 1(b)(46) does not contain a similar sentence and that sentence was recently removed from Nasdaq BX, Inc.'s ("BX") Rules.⁵⁴ The Exchange adopted a Professional designation in 2010⁵⁵ and has differentiated Public and Professional customers since that time. NOM proposes removing this sentence because it does not add useful information to understanding who may qualify as a Professional.

The Exchange's proposal to remove a sentence, within Options 3, Section 10(a)(1)(C)(i), which allocation rule provides that a Public Customer order does not include a Professional order does not impose an undue burden on competition. Today, the definition of a Public Customer does not explicitly exclude a Professional. Indicating that a Public Customer order is not a Professional Order is no longer necessary because of the proposed definition for Public Customer. The language that the Exchange proposes to delete, currently indicates that Professionals would not be treated the same as a Public Customer in terms of priority and, therefore, would not receive the same allocation that is reserved for Public Customer orders. Since NOM is amending the definition of a Public Customer to explicitly exclude Professionals, the language in the allocation rule is no longer necessary to distinguish these two types of market participants.

Bid/Ask Differentials

The Exchange's proposal to amend NOM Options 2, Section 5(d)(2) to add the words "Intra-Day" before the title "Bid/ask Differentials (Quote Spread Parameters)" and make clear that remove references to the opening, will make clear for Market Makers their intra-day requirements. The bid/ask differentials, within NOM Options 2,

⁵⁴ See Securities Exchange Act Release No. 89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁵⁵ See Securities Exchange Act Release No. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2020-099) (Order Approving a Proposed Rule Change To Adopt a Definition of Professional and Require That All Professional Orders Be Appropriately Marked).

Section 5(d)(2), will continue to apply intra-day. This proposal does not impose an undue burden on competition, rather it conform the Exchange's existing practice. Today, the bid/ask differentials applicable to the opening are noted within Options 3, Section 8(a)(6).⁵⁶ As noted within the rule, NOM publishes its specified bid/ask differential on its system settings page.⁵⁷ The bid/ask differentials noted for the Valid Width NBBO within the opening provide for quotations with a difference that does not exceed \$5 between the bid and offer regardless of the price of the bid. It is not necessary to discuss the opening bid/ask differentials within Options 2, Section 5 as those differentials are specifically noted within the opening rule. This clarification avoids any confusion for Market Makers as to their intra-day requirements versus their opening requirements.

Options 3, Section 5

The Exchange's proposal to amend Options 3, Section 5(c) to add additional rule text similar to Phlx Options 3, Section 5(c)⁵⁸ does not impose an undue burden on competition. Today, NOM re-prices certain orders to avoid locking and crossing away markets, consistent with its Trade-Through Compliance and Locked or Crossed Markets obligations.⁵⁹ Orders which lock or cross an away market automatically re-price one minimum price improvement inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price.⁶⁰ The re-priced

⁵⁶ NOM Options 3, Section 8(a)(6) provides, "Valid Width National Best Bid or Offer" or "Valid Width NBBO" shall mean the combination of all away market quotes and any combination of NOM-registered Market Maker orders and quotes received over the QUO or SQF Protocols within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and tables with valid width differentials will be posted by Nasdaq on its website. Away markets that are crossed will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on NOM are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation."

⁵⁷ NOM's System Settings page is located at: https://www.nasdaq.com/docs/2020/07/02/NOM_SystemSettings.pdf.

⁵⁸ Phlx has an All-or-None Order type that is non-displayed. See Options 3, Section 7(b)(5). Phlx Options 3, Section 5(c) accounts for this non-displayed order on the order book. NOM has a Price Improving Order is already described within Options 3, Section 5(c). A Price Improving Order on NOM displays differently than Phlx's All-Or-None Order and therefore is described differently within Options 3, Section 5(c). Otherwise, NOM has no other non-displayed order types.

⁵⁹ See NOM Options 3, Section 5(d).

⁶⁰ See Options 5, Section 4 (Order Routing), which describes the repricing of orders for both

order is displayed on OPRA. The order remains on NOM's Order Book and is accessible at the non-displayed price.

Options 3, Section 7

The Exchange's proposal to amend the Cancel-Replacement Order, within Options 3, Section 7(a)(1), does not impose an undue burden on competition. A Participant has the option of either submitting a cancel order and then separately submitting a new order, which serves as a replacement of the original order, in two separate messages, or submitting a single cancel and replace order in one message ("Cancel-Replacement Order"). Submitting a cancel order and then separately submitting a new order will not retain the priority of the original order. The Exchange's proposal to replace the words "shall mean" with "is" and remove the final sentence of the rule text will bring greater clarity to this rule. The Exchange addition of a new sentence to the end of the rule states in the affirmative the conditions under which the Cancel-Replacement Order will retain priority. Price and size are the terms that will determine if the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange's proposal is not amending the current System functionality of a Cancel-Replacement Order with respect to the terms that will cause the order to lose priority. Today, and with the proposed change, if a Participant does not change or increase the size of the order, it would not trigger a loss in priority. Options 3, Section 7(a)(1) states only if the size of the order were reduced would a loss of priority occur.⁶¹ Priority is retained if the size of the order does not change or is not increased. The rule is intended to provide transparency regarding changes to a Cancel-Replacement Order which would trigger a loss in priority. Today, and with the proposal, the price of the order may not be changed when submitting a Cancel-Replacement Order; that would be a new order. A similar change was recently made to BX's Cancel-Replacement Order.⁶² Price and size are the terms that will determine if

the Cancel-Replacement Order retains its priority, as is the case today, other terms and conditions do not amend the priority of the Cancel-Replacement Order.

The Exchange's proposal to amend "Limit Orders," within Options 3, Section 7(a)(3), to add the sentence for marketable limit orders which is currently in BX's rule does not impose an undue burden on competition. A Limit Order on NOM operates in the same manner as a Limit Order on BX. The Exchange proposes to conform the rule text of NOM's Limit Order to BX Options 3, Section 7(a)(3) by adding a sentence describing marketable limit orders. BX recently amended its rule to similarly change its description of Limit Order.⁶³ The proposed text more aptly describes a marketable limit order as compared to the current rule text, which is confusing, but was intended to convey the substance of the proposed text. The new sentence does not substantively amend the current rule text and conforms NOM's description with BX's description.

The Exchange's proposal to amend "Minimum Quantity Orders," within Options 3, Section 7(a)(3), is non-substantive and makes technical edits that do not change the meaning of the term. The Exchange is otherwise not amending the Minimum Quantity Order rule text.

The Exchange's proposal to amend "Market Orders," within Options 3, Section 7(a)(4), does not impose an undue burden on competition. The Exchange's proposal to style "Market Orders" in the singular and change "are" to "is an" and "orders" to "order." These amendments are technical and non-substantive. Market Orders submitted during the opening may be executed, or cancelled if the Market Order is priced through the opening price. The Exchange would only cancel those Market Orders that remained on the Order Book once an option series opened.⁶⁴ The pre-established period of time would commence once the intra-day trading session begins for that options series and the order would be cancelled back to the Participant, provided the Participant elected to cancel back its Market Orders. The Exchange's proposal makes clear that while the opening is on-going, and the intra-day trading session has not commenced, the pre-

established period of time would not commence.

The proposal to note that "Market Orders on the Order Book would be immediately cancelled if an options series halted, provided the Participant designated the cancellation of Market Orders" does not impose an undue burden on competition. Once an options series halts for trading, the Exchange conducts another Opening Process. In the case where a Market Order was resting on the Order Book, and the Participant had designated the cancellation of Market Orders, in the event of a halt, the Market Orders resting on the Order Book would immediately cancel. This proposed rule text is consistent with existing System functionality. The Exchange believes that this additional rule text brings greater clarity to the Market Order type.

The Exchange proposes to amend "Price Improving Orders," within Options 3, Section 7(a)(5) does not impose an undue burden on competition. The Exchange proposes to style "Price Improving Orders" in the singular and change "are" to "is an" and "orders" to "order" are non-substantive amendments.

The Exchange's proposal to amend "On the Open Order," within Options 3, Section 7(a)(6) by removing the words "The term" at the beginning of the sentence and change "shall mean" to "is" are non-substantive amendments.

The Exchange's proposal to amend "Intermarket Sweep Order" or "ISO" Orders, within Options 3, Section 7(a)(7), with the exception of Options 3, Section 7(a)(7)(1), which is being retained by re-lettered as "A," and addition of rule text does not impose an undue burden on competition. The new rule text is similar to BX Options 3, Section 7(a)(6).⁶⁵

An ISO Order is a Limit Order, as noted in the current text and Options 5, Section 1, continues to be referenced in the proposed text. The Exchange continues to note that the orders are not routable. The additional text is more precise than the current rule text and describes current functionality. The Exchange further proposes to state, "ISOs may be entered on the Order Book." That is also the case today. The remainder of the current rule text is not necessary as Options 5, Section 1(8) is cited. Removing the current rule text and replacing it with text which describes the proper time-in-force designation will make clear what is acceptable on NOM today. This rule text is not proposed to change the

routable and non-routable orders within Options 5, Section 4(a)(iii)(A), (B) and (C).

⁶¹ Options 3, Section 7(a)(1) provides, "The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained."

⁶² See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁶³ *Id.*

⁶⁴ See NOM's opening rule at Options 3, Section 8(d)(2), "After the opening, the Exchange shall reject Market Orders, as defined in Options 3, Section 7, and shall notify Participants of the reason for such rejection."

⁶⁵ BX's rule describes the PRISM mechanism, while NOM has no auction mechanisms.

functionality of an ISO Order. The Exchange believes the proposed description does not impose an undue burden on competition, rather it provides a more succinct description.

Today, ISOs may have any time-in-force designation, except WAIT, and further requires that ISOs with a time-in-force designation of GTC are treated as having a time-in-force designation of Day. The Exchange proposes to remove the WAIT time-in-force within this proposed rule change, as described in more detail below, and, therefore, the WAIT order type no longer needs to be cited. NOM's System does not treat an ISO with a time-in-force designation of GTC as having a time-in-force designation of Day, as provided for within NOM's current rule at Options 3, Section 7(a)(6), rather those orders are treated as GTC. The current sentence is being removed because it is inaccurate. The proposed sentence does not impose an undue burden on competition because it accurately describes the System functionality. The Exchange does not believe that an ISO with a time-in-force designation of GTC was ever treated as having a time-in-force designation of Day, the rule text was simply inaccurate.

The Exchange's proposal to amend "One-Cancels-the-Other Order" within renumbered Options 3, Section 7(a)(8) does not impose an undue burden on competition because the changes are technical in nature and non-substantive.

The Exchange's amendment to "All-or-None Order," within renumbered Options 3, Section 7(a)(9), is non-substantive and does not change the meaning of the term.

The Exchange's amendment to "Post-Only Orders," within renumbered Options 3, Section 7(a)(10), is non-substantive and does not change the meaning of the term.

The Exchange's proposal to amend the "On the Open Order," or "OPG" Order, within Options 3, Section 7(b)(1), to note that OPGs may not route, does not impose an undue burden on competition. The System would not route an OPG Order today. This order type functions in the same way as BX's OPG Order at Options 3, Section 7(b)(1).⁶⁶ The Exchange is adding rule text to make clear the manner in which an OPG Order would be treated, which

⁶⁶ BX Options 3, Section 7(b)(1) provides, "An Opening Only order ("OPG") is entered with a TIF of "OPG". This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route."

is similar to how a BX OPG Order is treated today.

The Exchange's proposal to amend an "Immediate-Or-Cancel" Order or "IOC," within Options 3, Section 7(b)(2), does not impose an undue burden on competition. The Exchange's proposal replaces the current description with Phlx's description at Options 3, Section 7(c)(2) as these order types are identical. The Exchange's proposal to state that an Immediate-or-Cancel Order or "IOC" Order is a Market Order or Limit Order to be executed in whole or in part upon receipt will bring greater clarity to the rule. Further the Exchange's proposal to add that any portion not so executed is cancelled is consistent with the current description. The Exchange proposes to replace this description with rule text similar to BX Options 3, Section 7(b)(2)⁶⁷ as these order types are identical, except that NOM has the OTTO protocol and BX does not, and also as mentioned previously NOM has no auctions. Additionally, BX's rule addresses limitations in order protections that do not exist today on NOM. Today, IOC Orders entered through OTTO or SQF do not route; only orders entered through FIX may route. The SQF interface is a quoting interface, the Exchange does not route quotes. With respect to OTTO, orders submitted by NOM Market Makers over this interface are treated as quotes and similarly do not route.

The Exchange's proposal to amend the TIF of "DAY" at Options 3, Section 7(b)(3) to conform the description of a TIF of "DAY" to Phlx Options 3, Section 7(c)(1)⁶⁸ does not impose an undue burden on competition. The Exchange believes the current text describing NOM's Day TIF is unnecessarily verbose and proposes to remove this language. A DAY Order on Phlx functions in the same way as a DAY Order on NOM. The proposal is not amending the System functionality of a DAY Order. The Phlx rule text is

⁶⁷ BX Options 3, Section 7(b)(2) provides, "Immediate-or-Cancel" or "IOC" is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively; (C) Orders entered into the Price Improvement Auction ("PRISM") Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) Executed after an exposure period, or (2) cancelled.

⁶⁸ Phlx Options 3, Section 7(c)(1) provides, "Day. If not executed, an order entered with a TIF of "Day" expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX."

more succinct in describing this order type. Similar changes were recently made on BX.⁶⁹

The Exchange's proposal to amend the TIF of "Good Til Cancelled" or "GTC" at Options 3, Section 7(b)(4) does not impose an undue burden on competition. The Exchange proposes to conform the rule text to Phlx Options 3, Section 7(c)(4).⁷⁰ The Exchange is not amending the manner in which the System function with respect to GTC Orders. GTC Orders, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open, as specified by the Exchange, until market close, as is the case today. Also, today, a GTC Order may only be entered through FIX. A GTC Order on Phlx functions in the same way as a GTC Order on NOM. The Exchange believes that the amended rule text will bring greater transparency to its rules.

The Exchange's proposal to no longer offer a TIF of "WAIT" does not impose an undue burden on competition because it will remove an order type that is not in demand on NOM and simply the offerings provided by NOM. If the Exchange desires to offer this TIF in the futures, it would file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act.⁷¹ The Exchange has provided notice of its intention to remove the TIF of "WAIT".⁷² BX previously offered a WAIT order type recently and discontinued this order type because it was not being utilized to a great extent.⁷³

The Exchange's proposal to note, within NOM Options 3, Section 7(c), the various routing options which are available does not impose an undue burden on competition.

Options 3, Section 15

The Exchange believes its proposal to clarify that Anti-Internalization will not

⁶⁹ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

⁷⁰ Phlx Options 3, Section 7(c)(4) provides, "A Good Til Cancelled ("GTC") Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close."

⁷¹ 15 U.S.C. 78s(b)(1).

⁷² See Options Trader Alert #2020-26.

⁷³ See Securities Exchange Act Release No. 89476 (August 4, 2020). 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

apply during an opening does not impose an undue burden on competition as it would provide more specificity on how this functionality currently operates. A similar change was recently made to BX's Rules.⁷⁴ The Exchange notes that the same procedures used during an opening are used to reopen an option series after a trading halt, and therefore proposes to specify that Anti-Internalization will not apply during the opening (*i.e.*, the opening and halt reopening processes). During the opening, Market Makers are able to observe the primary market and then determine how they would like to quote. They are not required to quote in the opening on NOM. Therefore, Anti-Internalization is unnecessary during an opening due to the high level of control that Market Makers exercise over their quotes during this process.

Options 3, Section 23

The Exchange's proposal to amend Options 3, Section 23, Data Feeds and Trade Information, to update its descriptions of the ITTO data feed does not impose an undue burden on competition because the updated descriptions will bring greater transparency to the Exchange's rules and more closely align with current System operation.

The Exchange's proposal will make clear that order imbalance information is provided for both an opening and re-opening process. Today, a re-opening process initiates after a trading halt has occurred intra-day. Also, the Exchange's proposal notes the specific information that would be provided, namely the size of matched contracts and size of the imbalance. The Exchange believes that this additional context to imbalance messages will provide market participants with more complete information about what is contained in the data feed. The Exchange notes that this information is available today and the rule text is being amended to make clear what information is currently provided.

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)(iii) of the Act⁷⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷⁶

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-NASDAQ-2020-083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-083. 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

⁷⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷⁶ 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.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-083, and should be submitted on or before January 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90616; File No. SR-NASDAQ-2020-086]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Basic to Internal Professional Subscribers as Set Forth in the Equity 7 Pricing Schedule, Section 147, and the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Last Sale to Professional Subscribers at Equity 7, Section 139

December 9, 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, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

⁷⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷⁴ See Securities Exchange Act Release No. 89759 (September 3, 2020). 85 FR 55877 (September 10, 2020) (SR-BX-2020-023).

and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to lower the enterprise license fee for broker-dealers distributing Nasdaq Basic to internal Professional Subscribers as set forth in the Equity 7 Pricing Schedule, Section 147, and the enterprise license fee for broker-dealers distributing Nasdaq Last Sale ("NLS") to Professional Subscribers at Equity 7, Section 139.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to lower the enterprise license fee for broker-dealers distributing Nasdaq Basic to internal Professional Subscribers³ from a two-tiered fee of \$365,000, plus \$2 for any Professional Subscribers over 16,000, to

³ A "Professional Subscriber" is any Subscriber other than a Non-Professional Subscriber. A "Non-Professional Subscriber" is "a natural person who is not (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or (ii) any commodities or futures contract market or association; engaged as an 'investment adviser' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt." See Equity 7 Pricing Schedule, Section 147(d)(4).

a flat fee of \$155,000. The license would otherwise remain unchanged. The enterprise license fee for broker-dealers distributing NLS to internal Professional Subscribers would be changed in a similar fashion: The two-tiered fee of \$365,000, plus \$2 for any Professional Subscribers over 16,000, would be replaced with a flat fee of \$155,000. Both fee reductions are designed to help Nasdaq compete against other exchanges selling top-of-book⁴ market data products.

The Exchange initially filed the proposed pricing changes on September 30, 2020 (SR-NASDAQ-2020-065). On November 23, 2020, the Exchange withdrew that filing and replaced it with SR-NASDAQ-2020-080. On December 3, 2020, the Exchange withdrew SR-NASDAQ-2020-080 and replaced it with SR-NASDAQ-2020-085. On December 7, 2020, the Exchange replaced SR-NASDAQ-2020-085 with this filing.

Nasdaq Basic and Nasdaq Last Sale

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facility ("TRF"). It is a subset of the "core" quotation and last sale data provided by securities information processors ("SIPs") distributing consolidated data pursuant to the CTA/CQ Plan and the UTP Plan. Nasdaq Basic is separated into three components, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq market center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE American, which provides data on stocks listed on NYSE American and other listing venues that disseminate quotes and trade reports on Tape B. The specific data elements available through Nasdaq Basic are: (i) Nasdaq Basic Quotes ("QBBO"), the best bid and offer and associated size available in the Nasdaq Market Center, as well as last sale transaction reports; (ii) Nasdaq opening and closing prices, as well as IPO and trading halt cross prices; and (iii) general exchange information,

⁴ "Top-of-book" market data products provide last sale information, or both last sale and best bid and offer information to the user, without additional "depth of book" data. Both Nasdaq Last Sale and Nasdaq Basic are examples of top-of-book products.

including systems status reports, trading halt information, and a stock directory.

NLS provides real-time last sale information for executions occurring within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRF.⁵ The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks ("NLS for Nasdaq") and for stocks listed on NYSE, NYSE American, and other Tape B listing venues ("NLS for NYSE/NYSE American").⁶ This is also a non-core product that provides a subset of the core last sale data distributed by the SIPs under the CTA/CQ Plan and the UTP Plan.⁷

Current Top-of-Book Enterprise Licenses for Internal Professional Subscribers

Broker-dealers may purchase Nasdaq Basic, or Derived Data⁸ therefrom, for internal professional use for a monthly per-Subscriber fee of \$26,⁹ or, in lieu of a per-Subscriber fee, purchase an enterprise license for the internal distribution of Nasdaq Basic to Professional Subscribers for \$365,000, plus \$2 for any Professional Subscribers over 16,000 if an external Distributor¹⁰ controls the display of the product.¹¹

⁵ See Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060) (proposing NLS); see also Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060) (approving SR-NASDAQ-2006-060, as amended by Amendment Nos. 1 and 2, to implement NLS on a pilot basis).

⁶ See Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060).

⁷ See Securities Exchange Act Release No. 34-82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-NASDAQ-2018-010).

⁸ "Derived Data" is "pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information." See Equity 7, Section 147(d)(6).

⁹ See Equity 7 Pricing Schedule, Section 147(b)(1). The \$26 monthly per-Subscriber fee consists of monthly charges of \$13 for Nasdaq Basic for Nasdaq, \$6.50 for Nasdaq Basic for NYSE, and \$6.50 for Nasdaq Basic for NYSE MKT.

¹⁰ "Distributor" refers to "any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. (A) "Internal Distributors" are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers within the Distributor's own entity. (B) "External Distributors" are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers outside the Distributor's own entity. See Equity 7, Section 147(d)(1).

¹¹ The additional \$2 fee was introduced to defray additional costs incurred by Nasdaq when distributing Nasdaq Basic through an External

The license also allows the broker-dealer to display NLS data for its own stock price and that of up to ten of its competitors or peers on its internal website. Separate licenses must be purchased if more than one external Distributor controls display of the product. The license excludes Distributor fees, which are \$1,500 per month for internal distribution.¹²

Although NLS was initially designed for general distribution to individual investors,¹³ a broker-dealer may elect to distribute this data to its registered representatives through an employer-provided workstation or software application. To allow for such usage, Nasdaq adopted a fee schedule for “specialized usage” of NLS not associated with distribution of data to the general investing public. In general, broker-dealers paying for specialized usage track either the number of Subscribers receiving data or the number of queries for the data, and pay the corresponding fee.

As an alternative to per-Subscriber or per-query fees, however, a broker-dealer may purchase an enterprise license for internal Subscribers to receive NLS, or Derived Data therefrom, through an external Distributor that controls display of the product. The fee is \$365,000 per month for up to 16,000 internal Subscribers, plus \$2 for each additional internal Subscriber over 16,000, the same fee structure as the enterprise license for the internal distribution of Nasdaq Basic to Professionals. A separate enterprise license must be purchased for each external Distributor that controls the display of the product. The enterprise license does not include distributor fees.

Proposed Fee Reduction for Nasdaq Basic and NLS Enterprise Licenses

Nasdaq proposes to reduce its enterprise license fees for Nasdaq Basic and NLS to bolster its ability to compete effectively against other exchanges selling top-of-book market data products, which are substitutes for Nasdaq Basic and NLS. Nasdaq faces vigorous competition for the sale of this

Distributor that controls display of the product. See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011).

¹² See Equity 7 Pricing Schedule, Section 147(c)(1).

¹³ See Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-Nasdaq-2018-010) (explaining that “NLS was designed to enable market-data ‘distributors to provide free access to the data contained in NLS to millions of individual investors via the internet and television’ and was expected to ‘increase the availability of Nasdaq proprietary market data to individual investors.’”).

data, including from the “Best Quote and Trade” (“BQT”) product sold by the NYSE-affiliated exchanges and the Cboe One Summary Feed.

Nasdaq received customer feedback requesting that it lower the price of the professional licenses for its top-of-book products. This feedback prompted a reexamination of Nasdaq’s four enterprise licenses for top-of-book data: (i) The license for internal Professional distribution of Nasdaq Basic to Professionals for \$365,000 per month (the subject of this proposal); (ii) the license for external distribution of Nasdaq Basic to Professionals and Non-Professionals in the context of the brokerage relationship for \$100,000 per month;¹⁴ (iii) the license for external distribution of NLS data to the General Investing Public for Display Usage for \$41,500;¹⁵ and (iv) the license for internal and external distribution of top-of-book¹⁶ and depth-of-book¹⁷ products for \$500,000 with a twelve-month commitment, or a month-to-month fee of \$600,000.¹⁸

Fees for three of these four licenses have been reduced in the last several years. In 2016, Nasdaq lowered the fee for external distribution of Nasdaq Basic in the context of the brokerage relationship from \$350,000 to \$100,000.¹⁹ Also in 2016, the Exchange reduced the monthly fee for the external distribution of NLS data from \$50,000 to \$41,500.²⁰ In 2018, Nasdaq introduced an enterprise license that substantially lowered the cost of purchasing top-of-book and depth-of-book data together by replacing three separate enterprise licenses—\$365,000 for internal distribution of Nasdaq Basic, \$100,000 for external distribution in a brokerage relationship, and \$500,000 for distribution of depth-of-book products—with a single license for a monthly fee of \$500,000, with a twelve-month service commitment.²¹

In light of customer feedback and Nasdaq’s history of lowering fees for top-of-book products, Nasdaq

¹⁴ See Equity 7 Pricing Schedule, Section 147(b)(5).

¹⁵ See Equity 7 Pricing Schedule, Section 139(b)(4).

¹⁶ The top-of-book products distributed under this license are Nasdaq Basic, NLS and NLS Plus.

¹⁷ The depth-of-book products distributed under this license are TotalView and Level 2.

¹⁸ See Equity 7 Pricing Schedule, Section 132.

¹⁹ See Securities Exchange Act Release No. 79456 (December 2, 2016), 81 FR 88716 (December 8, 2016) (SR-NASDAQ-2016-162).

²⁰ See Securities Exchange Act Release No. 77578 (April 11, 2016), 81 FR 22344 (April 15, 2016) (SR-NASDAQ-2016-048).

²¹ See Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR-Nasdaq-2018-058).

determined that the proposed fee will better position it to operate in the current competitive environment. Fees for Nasdaq’s other three enterprise licenses have been lowered over the course of the last four years, while the license fee for internal professionals has not changed since the enterprise license was introduced in 2014.²² Nasdaq believes that this fourth fee reduction will allow it to continue to compete in the market for top-of-book products.

The new enterprise license fee will substantially lower total and per-Subscriber costs for broker-dealers with approximately 5,962 or more internal Professional Subscribers. All current enterprise license purchasers will save the difference between the current base fee of \$365,000 and the proposed fee of \$155,000 (which is \$210,000 per month), plus \$2 times the number of internal Professional Subscribers over 16,000. A broker-dealer with 17,000 internal Professional Subscribers, for example, would save a total of \$212,000 per month as compared to the current license,²³ reducing average per-Subscriber monthly charges from \$21.60²⁴ to \$9.12.²⁵

In addition, a number of the mid-size broker-dealers that currently have too few professional subscribers to benefit from the license would be able to achieve substantial savings at the new, lower rate. The “break even” point—*i.e.*, the point at which the average per-Subscriber rate of a licensee falls below the per-Subscriber rate of \$26—is currently 14,038 internal Professional Subscribers.²⁶ Under the new fee schedule, broker-dealers with as few as 5,962 internal Professional Subscribers would be able to save money.²⁷ A hypothetical broker-dealer with 10,000 internal Professional Subscribers would

²² See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011).

²³ The broker-dealer would save the difference between \$365,000 and \$155,000 (\$210,000), plus an additional \$2,000 for the 1,000 Professional Subscribers over 16,000.

²⁴ The hypothetical current average per-Subscriber monthly charge is estimated as the current fee of \$365,000 plus \$2,000 for the 1,000 Professional Subscribers over 16,000 divided by 17,000 internal Professional Subscribers.

²⁵ The hypothetical per-Subscriber monthly charge for the Proposal is estimated as the flat fee of \$155,000 divided by 17,000 internal Professional Subscribers.

²⁶ See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011) (explaining that the \$365,000 monthly fee for all internal subscribers, divided by \$26 monthly fee for each internal Subscriber, is equal to 14,038).

²⁷ This estimated cutoff point is calculated as the Proposed license fee of \$155,000 divided by the per-Subscriber rate of \$26 per month.

be able to save \$105,000 per month,²⁸ reducing per-Subscriber fees from \$26²⁹ to \$15.50.³⁰

In addition to lowering Nasdaq's fees, the proposed rule change will allow users to lower internal administrative costs by eliminating the need to report monthly usage. Nasdaq does not have sufficient information about broker-dealer operations and costs to accurately estimate these savings, but believes that monthly savings in administrative expenditures—as well as the improved ability to project future expenditures achieved by eliminating audit liability for errors in reporting usage—to be substantial.

Staff of the Commission's Division of Trading and Markets have indicated that self-regulatory organizations ("SROs") proposing fee changes should provide "the projected number of purchasers (including members, as well as non-members) of any new or modified product or service" ³¹ Prior to the proposed change, two customers had purchased the Nasdaq Basic Professional Subscriber enterprise license for \$365,000, plus \$2 for any Professional Subscriber over 16,000 if an external Distributor controls the display of the product.³² Of these two customers, one informed Nasdaq that it would abandon the Nasdaq license in favor of a license offered by one of its two major competitors, Cboe and NYSE. After the proposed license fee was instituted on October 1, 2020, the complaining customer decided to retain the license. Nasdaq is also in discussions with additional customers to purchase the license, including both customers that do not currently purchase Nasdaq Basic, and customers that do purchase Nasdaq Basic, but not through an enterprise license. To date, however, no new firms have purchased the enterprise license.

While any broker-dealer with approximately 5,962 or more internal Subscribers will be able to benefit from the proposed license, Nasdaq does not know, and is unable to ascertain with precision, the number of internal

²⁸ Savings are calculated as follows: 10,000 internal Professional Subscribers multiplied by \$26 per-Subscriber equals \$260,000. The difference between \$260,000 and \$155,000 is \$105,000.

²⁹ See Equity 7 Pricing Schedule, Section 147(b)(1).

³⁰ This figure is calculated as the proposed flat fee of \$155,000 divided by 10,000 internal Professional Subscribers.

³¹ See Division of Trading and Markets, U.S. Securities and Exchange Commission, "Staff Guidance on SRO Filings Related to Fees (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

³² No customers purchased the comparable license for NLS, discussed above.

Professional Subscribers utilized by various broker-dealers, nor can it anticipate the actions of its competitors in response to the lower enterprise license fee, and therefore cannot project precisely the number of expected purchasers. Nevertheless, judging from expressions of interest and Nasdaq's experience in the financial services industry, Nasdaq estimates that between fifteen and twenty broker-dealers worldwide may elect to purchase the license.³³

2. Statutory Basis

The Exchange believes that its Proposal is consistent with Section 6(b) of the Act,³⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁵ 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.

As a preliminary manner, the statutory basis for the current Nasdaq Basic and NLS enterprise licenses have already been explained in prior filings.³⁶ The Proposal lowers fees for enterprise licenses that have already been shown to be consistent with Section 6(b) of the Act, and this analysis therefore focuses on the new, lower fees.³⁷

The Proposal Is an Equitable Allocation of Reasonable Dues, Fees and Other Charges

As the Commission and courts ³⁸ have recognized, "[i]f competitive forces are

³³ This estimate is based on customer conversations and the experience and judgment of Nasdaq staff.

³⁴ See 15 U.S.C. 78f(b).

³⁵ See 15 U.S.C. 78f(b)(4) and (5).

³⁶ See, e.g., Securities Exchange Act Release No. 81697 (September 25, 2017), 82 FR 45639 (September 29, 2017) (SR-NASDAQ-2017-095); Securities Exchange Act Release No. 72620 (July 16, 2014), 79 FR 42572 (July 22, 2014) (SR-NASDAQ-2014-070); Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575 (May 16, 2014) (SR-NASDAQ-2014-045); Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011); see Securities Exchange Act Release No. 82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR-Nasdaq-2018-010).

³⁷ The statutory bases for both the Nasdaq Basic and NLS enterprise licenses are identical. Both are top-of-book products sold to broker-dealers for internal distribution to Professionals. The fee structure and use requirements are currently the same for both, and will continue to be the same under the Proposal. The discussion contained herein therefore applies to both licenses.

³⁸ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission's reliance upon

operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior." ³⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory." ⁴⁰ Nasdaq believes that competitive forces constrain the price of top-of-book products based on competition among exchanges for top-of-book data. The proposed fee change is a direct response to this competition.

Nasdaq Basic and NLS provide choices to broker-dealers and other data consumers by providing less than the quantum of data provided through the consolidated tape feeds, but at a lower price. The same is true for the top-of-book proprietary products offered by other exchanges. All of these top-of-book products are substitutes for each other. Nasdaq Basic provides data derived from liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq TRF. The NYSE BQT feed disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca and NYSE National exchanges.⁴¹ The Cboe One Summary Feed provides data from the four Cboe equities exchanges: BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.⁴² These exchanges compete on price and quality

competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system." *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission's conclusion that "Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities." *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74,771 (December 9, 2008) (SR-NYSEArca-2006-21)).

³⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

⁴⁰ *Id.*

⁴¹ See <https://www.nyse.com/market-data/real-time/nyse-bqt>.

⁴² See https://markets.cboe.com/us/equities/market_data_services/#:-:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book We note that Cboe recently proposed a fee reduction for top-of-book data as well. See Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR-CboeBYX-2019-012).

for their top-of-book feeds. NYSE⁴³ and Cboe,⁴⁴ like Nasdaq, offer enterprise licenses. Cboe touts its price in promotional literature,⁴⁵ and reduced its fee for certain top-of-book customers just this year.⁴⁶

Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation. The value of that data depends on its quality and how well it approximates the NBBO, which is determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO.

Nasdaq's own experience with sales of top-of-book feeds underscores their substitutability, as the customer whose feedback motivated this price change informed Nasdaq that it would drop Nasdaq Basic in favor of a competing product unless a change is made.

The constraint imposed by direct competition on the price of top-of-book data is further illustrated by proposals to reduce fees for three of the four top-of-book enterprise licenses in the past several years: (i) The enterprise license for external distribution of Nasdaq Basic;⁴⁷ (ii) the enterprise license for the external distribution of NLS;⁴⁸ and (iii) the combined enterprise license for distribution of top-of-book and depth-of-book data.⁴⁹ Nasdaq is not alone in lowering fees to compete against the other exchanges. Just this year, Cboe

proposed a fee reduction for its top-of-book data.⁵⁰

As shown, Nasdaq competes against other exchanges in the sale of top-of-book products. That competition constrains the price of top-of-book market data, and provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.

The Proposal Does Not Permit Unfair Discrimination

The Proposal is not unfairly discriminatory. As previously noted, the Nasdaq Basic enterprise license subject to this Proposal was shown to be non-discriminatory and otherwise consistent with the Act over six years ago.⁵¹ The only difference between that initial proposal and the change under consideration today is that the new license costs less and more broker-dealers will be able to benefit from the lower prices. Enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. This applies to Nasdaq's enterprise licenses as well as those offered by the NYSE and Cboe exchanges.⁵²

The Act does not prohibit all distinctions among customers; only discrimination that is unfair. It is not unfair discrimination to charge those Distributors that are able to reach the largest audiences of retail investors a lower fee for incremental investors in order to encourage the widespread distribution of market data.

The instant Proposal, like other enterprise licenses, will cause top-of-book data to become more widely available to investors. It will save current enterprise license purchasers the \$210,000 per month difference between the current base fee of \$365,000 and \$155,000, plus \$2 times the number of internal Professional Subscribers over 16,000. Broker-dealers that do not currently purchase the license will nevertheless benefit because the "break even" point—*i.e.*, the point where the average per-Subscriber rate of a licensee falls below per-Subscriber rate of \$26—will fall from 14,038 to 5,962 internal

Professional Subscribers.⁵³ All purchasers of the proposed license will also be able to save in administrative expenditures by eliminating monthly reporting requirements and periodic review of such reports by compliance staff.

It is of particular importance now to expand the availability of top-of-book data. In recent months, retail investors have become increasingly interested in equities markets. Many of these retail investors will require advice and assistance from equity market professionals, and this license will enable broker-dealers that serve such clients to do so at a lower cost.

In addition, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each Distributor will be able to accept or reject the license depending on whether it will or will not lower costs for that particular Distributor, and, if the license is not sufficiently competitive, the Exchange may lose market share.

For all of these reasons, the Proposal is not unreasonably discriminatory.

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. With respect to inter-market competition—the competition among SROs—the Exchange's ability to price market data products is constrained by competition among exchanges for top-of-book data. With respect to intra-market competition—the competition among consumers of exchange data—the Exchange expects the Proposal to promote competition through lower-cost data.

Intermarket Competition

As discussed in detail under Statutory Basis, Nasdaq competes with other exchanges in the sale of top-of-book products. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top-of-book data by lowering the enterprise license fee for internal Professional Subscribers. The proposed price reduction will not cause any unnecessary or inappropriate burden on intermarket competition, as other

⁴³ See <https://www.nyse.com/market-data/real-time/nyse-bqt>.

⁴⁴ See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.

⁴⁵ See https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%20time,time%20on%20a%20Cboe%20book ("The Cboe One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users and non-professional users when compared to a similar competitor exchange product.").

⁴⁶ See Securities Exchange Act Release No. 88221 (February 14, 2020), 85 FR 9904 (February 20, 2020) (SR-CboeBYX-2020-007) (stating that "the Exchange's top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap . . ."). The filing included a table comparing its pricing to Nasdaq Basic.

⁴⁷ See Securities Exchange Act Release No. 79456 (December 2, 2016), 81 FR 88716 (December 8, 2016) (SR-NASDAQ-2016-162).

⁴⁸ See Securities Exchange Act Release No. 77578 (April 11, 2016), 81 FR 22344 (April 15, 2016) (SR-NASDAQ-2016-048).

⁴⁹ See Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR-Nasdaq-2018-058).

⁵⁰ See Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR-CboeBYX-2019-012).

⁵¹ See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011) (initially adopting the current enterprise license).

⁵² See, e.g., Sections 123(c) and 147 (b); Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR-NYSE-2017-60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

⁵³ See Securities Exchange Act Release No. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011) (explaining that the \$365,000 monthly fee for all internal subscribers, divided by \$26 monthly fee for each internal Subscriber, is equal to 14,038).

exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Nasdaq's main competitors, in particular, offer directly competing enterprise licenses for their top-of-book products, and are readily able to lower enterprise license fees in response to Nasdaq. Indeed, the Exchange's decision to lower its enterprise license fee was itself generated by the need to compete with other exchanges. The Proposal may in turn generate competitive responses from other exchanges, enhancing overall competition.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition. In fact, it will foster competition among broker-dealers by lowering costs for current licensees, while at the same time increasing the number of broker-dealers able to purchase that license. The current enterprise license, just like all of the enterprise licenses offered by Nasdaq's competitors, does not itself impose an unnecessary or inappropriate burden on intramarket competition. Relatively smaller broker-dealers have fewer internal Professional Subscribers and therefore operate with lower fixed costs, helping them compete with the larger broker-dealers. Moreover, the underlying fee of \$26 per Professional Subscriber fee has itself been shown not to place an undue burden on competition, and, if that fee proves to be excessive, broker-dealers would be able to purchase top-of-book data from one of the Exchange's competitors offering a substitute product. For all of these reasons, the Proposal will not place any unnecessary or inappropriate burden on intramarket competition.

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.⁵⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection

of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-086 and

should be submitted on or before January 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90612; File No. SR-EMERALD-2020-16]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Establish Market Data Fees

December 9, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the "Fee Schedule") to establish market data fees.

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

⁵⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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 market data fees. MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act³ on March 1, 2019.⁴ The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15.⁵ In that filing, the Exchange expressly waived, among others, market data fees to provide an incentive to prospective market participants to become Members⁶ of the Exchange. At that time, the Exchange waived market data fees for the Waiver Period⁷ 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, among other things, that the Exchange would be ending the Waiver Period for market data fees, beginning October 1, 2020.⁸

On October 1, 2020, the Exchange filed its proposal to assess fees for its market data products, MIAX Emerald Top of Market ("ToM"), Administrative Information Subscriber ("AIS") feed,

and MIAX Order Feed ("MOR").⁹ On October 14, 2020, the Exchange withdrew the First Proposed Rule Change and refiled its proposal in order to provide more description regarding the difference in pricing for internal distributors and external distributors.¹⁰

On November 25, 2020, the Exchange withdrew the Second Proposed Rule Change and refiled its proposal to assess fees for its ToM, AIS and MOR products in order to provide sufficient information to demonstrate that the Exchange is subject to significant substitution-based competitive forces¹¹ in setting the terms of its proposal for ToM, AIS and MOR market data fees.¹²

A more detailed description of the ToM, AIS and MOR products can be found in the Exchange's previously filed Market Data Product filings.¹³ The Exchange notes that it will not be assessing fees for Complex Top of Market ("cToM")¹⁴ data at this time.

To summarize, ToM provides market participants with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange.

The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority ("OPRA"). ToM also contains a feature that provides the number of Priority Customer¹⁵ contracts that are included in the size associated with the Exchange's best bid and offer.

AIS provides market participants with a direct data feed that allows subscribers to receive real-time updates of products traded on MIAX Emerald, trading status for MIAX Emerald and products traded on MIAX Emerald, and liquidity seeking event notifications. The AIS market data feed includes opening imbalance condition information, opening routing information, expanded quote range information, post-halt notifications, and liquidity refresh condition information. AIS real-time messages are disseminated over multicast to achieve a fair delivery mechanism. AIS notifications provide current electronic system status allowing subscribers to take necessary actions immediately.

MOR provides market participants with a direct data feed that allows subscribers to receive real-time updates of options orders, products traded on MIAX Emerald, MIAX Emerald Options System status, and MIAX Emerald Options Underlying trading status. Subscribers to the data feed will get a list of all options symbols and strategies that will be traded and sourced on that feed at the start of every session.

The Exchange proposes to charge monthly fees to Distributors (defined below) of the ToM, AIS, and MOR market data products. MIAX Emerald will assess market data fees applicable to the market data products on Internal and External Distributors in each month the Distributor is credentialed to use the applicable market data product in the production environment. A

"Distributor" of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. Market data fees for ToM, AIS, and MOR will be reduced for new Distributors for the first month during which they subscribe to the applicable market data product, based on the number of trading days that have

¹⁵ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

⁹ See SR-EMERALD-2020-10 (the "First Proposed Rule Change").

¹⁰ See Securities Exchange Act Release No. 90274 (October 27, 2020), 85 FR 69371 (November 2, 2020) (SR-EMERALD-2020-13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Establish Market Data Fees) (the "Second Proposed Rule Change").

¹¹ See, e.g., Securities Exchange Act Release No. 90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR-NYSENAT-2020-05) (Order Approving a Proposed Rule Change To Establish Fees for the NYSE National Integrated Feed) (the "Integrated Feed Approval Order").

¹² 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 Second Proposed Rule Change.

¹³ See Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR-EMERALD-2019-09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish MIAX Emerald Top of Market ("ToM") Data Feed, MIAX Emerald Complex Top of Market ("cToM") Data Feed, MIAX Emerald Administrative Information Subscriber ("AIS") Data Feed, and MIAX Emerald Order Feed ("MOR")).

¹⁴ cToM provides subscribers with the same information as the ToM market data product as it relates to the strategy book, i.e., the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. cToM also provides subscribers with the identification of the complex strategies currently trading on MIAX Emerald; complex strategy last sale information; and the status of securities underlying the complex strategy (e.g., halted, open, or resumed). cToM is distinct from ToM, and anyone wishing to receive cToM data must subscribe to cToM regardless of whether they are a current ToM subscriber. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM. See *id.*

³ 15 U.S.C. 78f.

⁴ 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).

⁵ 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).

⁶ "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.

⁷ "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.

⁸ See MIAX Emerald Regulatory Circular 2020-41 available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf.

been held during the month prior to the date on which they have been credentialed to use the applicable market data product in the production environment. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use the applicable market data product in the production environment, divided by the total number of trading days in the affected calendar month.

Specifically, the Exchange proposes to assess Internal Distributors \$1,250 per month and External Distributors \$1,750 per month for the ToM market data feed. The Exchange proposes to assess Internal Distributors \$1,250 per month and External Distributors \$1,750 per month for the AIS market data feed. The Exchange proposes to assess Internal Distributors \$3,000 per month and External Distributors \$3,500 per month for the MOR market data feed. The Exchange notes that its data feed prices are generally lower than other options exchanges' data feed prices for their comparable data feed products.¹⁶

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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."¹⁷

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and exchange-traded fund ("ETF") options trades.¹⁸ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More

specifically, in October 2020, the Exchange had approximately 3.60% market share of executed volume of multiply-listed equity & ETF options trades.

The recent growth of the Exchange's market share demonstrates this competitive marketplace. Up until February 28, 2019, the Exchange was non-operational, and therefore had a 0% market share. On March 1, 2019, the Exchange launched its current platform as an affiliated exchange of Miami International Securities Exchange, LLC ("MIAX") and MIAX PEARL, LLC ("MIAX PEARL"). Within one month, MIAX Emerald began regularly executing at least 0.70% of trading volume. By September, 2019, MIAX Emerald began executing close to 1% of trading volume on a more regular basis. Beginning March of 2020, the Exchange had a regular market share of approximately 2–4% of executed volume of equity option trades.¹⁹

As MIAX Emerald's transaction market share has increased, so has the value of its market data. For example, in March 2019, when MIAX Emerald launched operations, the Exchange had only 5 subscribers for its ToM data feed, 3 subscribers for its AIS data feed, and 2 subscribers for its MOR data feed—all such feeds were free during that time. As MIAX Emerald's market share has increased, the number of subscribers of the ToM, AIS and MOR data feeds has steadily increased and as of September 2020, prior to the First Proposed Rule Change, the Exchange had 14 subscribers for its ToM data feed, 13 subscribers for its AIS data feed, and 9 subscribers for its MOR data feed—all such feeds were free during that time. However, notwithstanding this subscriber growth, only a fraction of the total MIAX Emerald Members subscribe to MIAX Emerald data feed products. For example, as of September 2020, MIAX Emerald had 42 Members. However, during that same period, only 14 Members subscribed to MIAX Emerald data feed products. That is only an approximately 30% subscription rate. Accordingly, approximately 70% of the MIAX Emerald Members rely on substitute market data products to satisfy their trading needs on MIAX Emerald.

On September 15, 2020, the Exchange issued a Regulatory Circular to announce that the Exchange would be ending the Waiver Period for its ToM, AIS and MOR data feeds, beginning October 1, 2020, which provided market participants with sufficient advance notice of the proposed fees for those

data feeds. This notice also afforded market participants with reasonable time to consider the value of the MIAX Emerald ToM, AIS and MOR data feeds on their businesses, and make a determination of whether to continue using the products or not, once they were no longer provided for free.²⁰

Since the First Proposed Rule Change went into effect, 1 subscriber of the ToM data feed product (*i.e.*, nearly 7% of the prior subscriber base), 2 subscribers of the AIS data feed product (*i.e.*, nearly 16.66% of the prior subscriber base), and 1 subscriber of the MOR data feed product (*i.e.*, nearly 11% of the prior subscriber base) cancelled their subscriptions. In each instance, the subscribers told the Exchange that their reasons for cancelling their subscriptions were the imminent imposition of fees. The total number of subscriptions lost constitute 11.4% of the prior subscriber base.

The Exchange is not required to make the ToM, AIS and MOR data feeds available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the ToM, AIS and MOR data feeds. Firms that choose to purchase the ToM, AIS and MOR data feeds do so for the primary goals of using them to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the ToM, AIS and MOR data feeds or any other similar products are attractively priced.²¹

The Exchange produces and disseminates the ToM, AIS and MOR data feeds as part of its market data offerings to support its transaction execution services. Since March 2019, when the Exchange launched trading, the Exchange has observed a direct correlation between the steady increase of subscribers to the ToM, AIS and MOR data feeds and the increase in the Exchange's transaction market share volume over the same period.

The Exchange determined the level of fees to charge for the ToM, AIS and MOR data feeds based on the value of the Exchange's transaction services. As noted above, over an initial 12-month period, the Exchange has grown from 0% to approximately 2–4% market share of consolidated trading volume on

¹⁶ See Nasdaq PHLX LLC Pricing Schedule, Options 7, Section 10, Proprietary Data Feed Fees; Cboe BZX Exchange, Inc. Fee Schedule, Market Data Fees; Cboe Data Services, LLC, Fee Schedule.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) ("Reg NMS Adopting Release").

¹⁸ The 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>.

¹⁹ See *id.*

²⁰ See *supra*, note 8.

²¹ See Securities Exchange Act Release Nos. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR–Phlx–2009–54) (Order Approving a Proposed Rule Change to Establish Fees for the Top of PHLX Options Direct Data Feed Product); 66993 (May 15, 2012), 77 FR 30043 (May 21, 2012) (SR–PHLX–2012–63). See also Nasdaq GEMX Options 7, Pricing Schedule, Section 7, Market Data.

a regular monthly basis. During that same period, the Exchange had a steady increase in the number of subscribers to its ToM, AIS and MOR data feeds. However, as discussed above, only approximately 30% of MIAX Emerald Members subscribe to market data products from the Exchange. Conversely, approximately 70% of the MIAX Emerald Members rely on substitute market data products to satisfy their trading needs on MIAX Emerald.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the ToM, AIS and MOR data feeds at the Exchange's affiliate, MIAX.²² Both MIAX and MIAX Emerald trade over approximately 2,700 equity options. The Exchange now proposes fees for its ToM, AIS and MOR data feeds that are based on the existing fee structure and rates that data recipients already pay for the MIAX ToM, AIS and MOR data feeds.

At the time the Exchange filed the First Proposed Rule Change, the Exchange did not know the full impact of the proposed fees on current data recipients because subscribers may choose to reduce or eliminate their use of data. The Exchange anticipated that there might be data recipients of the ToM, AIS and MOR data feeds that subscribed only because they were free and might choose to discontinue using the products once the fees were implemented. The Exchange anticipated that data recipients that choose to discontinue the ToM, AIS and MOR data feeds may also choose to shift order flow away from the Exchange, and that, given the current competitive environment, if data recipients were to both discontinue the product and shift order flow away from the Exchange, the Exchange would reevaluate the fees and potentially file a separate proposed rule change to amend its fees. Prior to the imposition of the First Proposed Rule Change, the Exchange could not estimate the impact of the proposed fees on the Exchange's transaction services business or the number of subscribers for the Exchange's ToM, AIS and MOR data feeds. Since October 1, 2020, when the fees for the ToM, AIS and MOR data feeds took effect, 4 subscribers to the ToM, AIS and MOR data feeds have cancelled their subscriptions. In each instance, the subscribers told the Exchange that the reason for ending their subscriptions was the imminent imposition of fees. Additionally, this data must be considered in the context that only approximately 30% of MIAX

Emerald Members subscribe to market data products from the Exchange. Conversely, approximately 70% of the MIAX Emerald Members rely on substitute market data products to satisfy their trading needs on MIAX Emerald.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁴ 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.

Exchange Market Data Fees Are Constrained by the Availability of Substitute Platforms

The fierce competition for order flow constrains any exchange from pricing its market data at a supracompetitive price, and constrains the Exchange in setting its fees for the ToM, AIS and MOR data feeds. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of 15 substitute options exchanges offering market data products and trading capabilities. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in setting fees for ToM, AIS and MOR data feeds, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of an increasing number of alternative options exchanges to use instead of the Exchange. To illustrate, MIAX Emerald has 42 Exchange Members. The Cboe Exchange, Inc. ("Cboe") has approximately 229 exchange members.²⁵ The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fees. The existence of numerous alternative options exchanges

to the Exchange's trading system ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market in which it operates as a platform.

MIAX Emerald ToM, AIS and MOR Data Feeds Are Optional Market Data Products

The decision to subscribe to the Exchange's ToM, AIS and/or MOR data feeds is entirely optional and is a business decision that is made by each firm. The Exchange is not required to make the ToM, AIS and MOR data feeds available to any customers, nor is any customer required to purchase the ToM, AIS and MOR data feeds. A customer's decision whether to purchase the ToM, AIS and MOR data feeds is entirely discretionary. Most firms that choose to subscribe to the ToM, AIS and MOR data feeds do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange for order flow. Such firms are able to determine for themselves whether the ToM, AIS and MOR data feeds are necessary for their business needs, and if so, whether or not they are attractively priced. If the ToM, AIS and MOR data feeds do not provide sufficient value to firms based on the uses those firms may have for them, those firms may simply choose to conduct their business operations in ways that do not use the ToM, AIS and MOR data feeds. If they do not choose to use the ToM, AIS and MOR data feeds, they could also choose not to direct order flow to the Exchange.

As noted above, after the First Proposed Rule Change, current subscribers to the ToM, AIS and MOR data feeds began changing their behavior in response to the imposition of fees for those data feed products. Since October 1, 2020, when the First Proposed Rule Change took effect, 4 subscribers to the ToM, AIS and MOR data feeds cancelled their subscriptions. In each instance, the subscriber told the Exchange that the reason for ending its subscription was the imminent imposition of fees. These cancellations are evidence that subscribing to the ToM, AIS and MOR data feeds is discretionary, that each customer makes the decision whether to subscribe based on its own analysis of the benefits and costs to itself, and that customers can and do make those decisions quickly based on reactions to fee changes.

However, only a fraction of total MIAX Emerald Members subscribe to MIAX Emerald data feed products. For

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

²⁵ See Cboe Form 1 Amendment, Exhibit M (June 26, 2020), available at <https://www.sec.gov/Archives/edgar/vpr/2001/20012232.pdf>.

²² See MIAX Fee Schedule, Section 6, Market Data Fees.

example, as of September 2020, MIAX Emerald had 42 Members. However, during that same period, only 14 Members subscribed to MIAX Emerald data feed products. That is only an approximately 30% subscription rate. Accordingly, approximately 70% of the MIAX Emerald Members rely on substitute market data products to satisfy their trading needs on MIAX Emerald.

But even if such firms determine that the fees for the ToM, AIS and MOR data feeds are too high, customers can access much of the same data by subscribing to the data feed of the Options Price Reporting Authority (“OPRA”), which consists of: last sale reports (price, volume and related information with respect to completed transactions); quotation information (bids and offers and related information pertaining to quotations in eligible securities available for trading); and other related information with respect to trading and administrative messages. Although not free of charge, the fees for subscribing to OPRA’s substitute data feeds are significantly discounted.²⁶ Customers can also access much of this same data through one of the numerous OPRA Vendors.²⁷ In this way, OPRA and OPRA Vendors are substitutes for a significant portion of the data available on the ToM, AIS and MOR data feeds. This is clear evidence that the availability of these substitute products constrains the Exchange’s ability to charge supracompetitive prices for the ToM, AIS and MOR data feeds.

Further, in the case of data that is redistributed through OPRA Vendors, of which there are numerous firms, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers.

In setting the proposed fees for the ToM, AIS and MOR data feeds, the Exchange considered the competitiveness of the market for

proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of alternatives to the Exchange’s trading system and the continued availability of the Exchange’s separate data feeds at a steep discount ensure that the Exchange cannot set unreasonable fees when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

Further, the Exchange no longer believes it is necessary to waive its market data 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 proposed change is equitable and not unfairly discriminatory because the elimination of the fee waiver for market data fees will uniformly apply to all market participants and market participants are not required to purchase any market data feed from the Exchange. As described above, the Exchange does not offer trading in any proprietary or singly-list options products. Accordingly, the Exchange is not the sole source of market data for any products listed on the Exchange. Therefore, it is a business decision as to whether a firm purchases the Exchange’s market data feeds. Additionally, the Exchange believes its proposal to establish market data fees is reasonable and well within the range of fees assessed among other exchanges, including the Exchange’s affiliate, MIAX.²⁸

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess internal distributors fees that are less than the fees assessed for external distributors for subscriptions to the Exchange’s ToM, AIS and MOR data feeds because internal distributors have limited, restricted usage rights to the market data, as compared to external distributors which have more expansive usage rights. All Members and non-Members that determine to receive any market data feed of the Exchange (or its affiliates, MIAX and MIAX PEARL), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the “Exchange Data

Agreement”).²⁹ Pursuant to the Exchange Data Agreement, internal distributors are restricted to the “internal use” of any market data they receive. This means that internal distributors may only distribute the Exchange’s market data to the recipient’s officers and employees and its affiliates.³⁰ External distributors may distribute the Exchange’s market data to persons who are not officers, employees or affiliates of the external distributor,³¹ and may charge their own fees for the distribution of such market data. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess external distributors a higher fee for the Exchange’s market data products as external distributors have greater usage rights to commercialize such market data. The Exchange believes the proposed fees are a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering the costs associated with distributing such data. Access to the Exchange is provided on fair and non-discriminatory terms. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst users for similar services. Moreover, the decision as to whether or not to purchase market data is entirely optional to all users. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

“[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of

²⁹ See Exchange Data Agreement, available at https://miaxweb2.pairsite.com/sites/default/files/page-files/MIAX_Exchange_Group_Data_Agreement_09032020.pdf.

³⁰ See *id.*

³¹ See *id.*

²⁶ See OPRA Fee Schedule, available at https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5bf2f4661faec762fa07826a_OPRA_Fee_Schedule.pdf (charging professional subscriber device-based fees of \$31.50 per display device and non-professional subscriber fees starting at \$1.25 per non-professional subscriber, up to 75,000, for OPRA’s Basis Service).

²⁷ See the list of OPRA Vendors, available at https://assets.website-files.com/5ba40927ac854d8c97bc92d7/5c671220ff4c29504e423d0d_190215R2_OPRA_Vendors.pdf.

²⁸ See the MIAX Options Fee Schedule.

the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”³²

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase “on any person, whether or not the person is a member of the self-regulatory organization” after “due, fee or other charge imposed by the self-regulatory organization.” As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.”

The Exchange believes that these amendments to Section 19 of the Act reflect Congress’s intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a “due, fee or other charge imposed by the self-

regulatory organization,” the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. The Exchange believes that the amendment to Section 19 reflects Congress’s conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission’s prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission’s determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

Selling proprietary market data is a means by which exchanges compete to attract business. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they provide. The need to compete for business places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.³³ The Exchange therefore believes that the fees for market data are properly

assessed on Members and Non-Member users.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

“In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”³⁴

The court’s conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

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 fees do not put any market participants at a relative disadvantage compared to other market participants.

³³ See Sec. Indus. Fin. Mkts. Ass’n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

³⁴ *NetCoalition*, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323).

³² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

As noted above, the proposed fee schedule would apply to all subscribers of the ToM, AIS and MOR data feeds, and customers may choose whether to subscribe to any or all of the feeds. 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 market on competition. Further, the Exchange's proposed market data 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 affiliate, MIAX.³⁵

The Exchange believes that the proposed market data 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 charge for the time and resource necessary for providing market data to the market participants that request such data. Accordingly, the Exchange believes that the proposed market data 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 that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange was constrained by the availability of numerous substitute trading platforms and services also offering market data products and trading capabilities, and low barriers to entry mean new exchanges are frequently introduced. In addition, 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 market data products. Many other exchanges offer proprietary data feeds similar to the Exchange's ToM, AIS and MOR data feeds. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another platform, in which case the platform would stand to lose both market data and trading fees. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

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-2020-16 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-2020-16. 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-2020-16, and should be submitted on or before January 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-27488 Filed 12-14-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90611; File No. SR-MSRB-2020-08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change To Amend MSRB Form G-32

December 9, 2020.

I. Introduction

On October 13, 2020, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "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 MSRB Form G-32 to clarify that brokers, dealers, and municipal securities dealers (collectively, "dealers" and, individually, each a "dealer") acting as underwriters in the primary offering of municipal securities are obligated to manually complete three data fields (collectively, the "Amended Data

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁵ See the MIAX Options Fee Schedule.

³⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁷ 17 CFR 240.19b-4(f)(2).

Fields”) on Amended Form G–32 when such fields are applicable to a primary offering (the “proposed rule change”).³ The proposed rule change was published for comment in the **Federal Register** on October 28, 2020.⁴ In the Notice of Filing, the MSRB requested that the proposed rule change become effective on March 31, 2021.⁵

The Commission did not receive any comment letters on the proposed rule change.

II. Description of Proposed Rule Change

In the Notice of Filing, the MSRB stated that the purpose of the proposed rule change is to clarify a prior rule filing submitted to the SEC on April 10, 2019 and that was subsequently approved by the SEC, as amended, on June 27, 2019 (the “Primary Offering Practices Amendments”) that added new data fields to Form G–32.⁶ The proposed rule change seeks to clarify that the description within the Primary Offering Practices Amendments that describes the Amended Data Fields for three specific data fields as generally being “auto-populated” is incorrect and that these three data fields must be manually completed. The proposed rule change also describes the precise method by which underwriters must complete these new data fields.⁷

A. MSRB Form G–32 Data Fields Impacted by Proposed Rule

The MSRB stated that the proposed rule change is meant to clarify that brokers, dealers, and municipal securities dealers acting as underwriters in the primary offering of municipal securities are obligated to manually complete three data fields on Amended Form G–32 when such fields are applicable to a primary offering.⁸ Further, the MSRB stated that the proposed rule change would clarify the method of completing Amended Form G–32 for the following three data fields:

- **Bank Qualified Flag (“BQ Data Field”)**: The proposed rule change would clarify the “yes/no” flag on amended Form G–32 would, when

applicable, need to be manually completed by an underwriter to indicate whether a bank can deduct a portion of the interest cost of the carry for the municipal securities, in accordance with applicable provisions of the code of the Internal Revenue Service.

- **Planned Amortization Class Bond Flag (“PAC Bond Data Field”)**: The proposed rule change would clarify that the “yes/no” flag on amended Form G–32 would, when applicable, need to be manually completed to indicate whether the offering is an asset-backed bond payable with a fixed sinking fund schedule.

- **Put End Date Entry (“Put Date Field”)**: The proposed rule change would clarify that data fields on Form G–32 relating to whether the offering is puttable would, when applicable, need to be manually completed to indicate when a put end date is defined at the time of issuance.⁹

The MSRB stated its belief that the proposed rule change is necessary to more clearly define the compliance obligation of an underwriter when completing one of the Amended Manual Fields on Amended Form G–32, and, thereby, would promote greater regulatory transparency in the municipal securities market.¹⁰ The MSRB noted that the proposed rule change is intended to put market participants on notice that, when applicable, the Amended Manual Fields will not auto-populate on Amended Form G–32 with information input into the New Issue Information Dissemination Service (“NIIDS”), and thus must be manually completed.¹¹

B. Overview of MSRB Form G–32 Submission Process

The MSRB stated that pursuant to MSRB Rule G–32, an “underwriter” in a primary offering of municipal securities is required to electronically submit to the MSRB certain primary offering disclosure documents and related information, including the data elements set forth on Form G–32.¹² This submission is completed through the MSRB’s Electronic Municipal Market Access Dataport system (“EMMA Dataport”).¹³ The MSRB noted that an underwriter’s submission of Form G–32 in EMMA Dataport is commonly, but not always, preceded by the underwriter’s (1) procurement of CUSIP numbers from CUSIP Global Services, (2) registration of the municipal

securities for depository eligibility with the Depository Trust and Clearing Corporation (“DTCC”), and (3) submission of certain information about the characteristics of the offering to NIIDS, all generally pursuant to MSRB Rule G–34.¹⁴ As described in the Primary Offering Practices Amendments and prior amendments approved in 2012, Form G–32 incorporates matching data fields relating to certain information submitted to NIIDS and CUSIP Global Services and, thereby, facilitates the MSRB’s collection of market information utilized in various rulemaking and transparency activities.¹⁵

The MSRB discussed in the Notice of Filing how the Primary Offering Practices Amendments described each of the New Data Fields added to Form G–32 as falling into one of two categories: (1) Data fields that generally would be auto-populated with information previously entered by an underwriter in NIIDS (collectively, the “Auto-Populated Fields”) and (2) data fields that would be unique to Amended Form G–32 and, when applicable, would need to be completed via manual data entry because they could not be auto-populated with matching NIIDS information (collectively, the “Manual Fields”).¹⁶ The Primary Offering Practices Amendments identified fifty-seven Auto-Populated Fields and nine Manual Fields.¹⁷ The three Amended Manual Fields that are the subject of this proposed rule change were originally categorized as part of the fifty-seven Auto-Populated Fields, because the MSRB understood, at that time, that there was a corresponding data field match in NIIDS that would allow for the PAC Bond Data Field, the BQ Data Field, and the Put Date Field, respectively, to be auto-populated in EMMA Dataport, when applicable.¹⁸ The MSRB stated that it now understands that, although DTCC’s NIIDS system may allow for an underwriter to input information corresponding to the Amended Manual Fields, presently, this information is not disseminated by DTCC to the MSRB’s EMMA Dataport.¹⁹ Consequently, under the current design of DTCC’s system, the MSRB does not receive the electronic inputs necessary to auto-populate these three fields on Amended Form G–32. Thus, the MSRB determined it was

³ MSRB Form G–32 is an electronic form on which submissions of the information required by Rule G–32 are made to the MSRB.

⁴ Securities Exchange Act Release No. 34–90248 (October 22, 2020) (the “Notice of Filing”), 85 FR 68395 (October 28, 2020).

⁵ See Notice of Filing.

⁶ Securities Exchange Act Release No. 34–86219 (June 27, 2019), 84 FR 31961 (July 3, 2019) (File No. SR–MSRB–2019–07). (The Primary Offering Practices Amendments authorized updates to Form G–32 that will add the BQ Data Field, the PAC Bond Data Field, the Put Date Field, as well as the sixty-three other new data fields, upon their effective date of March 31, 2021.)

⁷ See Notice of Filing.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Primary Offering Practices Amendments, *supra* Note 6.

¹⁸ See Notice of Filing.

¹⁹ *Id.*

appropriate and necessary to provide guidance to filers clarifying the need to manually input information relating to the Amended Data Fields, when applicable, on Amended Form G-32.²⁰

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.²¹ Section 15B(b)(2)(C) of the Act states that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.²² The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) and necessary and appropriate to ensure the MSRB receives accurate and complete primary offering information in a timely manner. Further, the Commission notes that the clarification that underwriters are obligated to manually complete the three Amended Manual Fields on Amended Form G-32 applies to all applicable filers and ensures the accurate and timely completion of Amended Form G-32.

The Commission believes the proposed rule change would promote just and equitable principles of trade by resolving potential regulatory ambiguities and making clear that, when the filing of Amended Form G-32 is required in connection with a primary offering, an underwriter is effectively required to ensure that all applicable fields are complete and accurate, which may require manually completing these three fields on Amended Form G-32. The clarifications made by the proposed rule change would assist any dealer who acts, or may act, as an underwriter of a

primary offering of municipal securities in completing Form G-32 accurately.

The Commission also believes the proposed rule change would foster cooperation and coordination with persons engaged in regulating and processing information with respect to transactions in municipal securities and municipal financial products. The Commission believes that the benefits of the proposed rule change will not only accrue to dealer firms, but also to regulated-entity examiners, other regulators, and data vendors by mitigating potential ambiguity and confusion. Just as it would be beneficial to dealer firms to have a uniform clarified understanding of the regulatory obligations associated with Amended Form G-32, the proposed rule change would similarly benefit these other market participants by ensuring that the data submitted on Amended Form G-32 is complete and accurate regardless of whether the dealer directly interfaces with NIIDS or utilizes the interface of a third-party vendor.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change on efficiency, competition, and capital formation.²³ The Commission 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. The Commission understands the clarification will apply equally to all applicable underwriters without imposing an additional burden within the filing process. Moreover, since the proposed rule change is intended to increase regulatory transparency regarding the obligation of underwriters to manually complete the Amended Manual Fields, the Commission believes the proposed change should increase the efficiency of underwriters fulfilling their obligations under Rule G-32, as underwriters would be on notice of the lack of auto-population for these three fields on Amended Form G-32 and, thereby, may avoid certain costs associated with resolving a potentially ambiguous regulatory obligation. The Commission believes the proposed rule change will help market participants avoid the potential for regulatory misinterpretation and confusion, which promotes a fairer and more efficient municipal securities market.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-MSRB-2020-08) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-27482 Filed 12-14-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90619; File No. SR-FINRA-2020-042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027

December 9, 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 1, 2020, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 substantially by FINRA. FINRA filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of the temporary amendments set forth in SR-FINRA-2020-015 and SR-FINRA-2020-027 from December 31, 2020, to April 30, 2021.⁵ Given that both SR-FINRA-

²⁴ 15 U.S.C. 78s(b)(2).

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)(iii).

⁴ 17 CFR 240.19b.

⁵ As discussed below, SR-FINRA-2020-015 and SR-FINRA-2020-027 respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA's Office of Hearing

²⁰ *Id.*

²¹ 15 U.S.C. 78o-4(b)(2)(C).

²² *Id.*

²³ 15 U.S.C. 78c(f).

2020–015 and SR–FINRA–2020–027 provide temporary relief necessitated by the COVID–19 global health crisis and the related need to restrict in-person activities, and the COVID–19 conditions warranting this temporary relief persist, FINRA is filing this proposed rule change to extend and to continue to align the expiration dates of both filings.⁶

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR–FINRA–2020–015 and SR–FINRA–2020–027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA’s OHO and the NAC to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. The

Officers (“OHO”) and the National Adjudicatory Council (“NAC”) to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. For further information on SR–FINRA–2020–015 and SR–FINRA–2020–027, in addition to what is provided herein, visit FINRA’s website at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-015> and <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-027>, respectively.

⁶ If FINRA requires temporary relief from the rule requirements identified in SR–FINRA–2020–015 and SR–FINRA–2020–027 beyond April 30, 2021, FINRA may submit a separate rule filing to extend the expiration date of the temporary amendments that are the subject of those filings. The amended FINRA rules will revert back to their original form at the conclusion of the temporary relief period and any extension thereof.

COVID–19 conditions necessitating these temporary amendments persist, with cases rapidly escalating nationwide. Based on its assessment of current COVID–19 conditions, and the lack of certainty as to when COVID–19-related health concerns will subside, FINRA has determined that there is a continued need for this temporary relief for several months beyond December 31, 2020. Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments set forth in SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.

i. SR–FINRA–2020–015

On May 8, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–015, to temporarily amend some timing, method of service and other procedural requirements in FINRA rules during the period in which FINRA’s operations are impacted by the outbreak of COVID–19 (the “May 8 Filing”).⁷ The Commission published its notice of filing and immediate effectiveness for the May 8 Filing on May 20, 2020.⁸ The temporary amendments, as originally proposed in the May 8 Filing, would have expired on June 15, 2020, absent another proposed rule change filing by FINRA. FINRA subsequently filed two proposed rule changes to extend the expiration date of the temporary amendments set forth in the May 8 Filing.⁹ The most recent proposed rule change, SR–FINRA–2020–022, filed on July 27, 2020, extended the expiration date of the temporary amendments in the May 8 Filing from July 31, 2020, to a date to be specified in a public notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020 (the “July 27 Filing”).¹⁰

⁷ The following FINRA rules are the subject of the May 8 Filing: 1012, 1015, 6490, 9132, 9133, 9146, 9321, 9341, 9349, 9351, 9522, 9524, 9525, 9559 and 9630.

⁸ See Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–015).

⁹ On June 10, 2020, FINRA filed SR–FINRA–2020–017 to extend the expiration date of the temporary amendments set forth in the May 8 Filing from June 15, 2020, to July 31, 2020 (the “June 10 Filing”). The Commission published its notice of filing and immediate effectiveness for the June 10 Filing on June 12, 2020. See Securities Exchange Act Release No. 89055 (June 12, 2020), 85 FR 36928 (June 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–017).

¹⁰ The Commission published its notice of filing and immediate effectiveness for the July 27 Filing on July 29, 2020. See Securities Exchange Act Release No. 89423 (July 29, 2020), 85 FR 47278 (August 4, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–022).

As stated in its previous filings, FINRA proposed, and subsequently extended, the temporary amendments set forth in the May 8 Filing to address the substantial impacts of the COVID–19 outbreak on FINRA’s operations. Among other things, the need for FINRA staff, with limited exceptions, to work remotely and restrict in-person activities—consistent with the recommendations of public health officials—made it challenging to meet some procedural requirements and perform some functions required under FINRA rules. The temporary amendments in the May 8 Filing addressed these concerns by easing logistical and other issues and providing FINRA with needed flexibility for its operations during the COVID–19 outbreak, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its staff.

As noted above, the COVID–19 conditions necessitating the temporary amendments in the May 8 Filing—and the extensions of that relief provided for in FINRA’s subsequent filings—persist. FINRA continues to face the same logistical and other challenges stemming from the COVID–19-related public health risks for in-person activities and the continued need for FINRA staff, with few exceptions, to work remotely to protect their health and safety. Working remotely makes it difficult to, among other things, send and receive hard copy documents and conduct in-person oral arguments.

As indicated in its previous filings, FINRA has established a COVID–19 task force to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. Based on its assessment of current COVID–19 conditions, including the recent nationwide surge of COVID–19 cases, FINRA does not believe the COVID–19-related health concerns necessitating this relief will subside by December 31, 2020, and has determined that there will be a continued need for this temporary relief for several months beyond December 31, 2020. Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments in the May 8 Filing from December 31, 2020, to April 30, 2021.

ii. SR–FINRA–2020–027

On August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, to temporarily amend

FINRA Rules 1015, 9261, 9524 and 9830 to grant OHO and the NAC authority¹¹ to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing (the “August 31 Filing”).¹² The Commission published its notice of filing and immediate effectiveness for the August 31 Filing on September 2, 2020.¹³ The temporary amendments, as originally proposed in the August 31 Filing, will expire on December 31, 2020, absent another proposed rule change filing by FINRA.

FINRA proposed the temporary amendments allowing for specified OHO and NAC hearings to be conducted by video conference in response to the COVID-19-related public health risks posed in connection with conducting traditional, in-person hearings and the corresponding backlog of cases resulting from FINRA’s postponement of in-person hearings starting on March 16, 2020. As set forth in the August 31 Filing, FINRA relies on the guidance of its health and safety consultant, in conjunction with COVID-19 data and guidance issued by public health authorities, to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.¹⁴ As noted above, the COVID-19-related public health risks necessitating this temporary relief have not yet abated, with COVID-19 cases surging nationwide.

Based on its assessment of current COVID-19 conditions, including the

¹¹ For OHO hearings under FINRA Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For NAC hearings under FINRA Rules 1015 and 9524, this temporary authority is granted to the NAC or the relevant Subcommittee.

¹² The temporary amendments set forth in the August 31 Filing were subject to a 30-day operative delay and, accordingly, became operative on October 1, 2020.

¹³ See Securities Exchange Act Release No. 89739 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-027).

¹⁴ As noted in the August 31 Filing, the temporary proposed rule change grants discretion to OHO and the NAC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the NAC may consider a variety of other factors in addition to COVID-19 trends. In the August 31 Filing, FINRA provided a non-exhaustive list of other factors OHO and the NAC may take into consideration, including a hearing participant’s individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

recent escalation in COVID-19 cases nationwide, FINRA does not believe the COVID-19-related health concerns necessitating this relief will subside by December 31, 2020, and has determined that there will be a continued need for this temporary relief for several months beyond December 31, 2020.

Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments in the August 31 Filing from December 31, 2020, to April 30, 2021. The extension of these temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will allow FINRA’s critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances—enabling FINRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,¹⁶ which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change, which extends the expiration date of the temporary amendments to FINRA rules set forth in the May 8 Filing, will continue to provide FINRA, and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act’s purpose, for FINRA to operate pursuant to this temporary relief. The temporary

amendments allow FINRA to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes in order to cope with the current pandemic conditions. In addition, extending this temporary relief will further support FINRA’s disciplinary and eligibility proceedings and other review processes that serve a critical role in providing investor protection and maintaining fair and orderly markets.

The proposed rule change, which also extends the expiration date of the temporary amendments to FINRA rules set forth in the August 31 Filing, will continue to aid FINRA’s efforts to timely conduct hearings in connection with its core adjudicatory functions. Given current COVID-19 conditions and the uncertainty around when those conditions will improve, without this relief allowing OHO and NAC hearings to proceed by video conference, FINRA would be required to postpone such hearings indefinitely. FINRA must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to FINRA’s ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID-19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that FINRA can take immediate action to stop ongoing customer harm and will allow the NAC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in the August 31 Filing, this temporary relief allowing OHO and NAC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID-19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act’s purpose.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in the May 8 Filing and August 31 Filing, the proposed rule

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(8).

change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 outbreak and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change will prevent unnecessary impediments to FINRA's operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on December 31, 2020.

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 for this proposed rule change.¹⁷

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with its May 8 Filing and related extensions,²⁰ FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. FINRA has reiterated that the

¹⁷ For the comment file for SR-FINRA-2020-027, see <https://www.sec.gov/comments/sr-finra-2020-027/srfinra2020027.htm>.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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. FINRA has satisfied this requirement.

²⁰ See May 8 Filing, 85 FR at 31836. See also July 27 Filing, 85 FR at 47280 (requesting a waiver of the 30-day operative delay). FINRA did not request that the Commission waive the 30-day operative delay for its August 31 Filing.

requested relief in this proposed rule change will help minimize the impact of the COVID-19 outbreak on FINRA's operations, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.²¹ We also note that this proposal, like FINRA's May 8 Filing and its August 31 Filing, provides only temporary relief during the period in which FINRA's operations are impacted by COVID-19. As proposed, the changes would be in place through April 30, 2021.²² FINRA also noted in both its May 8 Filing and August 31 Filing that the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.²³ For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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:

²¹ See May 8 Filing, 85 FR at 31833.

²² As noted above, see *supra* note 6, FINRA states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

²³ See May 8 Filing, 85 FR at 31833.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2020-042 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-FINRA-2020-042. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-042 and should be submitted on or before January 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-27487 Filed 12-14-20; 8:45 am]

BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90621; File No. SR–MSRB–2020–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Additional Regulatory Relief on a Temporary Basis to Dealers and Municipal Advisors Due to the Sustained Coronavirus (COVID–19) Pandemic

December 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 2, 2020 the Municipal Securities Rulemaking Board (“MSRB” or “Board”) 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 MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to (i) amend Supplementary Material .01, Temporary Relief for Completing Office Inspections, of MSRB G–27, on supervision, to allow internal inspections of brokers, dealers and municipal securities dealers (collectively, “dealers”) to be conducted remotely, subject to certain conditions, for calendar year 2020 and calendar year 2021, without an on-site visit to the office or location; (ii) amend MSRB Rule G–16, on periodic compliance examinations, to add Supplementary Material .01, Temporary Relief for Completing Periodic Compliance Examination, to provide a temporary extension of time for registered securities associations³ and appropriate regulatory agencies⁴ (collectively,

“examining authorities”) to initiate periodic examinations of dealers; (iii) amend Supplementary Material .09, Temporary Relief for Municipal Advisor Principal, of MSRB Rule G–3, on professional qualification requirements, to provide a further extension of time for those individuals who meet the definition of a municipal advisor principal⁵ to become appropriately qualified by passing the Municipal Advisor Principal Qualification Examination (Series 54); and (iv) make a technical change to Supplementary Material .12, Temporary Relief for Municipal Advisor Continuing Education Requirements, of MSRB Rule G–3 to update a cross-reference (collectively the “proposed rule change”).

The MSRB has designated the proposed rule change as constituting a “noncontroversial” rule change under Section 19(b)(3)(A)⁶ of the Act and Rule 19b–4(f)(6)⁷ thereunder, which renders the proposal effective upon receipt of this filing by the Commission and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so that the MSRB can implement the proposed rule change immediately.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

securities dealers who are not members of a registered securities association shall be examined by their appropriate regulatory agency. The term “appropriate regulatory agency” when used with respect to municipal securities dealers means, in part, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“FRB”), and the Federal Deposit Insurance Corporation (“FDIC”). See 15 U.S.C. 78c(a)(34)(A). The Commission also has the authority to examine all registered municipal securities dealers. See 15 U.S.C. 78q(b)(1).

⁵ The term “municipal advisor principal” is defined in Rule G–3(e)(i) to mean a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b–4(f)(6).

may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March of this year, the United States declared a national emergency in response to the coronavirus disease (“COVID–19”) pandemic.⁸ In light of the operational challenges and disruptions to normal business functions as a result of COVID–19 pandemic, the MSRB filed a proposed rule change for immediate effectiveness with the SEC in April of this year that provided regulatory relief on a temporary basis to dealers and municipal advisors (collectively “regulated entities”). The MSRB stated it would continue to monitor the impact of COVID–19 and work in close coordination with other financial regulators and governmental authorities.⁹

The MSRB recognizes that a vast number of regulated entities are still operating under business continuity plans and continue to manage operations from alternate sites with employees working from diverse work locations and telework arrangements. The impacts of the COVID–19 pandemic persist and, in an effort to slow the spread of COVID–19, many states are continuing to impose stay-at-home orders, limitations on in-person interactions and travel restrictions. Due to the ongoing pandemic-related health and safety concerns and the operational challenges regulated entities continue to experience, the MSRB believes the additional tailored temporary relief provided in the proposed rule change is warranted.

Temporary Relief Under Rule G–27 To Allow Remote Inspections for Calendar Year 2020 and Calendar Year 2021

With respect to Rule G–27, the April relief extended the deadline until March 31, 2021 for dealers to complete their

⁸ See The White House, “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak,” (March 13, 2020) <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/#:~:text=On%20March%2011%2C%202020%2C%20the,and%20across%20the%20United%20States.>

⁹ See Release No. 34–88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR–MSRB–2020–01) (“April relief”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Section 15B(c)(7) of the Exchange Act provides that periodic examinations of municipal securities brokers and municipal securities dealers shall be conducted by a registered securities association, in the case of municipal securities brokers and municipal securities dealers that are members of such association. The Financial Industry Regulatory Authority (“FINRA”) is currently the only registered securities association. See 15 U.S.C. 78o–4(c)(7).

⁴ Pursuant to Section 15B(c)(7) of the Exchange Act, municipal securities brokers and municipal

calendar year 2020 inspections.¹⁰ However, in light of the health and safety concerns coupled with the continued restrictions on social interactions and travel, the April relief is no longer sufficient. To help proactively address the challenges resulting from the sustained pandemic, the MSRB is proposing to amend temporary Supplementary Material .01 under Rule G–27, on supervision, to provide dealers, subject to specified requirements therein, the ability to conduct the inspections of their offices and locations for calendar year 2020 and calendar year 2021 remotely without the need to conduct an onsite visit to such office or location.¹¹

The proposed amendment to Supplementary Material .01 would set forth that inspections are due to be completed by March 31, 2021 for calendar year 2020 and completed by December 31, 2021 for calendar year 2021, the requirement to amend or supplement written supervisory procedures for remote inspections, the use of remote inspections as part of an effective supervisory system, and documentation requirements. The MSRB believes affording dealers the option to conduct remote inspections is a prudent regulatory approach during these unprecedented times while continuing to serve the important investor protection objectives of the inspection requirements under these unique circumstances. The temporary proposed supplementary material makes clear that it is not intended to alter a dealer's core responsibility, embodied in Rule G–27, to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to ensure compliance with Board rules and the applicable provisions of the Act and rules thereunder.

Temporary Relief Under Rule G–16 To Extend the Time To Complete Periodic Compliance Examinations

MSRB Rule G–16, on periodic compliance examination, provides that at least once every four calendar years, each dealer that is a member of a registered securities association, must be examined by such registered securities association (*i.e.*, FINRA); and at least once every two calendar years, each municipal securities dealer that is

a bank or subsidiary or department or division of a bank must be examined by the appropriate regulatory agency (*i.e.*, OCC, FRB, or FDIC), in accordance with Section 15B(c)(7) of the Exchange Act¹² for compliance with applicable rules of the Board and applicable provisions of the Act and rules and regulations of the Commission thereunder.

In an effort to provide examining authorities with an opportunity to better manage and allocate resources during these exigent circumstances; and in working with dealers as they manage operational challenges due to the pandemic, the MSRB is proposing to temporarily modify the date by which compliance examinations under Rule G–16 must be met. Specifically, the proposed rule change would deem any examination initiated between January 1, 2020 and March 31, 2021 to have occurred in calendar year 2020.

Temporary Relief Under Rule G–3 To Extend Time To Complete Professional Qualification Requirements and Technical Amendment

In connection with the MSRB's April relief, the MSRB provided additional time to allow individuals to fulfill certain professional qualification standards under Rule G–3, on professional qualification requirements.¹³ At that time, due to the uncertainty regarding ongoing stay-at-home orders and social distance restrictions that could impact capacity at Prometric testing centers,¹⁴ the MSRB extended the date by which individuals are required to become qualified with the Series 54 examination from November 12, 2020 to March 31, 2021.¹⁵

¹² 15 U.S.C. 78o–4(b)(c)(7).

¹³ See *supra* note 9.

¹⁴ FINRA, as appointed by the Commission, provides test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations. See, e.g., Release No. 34–75714 (Aug. 17, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors). FINRA uses Prometric as its single vendor for the delivery of the professional qualification examinations that FINRA is charged with administering, including MSRB-owned professional qualification examinations.

¹⁵ In the April relief, the MSRB provided temporary relief for dealers by permitting any individual qualified to function in the capacity as a municipal securities principal, municipal fund securities limited principal or a municipal securities sales principal additional time to engage in the principal activity before passing the applicable principal-level qualification examination. The April relief extended the requirement to 120 days from the time the MSRB announces that Prometric testing centers have resumed sufficient access to its testing centers. See Rules G–3(b)(ii)(D), G–3(b)(iv)(B)(4) and G–3(c)(ii)(D). The MSRB stated in the April relief that it would publish a notice on its website announcing

Given the protracted period of the COVID–19 pandemic, the MSRB is taking proactive measures and is proposing to amend Supplementary Material .09 of Rule G–3 to extend the time period from March 31, 2021 to November 12, 2021, by which individuals who meet the definition of a municipal advisor principal must become appropriately qualified by passing the Series 54 examination. This extension of time affords municipal advisors and individuals functioning as municipal advisor principals a full year from the sunset of the original grace-period¹⁶ to continue to engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, so long as such persons are qualified with the Municipal Advisor Representative Qualification Examination (Series 50).

The proposed rule change also makes a technical amendment to Supplementary Material .12 under Rule G–3, providing for the temporary relief for municipal advisor continuing education requirements, by correcting the cross-reference under the provision from (i)(ii)(B)(2) to (i)(ii)(B).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,¹⁷ which provides that the MSRB's rules shall:

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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

when Prometric resumes operations in its testing centers, so regulated entities are on notice of when the 120-day period begins to toll. See *supra* note 9. The MSRB notes dealer firms are still covered under the April relief because, given the exigent circumstances surrounding the sustained pandemic, the MSRB has not yet announced when the obligation to take and pass the applicable principal examination must be completed.

¹⁶ The MSRB had previously stated, to facilitate the transition to the new exam requirement, the MSRB was providing a one-year grace period, sunset on November 12, 2020, during which individuals qualified with the Series 50 examination would be able to take the Series 54 examination while continuing to engage in principal-level activities. See Release No. 34–84630 (Nov. 20, 2018), 83 FR 60927 (Nov. 27, 2018) (File No. SR–MSRB–2018–07).

¹⁷ 15 U.S.C. 78o–4(b)(2)(C).

¹⁰ *Id.*

¹¹ The proposed amendment to Supplementary Material .01 would be analogous to FINRA's rule change, File No. SR–FINRA–2020–04, which was filed on November 6, 2020 and was effective upon filing. See Release No. 34–90454 (Nov. 6, 2020) <https://www.sec.gov/rules/sro/finra/2020/34-90454.pdf>.

The proposed rule change is designed to provide regulated entities additional time to comply with certain obligations under MSRB rules for a temporary period of time; it does not relieve such entities from compliance with underlying obligations that directly serve to protect investors, municipal entities, obligated persons and the public interest or market transparency goals. In a time when faced with unique challenges resulting from the sustained pandemic, the proposed rule change will afford dealers, municipal advisors and the examining authorities the ability to safeguard the health and safety of their personnel and to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest. In addition, the proposed rule change will also alleviate some of the operational challenges these regulated entities may be experiencing, which will allow them to more effectively allocate resources to the provision of advice and the operations that facilitate transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.

Additionally, the proposed rule change is consistent with Section 15B(b)(2)(E) of the Exchange Act,¹⁸ which provides that the MSRB's rules shall provide:

for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers, municipal securities dealers, and municipal advisors to determine compliance with applicable provisions of this title, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker, municipal securities dealer, or municipal advisor.

Given the potential period of the pandemic and resulting persistent challenges to business operations, the proposed rule change provides examining authorities, not only with the ability to appropriately allocate their resources, but with a degree of flexibility to be responsive to the challenges dealers may face and minimize, to the extent possible, undue regulatory burdens, while not substantively altering examining authorities' obligations to examine for compliance with applicable rules of the Board and applicable provisions of the

Act. The MSRB believes the temporary relief to provide for an extension of time for examining authorities to initiate periodic compliance examinations is not likely to, in isolation, create an investor protection harm given that, through risk assessments, dealers are prioritized and examined with a greater frequency than the timeline Rule G–16 allows.¹⁹

The MSRB believes that the proposed rule change is also consistent with Section 15B(b)(2)(A) of the Act,²⁰ which authorizes the MSRB to prescribe “standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons,” in that those acting in the capacity of a municipal advisor principal would still be subject to the regulatory requirements under Rule G–3, including the requirement to be qualified with the Series 50 examination. Additionally, continuing to allow individuals to function in a principal capacity with the Series 50 for a period of time before having to pass the Series 54 examination, given this protracted period of the pandemic, provides individuals flexibility to prioritize safeguarding their health and safety and the proposed rule change is not inconsistent with the purpose of the grace period that the MSRB originally provided such professionals to qualify by the Series 54 examination, which is to minimize disruptions and to provide an orderly transition to the new qualification requirements.²¹

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²² The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The goal of the proposed rule change is to provide temporary relief to grant additional time for

¹⁹ The MSRB stated in a filing made with the SEC in 2011, that firms that are members of a registered securities association are risk-ranked based on an analysis of various identified risks and related factors. See Release No. 34–65992 (Dec. 16, 2011), 76 FR 79738 (Dec. 22, 2011) (File No. SR–MSRB–2011–19).

²⁰ 15 U.S.C. 78o–4(b)(2)(A).

²¹ See Release No. 34–84630 (Nov. 20, 2018), 83 FR 60927 (Nov. 27, 2018) (File No. SR–MSRB–2018–07).

²² 15 U.S.C. 78o–4(b)(2)(C).

regulated entities and the examining authorities to meet certain obligations under MSRB rules during the exigent circumstances of the COVID–19 pandemic but would not alter their underlying obligations under MSRB rules.

Additionally, Section 15B(b)(2)(L)(iv) of the Exchange Act, requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.²³ The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act²⁴ in that, while the proposed rule change to extend the date by which individuals have to pass the Series 54 examination will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results. Small municipal advisors typically have fewer associated persons and, as a result, their resources may be more limited during the pandemic and the benefits of the proposed rule change may provide smaller municipal advisors a greater benefit given their limited resources.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)²⁵ of the Act and Rule 19b–4(f)(6)²⁶ thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.²⁷ However, Rule 19b–4(f)(6)(iii)²⁸ permits the Commission to

²³ 15 U.S.C. 78o–4(b)(2)(L)(iv).

²⁴ *Id.*

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b–4(f)(6).

²⁷ *Id.*

²⁸ 17 CFR 240.19b–4(f)(6)(iii).

¹⁸ 15 U.S.C. 78o–4(b)(2)(E).

designate a shorter time if such action is consistent with the protection of investors and the public interest.²⁹ The MSRB has requested that the Commission designate the proposed rule change operative upon filing,³⁰ as specified in Rule 19b-4(f)(6)(iii),³¹ which would make the proposed rule change operative on December 2, 2020.

The MSRB notes that the proposed rule change does not relieve regulated entities from compliance with underlying obligations. Rather, the proposed rule change provides regulated entities with additional time and flexibility to comply with certain compliance obligations for a temporary period of time. Additionally, it grants examining authorities an extension of time to examine dealers without substantially altering the examining authorities' obligations. The MSRB believes the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during the sustained pandemic. Further the MSRB stated, that by alleviating operational challenges, the proposed rule change will allow regulated entities to focus resources on the provision of advice and operations that facilitate transactions in municipal securities and municipal financial products.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not relieve regulated entities from compliance with underlying obligations and will allow regulated entities to more effectively allocate resources during ongoing disruption to normal business functions as a result of the pandemic. Waiver of the 30-day operative period will alleviate operational challenges and facilitate the provision of advice and transactions in the municipal securities market in light of the ongoing impacts to in-person interactions, travel, health and safety presented by the pandemic. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b-4(f)(6)(iii) and

designates the proposed rule change to be operative upon filing.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2020-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. All submissions should refer to File Number SR-MSRB-2020-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments

³² For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2020-09 and should be submitted on or before January 5, 2021.

For the Commission, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-27486 Filed 12-14-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90615; File No. SR-NASDAQ-2020-065]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Lower the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Basic to Internal Professional Subscribers as Set Forth in the Equity 7 Pricing Schedule, Section 147, and the Enterprise License Fee for Broker-Dealers Distributing Nasdaq Last Sale to Professional Subscribers at Equity 7, Section 139

December 9, 2020.

On September 30, 2020, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder,² a proposed rule change to lower the enterprise license fee for broker-dealers distributing Nasdaq Basic to internal professional subscribers as set forth in the Equity 7 Pricing Schedule, Section 147, and the enterprise license fee for broker-dealers distributing Nasdaq Last Sale to professional subscribers at Equity 7, Section 139. The proposed rule change was published for comment in the **Federal Register** on October 20, 2020.³

On November 23, 2020, the Exchange withdrew the proposed rule change (SR-NASDAQ-2020-065).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90177 (October 14, 2020), 85 FR 66620. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-065/srnasdaq2020065.htm>.

²⁹ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

³⁰ See SR-MSRB-2018-10.

³¹ 17 CFR 240.19b-4(f)(6)(iii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-27485 Filed 12-14-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 3:00 p.m. on Thursday, December 17, 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 topics:

- 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 10, 2020.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2020-27615 Filed 12-11-20; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90617; File No. SR-FINRA-2020-043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of the Temporary Amendments Set Forth in SR-FINRA-2020-026 From December 31, 2020 to April 30, 2021

December 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 4, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the effective date of the temporary amendments set forth in SR-FINRA-2020-026 from December 31, 2020, to April 30, 2021.⁴ Due to the impacts of COVID-19 on the administration of FINRA qualification examinations at test centers, SR-FINRA-2020-026 extended the 120-day period that certain individuals can function as a principal or Operations Professional without having successfully passed an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond April 30, 2021, FINRA will submit a separate rule filing to further extend the temporary extension of time.

appropriate qualification examination through December 31, 2020.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The COVID-19 pandemic is an unpredictable, exogenous event that has resulted in unavoidable disruptions to the securities industry and impacted member firms, regulators, investors and other stakeholders. In response to COVID-19, earlier this year FINRA began providing temporary relief to member firms from FINRA rules and requirements via frequently asked questions ("FAQs") on its website.⁵ Two of these FAQs⁶ provided temporary relief to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for these examinations due to Prometric test center capacity issues.⁷

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to February 2, 2020,

⁵ See Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq>.

⁶ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

⁷ At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. Currently, Prometric has resumed testing in many of its United States and Canada test centers, at either full or limited occupancy, based on local and government mandates.

⁴ 17 CFR 200.30-3(a)(12).

would be given until May 31, 2020, to pass the appropriate principal qualification examination.⁸ On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. On June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

FINRA published the second FAQ on May 15, 2020, providing that individuals who were designated to function as Operations Professionals under FINRA Rule 1220(b)(3)(B) prior to February 2, 2020, would be given until June 30, 2020, to pass the applicable qualification examination.⁹ On June 29, 2020, FINRA extended the temporary relief providing that individuals who were designated to function as Operations Professionals under FINRA Rule 1220(b)(3)(B) prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate qualification examination.

On August 28, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness to extend the temporary relief provided via the two FAQs by adopting: (1) Temporary Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 (Registration Requirements), and (2) temporary Supplementary Material .07 (Temporary Extension of the Limited Period for Persons to Function as Operations Professionals) under FINRA Rule 1220 (Registration Categories).¹⁰ Pursuant to this rule filing, individuals who were designated prior to September 3, 2020, to function as a principal under FINRA Rule 1210.04 or an Operations Professional under FINRA Rule 1220(b)(3)(B) have until December 31, 2020, to pass the appropriate qualification examination.

The COVID-19 conditions necessitating the extension of relief provided in the FAQs and SR-FINRA-

2020-026 persist and in fact appear to be worsening.¹¹ One of the impacts of COVID-19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.¹² Although Prometric has been reopening its test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹³ Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID-19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID-19 have led to a continued backlog of individuals who are waiting to sit for FINRA examinations that are not available online, including the General Securities Principal Exam (Series 24) and the Operations Professional Exam (Series 99).¹⁴

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.¹⁵ As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19. Such potential disruptions may be

further exacerbated and may even affect client services if firms cannot continue to keep principal or Operations Professional positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for member firms to ensure that the individuals who they have designated to function in a principal or Operations Professional capacity, as set forth in FINRA Rules 1210.04 and 1220(b)(3)(B), are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rules, or to find other qualified staff to fill these positions. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal and Operations Professional examinations are not available online. Therefore, FINRA is proposing to extend the effective date of the temporary relief provided through SR-FINRA-2020-026 until April 30, 2021. The proposed rule change would apply only to those individuals who have been designated to function as a principal or Operations Professional prior to January 1, 2021. Any individuals designated to function as a principal or Operations Professional on or after January 1, 2021, would need to successfully pass an appropriate qualification examination within 120 days.¹⁶

FINRA believes that this proposed continued extension of time is tailored to address the needs and constraints on a firm's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on firms by providing continued flexibility so that firms can ensure that principal and Operations Professional positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the firm's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness and

⁸ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination.

⁹ Pursuant to FINRA Rule 1220(b)(3)(B) (Qualifications), a person registering as an Operations Professional may function in that capacity for 120 days before having to pass an applicable qualification examination.

¹⁰ See Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-026).

¹¹ See, e.g., Meryl Kornfield, Jacqueline Dupree, Marisa Lati, Paulina Villegas, Siobhan O'Grady and Hamza Shaban, *New daily coronavirus cases in U.S. rise to 145,000, latest all-time high*, Wash. Post, November 11, 2020, <https://www.washingtonpost.com/nation/2020/11/11/coronavirus-covid-live-updates-us/>.

¹² Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/key-topics/covid-19/exams>.

¹³ Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virus-update>. See also *supra* note 12.

¹⁴ Earlier this year, an online test delivery service was launched for candidates seeking to take qualification examinations remotely. Only certain qualification examinations are available online. See *supra* note 12. FINRA is considering making additional qualification examinations available remotely on a limited basis.

¹⁵ See, e.g., Centers for Disease Control and Prevention, *How to Protect Yourself & Others*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁶ FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers ("CABs"), given that the CAB rule set incorporates the impacted FINRA rules by reference.

has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is intended to minimize the impact of COVID-19 on firm operations by further extending the 120-day period certain individuals may function as a principal or Operations Professional without having successfully passed an appropriate qualification examination under FINRA Rules 1210.04 and 1220(b)(3)(B) until April 30, 2021. The proposed rule change does not relieve firms from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, FINRA believes that the proposed rule change is a sensible accommodation that will continue to afford firms the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR-FINRA-2020-026, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID-19 pandemic and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change is necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1210 and 1220 in response to the impacts of

the COVID-19 pandemic that would otherwise result if the temporary amendments were to expire on December 31, 2020.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, FINRA stated that the proposed extension of time will help minimize the impact of the COVID-19 outbreak on FINRA member firms' operations by allowing them to keep principal and Operations Professional positions filled and minimizing disruptions to client services and other critical responsibilities. FINRA further stated that the ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. FINRA also stated that shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to social distancing guidelines consistent with the

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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. FINRA has satisfied this requirement.

recommendations of public officials remain in place in various states.²⁰ FINRA also observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.²¹ FINRA has launched an online test delivery service to help address this backlog. However, FINRA states that the General Securities Principal (Series 24) and the Operations Profession (Series 99) Examinations are not available online.²² FINRA also states that the proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on member firms' operations during the COVID-19 pandemic without significantly compromising critical investor protection.²³

The Commission also notes that the proposal provides only an extension to temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals or Operations Professionals through April 30, 2021. FINRA also noted that if it requires a further extension of temporary relief from the rule requirements identified in this proposal beyond April 30, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.²⁴ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²⁵ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁶

²⁰ See *supra* note 15.

²¹ See *supra* notes 12 and 13. FINRA states that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²² See *supra* note 14. FINRA is considering making additional qualification examinations available remotely on a limited basis.

²³ FINRA states that member firms remain subject to the continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as FINRA rules.

²⁴ See *supra* note 4.

²⁵ As noted above by FINRA, this proposal is an extension of temporary relief provided in a prior filing where FINRA also requested and the Commission granted a waiver of the 30-day operative delay. See *supra* note 10, 85 FR at 55538.

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78o-3(b)(6).

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-FINRA-2020-043 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-FINRA-2020-043. 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 FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal

identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-043 and should be submitted on or before January 5, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-27481 Filed 12-14-20; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16647; Colorado Disaster Number CO-00125 Declaration of Economic Injury]

Administrative Declaration Amendment of an Economic Injury Disaster for the State of Colorado

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of COLORADO, dated 09/15/2020. Incident: Grizzly Creek Fire. Incident Period: 08/10/2020 through 12/08/2020.

DATES: Issued on 12/09/2020. Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's EIDL declaration for the State of Colorado, dated 09/15/2020, is hereby amended to establish the incident period for this disaster as beginning 08/10/2020 and continuing through 12/08/2020.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020-27558 Filed 12-14-20; 8:45 am]

BILLING CODE 8026-03-P

²⁷ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11206]

Notice of Department of State Sanctions Actions Pursuant to Executive Order 13846 of August 6, 2018, Reimposing Certain Sanctions With Respect to Iran

SUMMARY: The Secretary of State imposed sanctions on six entities and five individuals pursuant to E.O. 13846, Reimposing Certain Sanctions with Respect to Iran; the Secretary of State subsequently terminated those sanctions imposed on one of the entities and one of the individuals.

DATES: The Secretary of State's determination and selection of certain sanctions to be imposed upon the six entities and five individuals identified in the **SUPPLEMENTARY INFORMATION** section was effective as of September 25, 2019. The Secretary of State's subsequent termination of sanctions with respect to one of the entities and one of the individuals, further identified in the **SUPPLEMENTARY INFORMATION** section, was effective January 31, 2020.

FOR FURTHER INFORMATION CONTACT:

Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647-7677, email: RugglesTV@state.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 3(a) of E.O. 13846, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with other agencies and officials as appropriate, is authorized to impose on a person any of the sanctions described in section 4 or 5 of E.O. 13846 upon determining that the person met the relevant criteria set forth in sections 3(a)(i)-3(a)(vi) of E.O. 13846.

The Secretary of State determined on September 25, 2019, pursuant to Section 3(a)(ii) of E.O. 13846, that each of China Concord Petroleum Co., Limited, Kunlun Shipping Company Limited, Pegasus 88 Limited, and COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co., Ltd., knowingly, on or after November 5, 2018, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran. Additionally, the Secretary of State determined pursuant to Section 3(a)(v) of E.O. 13846, that Kunlun Holding Company Ltd owned or controlled China Concord Petroleum Co., Limited and Kunlun Shipping

Company Limited and had knowledge that China Concord Petroleum Co., Limited and Kunlun Shipping Company Limited engaged in the activities referred to above; and that COSCO Shipping Tanker (Dalian) Co., Ltd. owned or controlled COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co., Ltd. and had knowledge that COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co., Ltd. engaged in the activities referred to above.

Pursuant to Section 5(a) of E.O. 13846, the Secretary of State selected the following sanctions to be imposed upon each of China Concord Petroleum Co., Limited, Kunlun Shipping Company Limited, Pegasus 88 Limited, COSCO Shipping Tanker (Dalian) Seaman & Ship Management Co., Ltd., Kunlun Holding Company Ltd., and COSCO Shipping Tanker (Dalian) Co., Ltd.:

- Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the entities have any interest;
- Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the entities;
- Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the entities, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;
- Prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the entities;
- Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the entities; and
- Impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of the entities the sanctions described in sections 5(a)(ii)–5(a)(iv) and 5(a)(vi) of E.O. 13846, as selected by the Secretary of State.

Pursuant to Sections 4(e) and 5(a) of E.O. 13846, on September 25, 2019, the Secretary of State selected the following sanctions to be imposed upon Bin Xu, Director of China Concord Petroleum Co., Limited and Kunlun Holding Company Ltd.; Yi Li, Director of Kunlun Shipping Company Limited; Luqian Shen, Director of Pegasus 88 Limited;

Yu Hua Mao, Director of Kunlun Shipping Company Limited; and Yazhou Xu, Director of COSCO Shipping Tanker (Dalian) Co., Ltd.; each of whom was determined to be (i) a corporate officer or principal of the aforementioned entities and (ii) a principal executive officer of the aforementioned entities, or performing similar functions with similar authorities as a principal executive officer:

- Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Bin Xu, Yi Li, Luqian Shen, Yu Hua Mao, and Yazhou Xu have any interest;
- Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Bin Xu, Yi Li, Luqian Shen, Yu Hua Mao, and Yazhou Xu;
- Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of Bin Xu, Yi Li, Luqian Shen, Yu Hua Mao, and Yazhou Xu, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and
- Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from Bin Xu, Yi Li, Luqian Shen, Yu Hua Mao, and Yazhou Xu.

Where the Secretary of State elects the sanction under Section 4(e) of E.O. 13846, the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person subject to this action.

Subsequently, the Secretary of State determined on January 31, 2020 that the sanctions imposed with respect to the following persons on September 25, 2019 pursuant to Executive Order 13846 (noted above) were terminated as of January 31, 2020: COSCO Shipping Tanker (Dalian) Co. Ltd. and Yazhou Xu.

Peter D. Haas,

Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2020–27517 Filed 12–14–20; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 11210]

Notice of Department of State Sanctions Actions Pursuant to Executive Order 13846 of August 6, 2018, Reimposing Certain Sanctions With Respect to Iran

SUMMARY: The Secretary of State has imposed sanctions on 5 entities and 3 individuals pursuant to E.O. 13846, Reimposing Certain Sanctions with Respect to Iran.

DATES: The Secretary of State's determination and selection of certain sanctions to be imposed upon the 5 entities and 3 individuals identified in the **SUPPLEMENTARY INFORMATION** section are effective on September 3, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: RugglesTV@state.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 3(a) of E.O. 13846, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is authorized to impose on a person any of the sanctions described in section 4 or 5 of E.O. 13846 upon determining that the person met any criteria set forth in sections 3(a)(i)–3(a)(vi) of E.O. 13846.

The Secretary of State has determined, pursuant to Section 3(a) (ii) of E.O. 13846, that Abadan Refining Company, Zhihang Ship Management (Shanghai) Co Ltd, New Far International Logistics LLC, Chemtrans Petrochemicals Trading LLC, and Sino Energy Shipping (Hong Kong) Ltd, have knowingly, on or after November 5, 2018, engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum products from Iran.

Pursuant to Section 5(a) of E.O. 13846, the Secretary of State has selected the following sanctions to be imposed upon Abadan Refining Company, Zhihang Ship Management (Shanghai) Co Ltd, New Far International Logistics LLC, Chemtrans Petrochemicals Trading LLC, and Sino Energy Shipping (Hong Kong) Ltd:

- Prohibit any transactions in foreign exchange that are subject to the

jurisdiction of the United States and in which the entities have any interest;

- Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the entities;

- Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the entities, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

- Prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the entities;

- Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the entities; and

- Impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of the entities the sanctions described in sections 5(a)(i)–5(a)(iv) and 5(a)(vi) of E.O. 13846, as selected by the Secretary of State.

Pursuant to Sections 5(a) of E.O. 13846, the Secretary of State has selected the following sanctions to be imposed upon Min Shi, director of New Far International Logistics LLC, Zouyou Lin, director of Sino Energy Shipping (Hong Kong) Ltd, and Alireza Amin, managing director of Abadan Refining Company, who have been determined to be (i) a corporate officer or principal of the aforementioned entities and (ii) a principal executive officer of the aforementioned entities, or perform similar functions with similar authorities as a principal executive officer:

- Prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which Min Shi, Zouyou Lin, and Alireza Amin have any interest;

- Prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Min Shi, Zouyou Lin, and Alireza Amin;

- Block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of Min Shi,

Zouyou Lin, and Alireza Amin; and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; and

- Restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from Min Shi, Zouyou Lin, and Alireza Amin.

Additionally, pursuant to Section 4(e) of E.O. 13846, the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person subject to this action.

Peter D. Haas,

Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2020–27518 Filed 12–14–20; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0041]

Request for Comments and Notice of a Public Hearing Regarding the 2021 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative (USTR) conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

DATES:

January 28, 2021 at 11:59 p.m. EST: Deadline for submission of written comments from the public.

February 11, 2021 at 11:59 p.m. EST: Deadline for submission of written comments from foreign governments.

February 22, 2021: Deadline for the Special 301 Subcommittee of the Trade

Policy Staff Committee (Subcommittee) to pose questions on written comments.

March 5, 2021 at 11:59 p.m. EST: Deadline for submission of commenters' responses to questions from the Subcommittee.

On or about April 30, 2021: USTR will publish the 2021 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: <https://www.regulations.gov> (*Regulations.gov*). Follow the submission instructions in section IV below. The docket number is USTR–2020–0041. For alternatives to on-line submissions, please contact USTR at Special301@ustr.eop.gov before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Jacob Ewerdt, Director for Innovation and Intellectual Property, at Special301@ustr.eop.gov, or (202) 395–4510. You can find information about the Special 301 Review at <https://www.ustr.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on issues arising under Special 301. Written submissions from

the public are a key source of information for the Special 301 review process. As discussed below, in 2021, in lieu of an in-person hearing, the Subcommittee will submit written questions to commenters as part of the review process and will allow commenters to provide written responses. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies or practices deny adequate and effective protection for IP rights or deny fair and equitable market access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the USMCA (as defined in section 3 of the United States-Mexico-Canada Agreement Implementation Act). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 30, 2021.

II. Public Comments

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential or other orders, and administrative, court or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should

include the methodology used to calculate the estimated losses.

III. Public Participation

In 2021, due to COVID-19, USTR will foster public participation via written submissions rather than an in-person hearing. The Subcommittee will review written comments and may ask clarifying questions to commenters. The Subcommittee will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). The Subcommittee will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.

In order to be eligible to receive written questions, the written submissions must be in English and must include the name, address, telephone number, email address, and firm or affiliation of the submitter.

IV. Submission Instructions

All submissions must be in English and sent electronically via *Regulations.gov* using docket number USTR-2020-0041. To submit comments, locate the docket (folder) by entering the number USTR-2020-0041 in the 'enter keyword or ID' window at the *Regulations.gov* home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment now!'

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name, or Organization_2021 Special 301_Review_Comment. Please include the following information in the 'type comment' field: "2021 Special 301 Review." Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'type comment' field. For further information on using *Regulations.gov*, please select 'how to use *Regulations.gov*' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments

themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'type comment' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at *Special301@ustr.eop.gov*.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR-2020-0041 in the 'search' field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting), Office of the United States Trade Representative.

[FR Doc. 2020-27515 Filed 12-14-20; 8:45 am]

BILLING CODE 3290-F0-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[Docket No. FRA–2001–11213, Notice No. 25]

**Drug and Alcohol Testing:
Determination of Minimum Random
Testing Rates for 2021****AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Notification of determination.**SUMMARY:** This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service and maintenance-of-way (MOW) employees for calendar year 2021.**DATES:** This determination takes effect December 15, 2020.**FOR FURTHER INFORMATION CONTACT:** Gerald Powers, FRA Drug and Alcohol Program Manager, by email: gerald.powers@dot.gov or by telephone: 202–493–6313; or Sam Noe, FRA Drug and Alcohol Program Specialist, by email: sam.noe@dot.gov or by telephone: 615–719–2951.**SUPPLEMENTARY INFORMATION:** FRA is announcing the 2021 minimum annual random drug and alcohol testing rates for covered service and MOW employees. For calendar year 2021, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will continue to be 50 percent for drugs and will be lowered to 10 percent for alcohol. Because these rates represent minimums, railroads and contractors may conduct FRA random testing at higher rates.**Discussion**

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its

Management Information System (MIS). FRA has also, however, reserved the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. See 63 FR 71789 (Dec. 30, 1998).

Random Testing Rates for Covered Service Employees

The rail industry's random drug testing positive rate for covered service employees (employees subject to the Federal hours of service laws and regulations) remained below 1.0 percent for 2018 and 2019. The Administrator has therefore determined the minimum annual random drug testing rate for the period January 1, 2021, through December 31, 2021, will remain at 25 percent for covered service employees. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2018 and 2019. Therefore, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent for covered service employees for the period January 1, 2021, through December 31, 2021.

Random Testing Rates for MOW Employees

MOW employees became subject to FRA random drug and alcohol testing in June 2017. See 81 FR 37894 (June 10, 2016). FRA now has MIS data for two full consecutive years of the industry-wide performance rates for MOW employees, 2018 and 2019. While FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two consecutive calendar years while testing at the 50 percent rate, FRA has reserved the right to consider other factors before deciding whether to lower annual minimum random testing rates. See 63 FR 71789 (Dec. 30, 1998).

As illustrated in the figures in the appendix below, in contrast to the drug testing positive rate for covered service employees that remained substantially

below 1.0 percent for 2018 and 2019, the random drug testing positive rate for MOW employees is not only trending upwards, but also approaching the 1.0 percent positive rate threshold at which point the Administrator will raise the drug testing rate under 49 CFR 219.625(d)(2). Specifically, the industry-wide random drug testing violation rate for MOW employees increased from 0.69 percent in 2018 to 0.8 percent in 2019, and MOW employees continue to have a higher positive testing rate than covered service employees.¹ The Administrator further notes that MOW employees who were performing duties for a railroad before June 12, 2017, were exempted from the pre-employment drug testing requirement. See 49 CFR 219.501(e). As such, some MOW employees may remain who have never been subject to FRA drug testing because they have not yet been randomly selected.

Taking these factors into consideration, the Administrator finds it is currently not in the interest of railroad safety to lower the random drug testing rate for MOW employees. Therefore, for the period January 1, 2021, through December 31, 2021, the Administrator has determined that the minimum annual random drug testing rate will continue to be 50 percent for MOW employees.

Because the random alcohol testing violation rate for MOW employees remained substantially below 0.5 percent for 2018 and 2019, and has been trending downwards, the Administrator has determined that the minimum annual random alcohol testing rate will be lowered to 10 percent for MOW employees for the period January 1, 2021, through December 31, 2021.

BILLING CODE 4810–06–P**Appendix**

¹ While the drug testing positive rate for covered service employees also increased from 0.50 percent in 2018 to 0.57 percent in 2019, a concerning trend upwards, 0.57 percent is far below the 0.80 positive rate for MOW employees and remains substantially below the 1.0 percent threshold for raising rates.

Figure 1. Random Drug Testing Violation Rate for Covered Service and MOW Employees

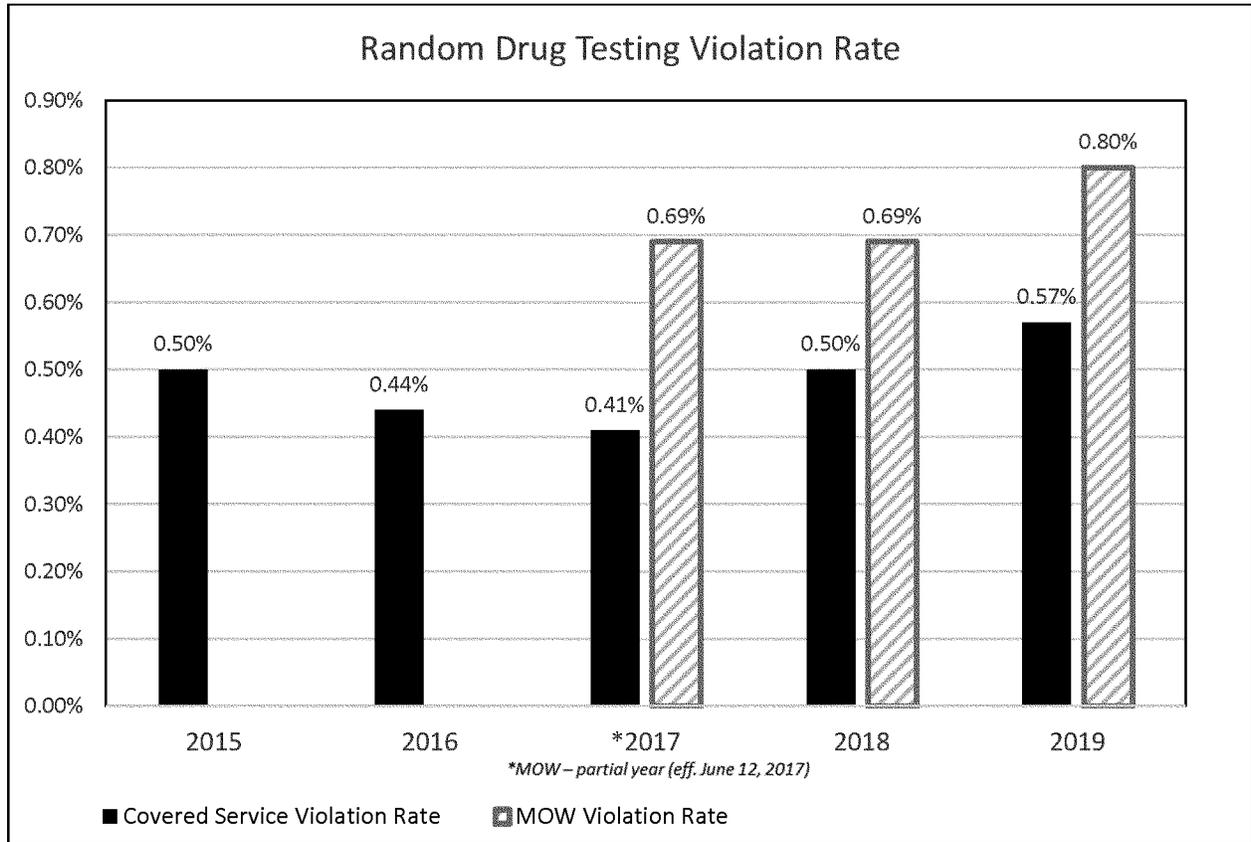
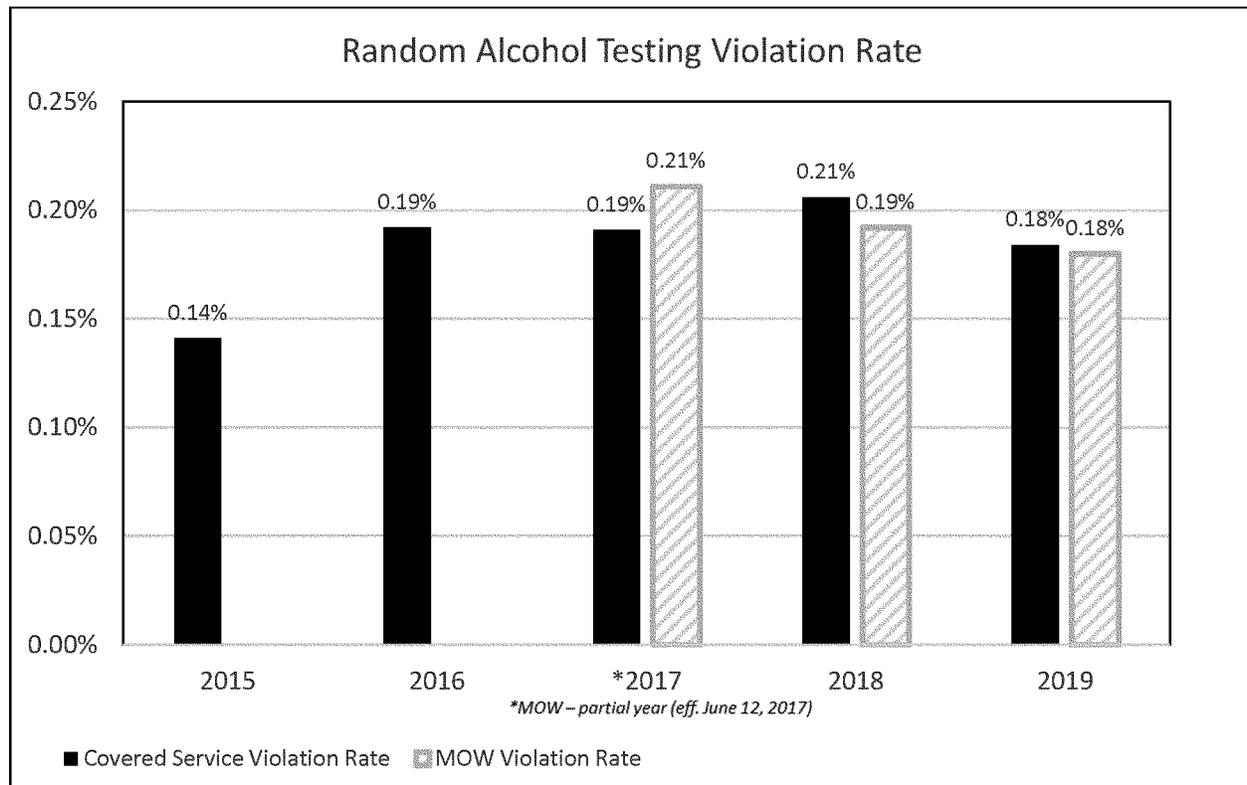


Figure 2. Random Alcohol Testing Violation Rate for Covered Service and MOW Employees



Issued in Washington, DC

Quintin C. Kendall,
Deputy Administrator.

[FR Doc. 2020-27521 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-06-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0108; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2014–2018 Chevrolet 2500 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2014–2018 Chevrolet 2500 Trucks (TKs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) with a GVWR range of 6,600–7,200 lbs, are eligible for

importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2014–2018 Chevrolet Silverado TKs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 14, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The

Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the

closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register** and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Diversified Vehicle Services Inc. (DVS), (Registered Importer R–98–165), of Indianapolis, Indiana has petitioned NHTSA to decide whether nonconforming 2014–2018 Chevrolet 2500 TKs are eligible for importation into the United States. The vehicles which DVS believes are substantially similar are MY 2014–2018 Chevrolet Silverado TKs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2014–2018 Chevrolet 2500 TKs to their U.S. certified counterparts and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

DVS submitted information with its petition intended to demonstrate that non-U.S. certified MY 2014–2018 Chevrolet 2500 TKs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2014–2018 Chevrolet 2500 TKs, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*, 103, *Windshield Defrosting and Defogging Systems*, 104, *Windshield Wiping and Washing Systems*, 106, *Brake Hoses*, 108, *Lamps, Reflective Devices, and Associated Equipment*, 110, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less*, 111, *Rear Visibility*, 113, *Hood Latch System*, 114, *Theft Protection*, 116, *Motor Vehicle Brake Fluids*, 118, *Power-Operated Window, Partition, and Roof Panel System*, 119, *New Pneumatic Tires*, 124, *Accelerator Control Systems*, 126, *Electronic Stability Control Systems For Light Vehicles*, 135, *Light Vehicle Brake Systems*, 138, *Tire Pressure Monitoring Systems*, 201, *Occupant Protection in Interior Impact*, 202, *Head Restraints; Mandatory Applicability Begins on September 1, 2009*, 203, *Impact Protection for the Driver from the Steering Control System*, 204, *Steering Control Rearward Displacement*, 205, *Glazing Materials*, 206, *Door Locks and Door Retention Components*, 207, *Seating Systems*, 208, *Occupant Crash Protection*, 209, *Seat Belt Assemblies*, 210, *Seat Belt Assembly Anchorages*, 212, *Windshield Mounting*, 213, *Child Restraint Systems*, 214, *Side Impact Protection*, 216, *Roof Crush Resistance; Applicable Unless a Vehicle is Certified to § 571.216a*, 219, *Windshield Zone Intrusion*, 301, *Fuel System Integrity*, 302, *Flammability of Interior Materials*, 49 CFR part 541, *Theft Prevention*, and, 49 CFR part 565 *VIN Requirements*.

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays*: The instrument cluster will require the addition of the word “BRAKE”.

The petitioner additionally states a reference and certification label will need to be added to the left front door post area to meet the requirements of 49 CFR part 567.

(Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–27480 Filed 12–14–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0107; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2014–2018 Chevrolet Cheyenne Trucks are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces NHTSA's receipt of a petition for a decision that model year (MY) 2014–2018 Chevrolet Cheyenne Trucks (TKs) (which may be badged as either “LTZ,” “Z–71,” or “High Country” model) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) with a GVWR range of 6,800–7,200 lbs, are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2014–2018 Chevrolet Silverado TKs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 14, 2021.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at https://www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

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FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202-366-1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally

manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register** and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Diversified Vehicle Services Inc. (DVS), (Registered Importer R-98-165), of Indianapolis, Indiana has petitioned NHTSA to decide whether nonconforming 2014-2018 Chevrolet Cheyenne TKs are eligible for importation into the United States. The vehicles which DVS believes are substantially similar are MY 2014-2018 Chevrolet Silverado TKs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2014-2018 Chevrolet Cheyenne TKs to their U.S. certified counterparts and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

DVS submitted information with its petition intended to demonstrate that non-U.S. certified MY 2014-2018 Chevrolet Cheyenne TKs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2014-2018 Chevrolet Cheyenne TKs, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*, 103, *Windshield Defrosting and Defogging Systems*, 104, *Windshield Wiping and Washing Systems*, 106, *Brake Hoses*, 108, *Lamps, Reflective Devices, and Associated Equipment*, 110, *Tire*

Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less, 111, *Rear Visibility*, 113, *Hood Latch System*, 114, *Theft Protection*, 116, *Motor Vehicle Brake Fluids*, 118, *Power-Operated Window, Partition, and Roof Panel System*, 119, *New Pneumatic Tires*, 124, *Accelerator Control Systems*, 126, *Electronic Stability Control Systems For Light Vehicles*, 135, *Light Vehicle Brake Systems*, 138, *Tire Pressure Monitoring Systems*, 201, *Occupant Protection in Interior Impact*, 202, *Head Restraints; Mandatory Applicability Begins on September 1, 2009*, 203, *Impact Protection for the Driver from the Steering Control System*, 204, *Steering Control Rearward Displacement*, 205, *Glazing Materials*, 206, *Door Locks and Door Retention Components*, 207, *Seating Systems*, 208, *Occupant Crash Protection*, 209, *Seat Belt Assemblies*, 210, *Seat Belt Assembly Anchorages*, 212, *Windshield Mounting*, 213, *Child Restraint Systems*, 214, *Side Impact Protection*, 216, *Roof Crush Resistance; Applicable Unless a Vehicle is Certified to § 571.216a*, 219, *Windshield Zone Intrusion*, 301, *Fuel System Integrity*, 302, *Flammability of Interior Materials*, 49 CFR part 541, *Theft Prevention*, and, 49 CFR part 565 *VIN Requirements*.

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays*: the instrument cluster will require the addition of the word "BRAKE".

The petitioner additionally states a reference and certification label will need to be added to the left front door post area to meet the requirements of 49 CFR part 567.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020-27479 Filed 12-14-20; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Information Collection Renewal; Comment Request; CRA Information Collection Survey**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "CRA Information Collection Survey".

DATES: Comments must be submitted by February 16, 2021.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, 1557–0348, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Fax:* (571) 465–4326.

Instructions: You must include "OCC" as the agency name and "1557–0348" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Respondents may designate information as confidential or request confidential treatment. The OCC will treat confidential commercial information submitted to the agency in accordance with 12 CFR 4.16 consistent with *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2363 (2019) and applicable guidance issued by the Department of Justice at <https://www.justice.gov/oip/step-step-guidedetermining-if-commercial-or-financialinformation-obtained-personconfidential>. The OCC may aggregate the information, use the aggregated information, and make the aggregated information public. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection¹ by the following method:

• **Viewing Comments Electronically:** Go to www.reginfo.gov. Click on the "Information Collection Review" tab. Underneath the "Currently under Review" section heading, select "Department of Treasury" from the drop-down menu, and then click "submit." This information collection can be located by searching with the OMB control number "1557–0348" or "CRA Information Collection Survey." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents," and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the following collection of information set forth in this document. OMB provided

emergency clearance for the collection on November 25, 2020.

Title: CRA Information Collection Survey.

OMB Control No.: 1557–0348.

Affected Public: Businesses or other for-profit.

Type of Review: Renewal.

Abstract: On June 5, 2020, the OCC published a final rule in the **Federal Register** that makes comprehensive changes to the Community Reinvestment Act (CRA) regulatory framework designed to ensure that the CRA remains a relevant and powerful tool for encouraging banks to serve the needs of their communities, particularly low- or moderate-income (LMI) neighborhoods, consistent with banks' safe and sound operations.² As the final rule describes, the agency modernized and strengthened the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the final rule strengthened the CRA regulations in four key areas by (1) clarifying which activities qualify for CRA credit; (2) updating where activities count for CRA credit; (3) creating a more consistent and objective method for measuring CRA performance; and (4) providing for more timely and transparent CRA-related data collection, recordkeeping, and reporting.

The final rule provided a new evaluation framework (*i.e.*, the general performance standards) for banks with assets of \$2.5 billion or more that are not wholesale or limited purpose banks and do not operate under an approved strategic plan.³ However, the final rule did not provide the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development (CD) minimums under the general performance standards. The OCC plans to determine these benchmarks, thresholds, and minimums through separate rulemaking. In order to calibrate the benchmarks, thresholds, and minimums, the OCC seeks information to assist in determining current and historical levels of CRA activity. Specifically, this information collection seeks bank-specific data and information to supplement available data. This information collection

² 85 FR 34734 (June 5, 2020).

³ Under § 25.10(a)(2) and (3) of the final rule, small, intermediate, wholesale, and limited purpose banks may opt into the general performance standards.

¹ Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

applies only to banks with assets of \$2.5 billion or more that are subject to the general performance standards under the CRA final rule.

Information Collection

The OCC seeks information to assist in determining the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and CD minimums under the final rule that will correspond to the presumptive ratings. As discussed in the Supplementary Information section to the final rule, the OCC analyzed currently available data to estimate how banks would have performed under the proposed rule's framework.⁴ The final rule did not finalize the benchmarks, thresholds, or minimums as proposed. Instead, as explained in the Supplementary Information section to the final rule, the OCC plans to issue a separate notice of proposed rulemaking to determine the benchmarks, thresholds, and minimums that will correspond to the presumptive ratings in the final rule.

This information collection seeks bank-specific data and information to supplement the agency's analyses and currently available data. Specifically, it requests four types of bank data or information: (1) Retail domestic deposit and assessment area data; (2) qualifying activities data; (3) branch information; and (4) retail loan application and origination data. The data should contain information from January 1, 2017, to December 31, 2019. The final rule provides additional information (*e.g.*, definitions, qualifying activities criteria, etc.) to inform what is requested below.

Respondents must answer all of the questions below. If a respondent does not have the data available, the respondent must submit a separate statement that explains the reason(s) the respondent does not have the data requested. If a respondent has significant difficulty in submitting any of the data requested, the OCC will work with the respondent through the appropriate supervisory channels in order to help the respondent comply with this information collection to the extent possible.

All information should be in a comma delimited file, using the same nomenclature as in the data name field, and dollar values should be in 1000s without any comma separators (*e.g.*, \$5,000,000 should be reported as 5000, not 5,000).

Standard Federal Information Processing Standards (FIPS) codes should be used for geographic data, and the following codes should be used, unless otherwise instructed:

- -99—Information not available
- -98—Not applicable (*e.g.*, geographic area is not part of a facility-based assessment area)
- -99999—Not part of a metropolitan statistical area (MSA)

For each subsection of this information collection, we first describe the data elements requested and then illustrate how the data should be formatted in a table immediately following the text.

Retail Domestic Deposit and Assessment Area Data

A bank's main office, branch, and deposit-taking facility locations and retail domestic deposit data are required to determine its assessment area delineations, performance under the general performance standards, and presumptive ratings in §§ 25.09 through 25.13 of the final rule. The following data will supplement existing data and assist the OCC.

1. What is the bank's total amount of retail domestic deposits received, by county, for each quarter-end? As defined in § 25.03 of the final rule, retail domestic deposits include deposits, as that term is defined in section 3(I) of the Federal Deposit Insurance Act (12 U.S.C. 1813(I)) that are reported on Schedule RC-E, item 1 or item 3, of the Call Report or that are non-brokered "reciprocal deposits" as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution sending the non-brokered "reciprocal deposits." However, retail domestic deposits do not include deposits that are: (1) Obtained, directly or indirectly, from or through the mediation or assistance of a "deposit broker" as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)); (2) originated from an affiliated or non-affiliated broker-dealer sweep transaction; (3) held in a Health Savings Account established in accordance with 26 U.S.C. 223; (4) held in a prepaid card account established in accordance with 12 CFR 1005.1 *et seq.*; or (5) non-brokered reciprocal deposits as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution receiving a non-brokered "reciprocal deposit." The county should be assigned based on the accountholder's physical address, not the location of the branch that accepted the deposit.

2. Assign and provide a unique numerical identification (ID) to each facility-based or deposit-based assessment area, as defined in the final rule. As discussed in § 25.09(b) of the final rule, a bank must delineate facility-based assessment areas encompassing the location where the bank maintains its main office, branches, or non-branch deposit-taking facilities, other than deposit-taking automated teller machines (ATMs),⁵ as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its loans. A bank also may, but is not required to, delineate facility-based assessment areas based on its deposit-taking ATMs.⁶ Branch, ATM, and non-branch deposit-taking facility are defined in § 25.03 of the final rule. Facility-based assessment areas will be comprised of one of the following: (1) A whole MSA; (2) the whole nonmetropolitan area of a state; (3) one or more whole, contiguous metropolitan divisions (MD) in a single MSA; or (4) one or more whole, contiguous counties or county equivalents in a single MSA or nonmetropolitan area. Under § 25.09(c) of the final rule, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas where it receives five percent or more of its retail domestic deposits. Deposit-based assessment areas will be comprised of one of the following: (1) A whole state; (2) one whole MSA; (3) the whole nonmetropolitan area of a state; (4) one or more whole, contiguous MDs in a single MSA; (5) the remaining geographic area of a state, MSA, nonmetropolitan area, or MD other than where it has a facility-based assessment area; or (6) one or more whole, contiguous counties or county equivalents in a single MSA or nonmetropolitan area.

3. For the data above, provide county, MD/MSA, and state FIPS codes.

4. For the data above, report whether there is a main office, branch, deposit-taking ATM, and/or non-branch deposit-taking facility other than an ATM, as detailed in Table 1, Columns 5–8.

5. Are there burdens associated with collecting or reporting the data described in this section of this information collection?

main office, branches, or other non-branch deposit taking facilities.

⁴ 85 FR 34734, 34773.

⁵ Section 25.09(b)(1) of the final rule allows these assessment areas to include one or more of these facilities, as well as deposit-taking ATMs.

⁶ Assessment areas delineated based on the location of a deposit-taking ATM under § 25.09(b)(2) of the final rule may contain the bank's

TABLE 1, COLUMNS 1–10—DEPOSIT AND ASSESSMENT AREA DATA BY COUNTY, QUARTER

Column	Data name	Format	Data definition	Comments
1	COUNTY	String	County FIPS	County FIPS code (3-digit), e.g., report 201 if Harris County, TX. Use leading zeros if the FIPS code is less than 3-digit number.
2	MD_MSA	String	MD/MSA	MD/MSA code (5-digit), e.g., report 26420 if Houston-The Woodlands-Sugar Land, TX.
3	STATE	String	State FIPS	State FIPS code (2-digit), e.g., report 48 if Harris County, TX. Use leading zeros if the State FIPS code is less than a 2-digit number.
4	AA_ID	String	Facility-based or deposit-based assessment area number.	Numeric indicator, created by the bank, that uniquely identifies each facility-based or deposit-based assessment area. Use leading zeros if the assessment area is less than a 3-digit number. Use code –98 if a county is not in a facility-based assessment area.
5	BRANCH_IND	String	Branch indicator	1 if there is a branch in this facility-based assessment area; 0 if otherwise.
6	MO_IND	String	Main office indicator	1 if the main office is in this facility-based assessment area; 0 if otherwise.
7	DEPOSITATM_IND.	String	Deposit-taking ATM indicator	1 if there is a deposit-taking ATM in this facility-based assessment area; 0 if otherwise.
8	NONBRANCH_DEPFAC_IND.	String	Indicator for non-branch deposit-taking facility other than ATM.	1 if there is a non-branch deposit-taking facility that is not an ATM; 0 if otherwise.
9	QUARTERYEAR	Alpha-numeric	Quarter-end/year	Specify date of data snapshot, e.g., as reported on Q4 call report. Q1YYYY if Jan 1–March 30 of YYYY; Q2YYYY if April 1–June 30 of YYYY; Q3YYYY if July 1–Sept 30 of YYYY; or Q4YYYY if Oct 1–Dec 31 of YYYY.
10	DEPOSITS	Numeric	Quarter-end total retail domestic deposits received from the county in dollars.	County should be assigned based on the depositor’s physical home address; Reported in thousands of dollars.

Total Qualifying Activities

As discussed in the final rule and this information collection, the dollar value of a bank’s qualifying activities is required to determine the CRA evaluation measure under § 25.11 of the final rule, which in turn determines a bank’s presumptive ratings under § 25.13 of the final rule. The following data will supplement existing data and assist the OCC.

6. Calculate and report the sum, at the county level, of the quantified dollar value of all quarter-end balances for each type of qualifying loan or CD investment held on the balance sheet. Calculate and report the sum of the quantified dollar value, at the county level, for other CD investments (i.e., CD investment funds that are quantified under § 25.07(d)(3) of the final rule and monetary and in-kind donations) and CD services made or provided in each

quarter. For each activity, determine the county pursuant to § 25.24 of the final rule. Note that the quantified dollar value does not include multipliers. The OCC will apply the multipliers, where feasible and as applicable. Exclude any retail loans sold within 365 days of origination by the bank. Qualifying activity means an activity that meets the criteria in § 25.04 of the final rule. Qualifying activities include qualifying loans, CD investments, and CD services. Qualifying loan means a retail loan, as defined in § 25.03 of the final rule, that meets the criteria in § 25.04(b) of the final rule or a CD loan, as defined in § 25.03 of the final rule. Section 25.03 of the final rule defines a retail loan as a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan; each of these loans is defined in § 25.03 of the final rule. In particular, “consumer loan” means a

loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures other than overdraft plans, that is an automobile loan, other revolving credit plan, or other consumer loan; credit cards are not included. CD investments and CD services are also defined in § 25.03 of the final rule. Section 25.07 of the final rule provides information on how to calculate the quantified dollar value of qualifying activities. The quantified dollar value of a partially qualifying activity includes only the portion of the activity that is qualifying. Qualifying activities should be attributed to locations based on § 25.24 of the final rule, which provides information on how to determine a qualifying activity’s location. For example, § 25.24(b) of the final rule

requires banks to allocate credit for CD activities in two ways: (1) To an assessment area within a broader area served by an activity if the bank can document the services or funding it provided was allocated to a particular project that is within or serves the assessment area; or if that cannot be documented (2) across all of the areas served by the activity, according to the

share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits.

7. Calculate and report the sum, at the county level, of the quantified dollar value of all quarter-end balances for each type of retail loan generated by branches in LMI tracts.⁷

8. For Table 1, Columns 11–14 and 27–30, please include the mortgage and consumer loans only if the borrower income status is available or the loan is located in Indian country or other tribal and native lands.

9. Are there burdens associated with collecting or reporting the data described in this section of this information collection?

TABLE 1, COLUMNS 11–51—THE QUARTER-END QUANTIFIED DOLLAR VALUE OF QUALIFYING ACTIVITIES BY COUNTY, QUARTER

Column	Data name	Format	Data definition	Comments
11	MTG_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying home mortgages, excluding those sold within 365 days of origination by the bank.	Reported in thousands of dollars.
12	AUTO_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying auto loans, excluding those sold within 365 days of origination by the bank.	Reported in thousands of dollars.
13	OTHER_RCP_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying other revolving credit plans, excluding other revolving credit plans sold within 365 days of origination by the bank and any overdraft plans.	Reported in thousands of dollars.
14	OTHER_CONS_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying other consumer loans, excluding other consumer loans sold within 365 days of origination by the bank and any credit cards or overdrafts.	Reported in thousands of dollars.
15	BUS_BAL1_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$1 million to businesses in LMI census tracts, Indian country, or other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
16	BUS_BAL2_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans above \$1 million and up to \$1.6 million to businesses in LMI census tracts, Indian country, or other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
17	FARM_BAL1_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$500,000 to farms in LMI census tracts, Indian country, or other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
18	FARM_BAL2_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans above \$500,000 and up to \$1.6 million to farms in LMI census tracts, Indian country, or other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
19	SBUS1_BAL1_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$1 million to businesses with revenues of up to \$1 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.

⁷ For purposes of this information collection, a retail loan is “generated by [a] branch” if that loan

is originated by employees of the bank or

reasonably assigned to that branch according to a bank's internal procedures.

TABLE 1, COLUMNS 11–51—THE QUARTER-END QUANTIFIED DOLLAR VALUE OF QUALIFYING ACTIVITIES BY COUNTY, QUARTER—Continued

Column	Data name	Format	Data definition	Comments
20	SBUS2_BAL1_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$1 million to businesses with revenues above \$1 million and up to \$1.6 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
21	SBUS1_BAL2_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans above \$1 million and up to \$1.6 million to businesses with revenues of up to \$1 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
22	SBUS2_BAL2_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans of above \$1 million and up to \$1.6 million to businesses with revenues above \$1 million and up \$1.6 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
23	SFARM1_BAL1_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$500,000 to farms with revenues up to \$1 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
24	SFARM2_BAL1_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans up to \$500,000 to farms with revenues above \$1 million and up to \$1.6 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
25	SFARM1_BAL2_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans above \$500,000 and up to \$1.6 million to farms with revenues up to \$1 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
26	SFARM2_BAL2_NON_LMITRACT.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying loans above \$500,000 and up to \$1.6 million to farms with revenues above \$1 million and up to \$1.6 million in non-LMI census tracts and not in Indian country and not in other tribal and native lands that are not counted as CD loans and not sold within 365 days of origination by the bank.	Reported in thousands of dollars.
27	MTG_BAL_LMIBR	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 11 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
28	AUTO_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 12 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
29	OTHER_RCP_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 13 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
30	OTHER_CONS_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 14 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.

TABLE 1, COLUMNS 11–51—THE QUARTER-END QUANTIFIED DOLLAR VALUE OF QUALIFYING ACTIVITIES BY COUNTY, QUARTER—Continued

Column	Data name	Format	Data definition	Comments
31	BUS_BAL1_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 15 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
32	BUS_BAL2_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 16 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
33	FARM_BAL1_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 17 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
34	FARM_BAL2_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 18 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
35	SBUS1_BAL1_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 19 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
36	SBUS2_BAL1_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 20 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
37	SBUS1_BAL2_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 21 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
38	SBUS2_BAL2_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 22 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
39	SFARM1_BAL1_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 23 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
40	SFARM2_BAL1_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 24 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
41	SFARM1_BAL2_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 25 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
42	SFARM2_BAL2_NON_LMITRACT_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 26 where the loan originations were generated by branches in LMI census tracts.	Reported in thousands of dollars.
43	CDLOAN_MINORITY_BAL.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of CD loans provided to or that support minority depository institutions, women's depository institutions, CDFIs, low-income credit unions and other affordable housing-related CD loans.	Reported in thousands of dollars.
44	CDLOAN_OTHER_BAL.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of CD loans other than those captured in column 43.	Reported in thousands of dollars.
45	CDINVT_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of CD investments held on balance sheet, excluding mortgage-backed securities and municipal bonds.	Reported in thousands of dollars.
46	MBS_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying mortgage backed securities.	Reported in thousands of dollars.
47	MUNI_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying municipal bonds.	Reported in thousands of dollars.

TABLE 1, COLUMNS 11–51—THE QUARTER-END QUANTIFIED DOLLAR VALUE OF QUALIFYING ACTIVITIES BY COUNTY, QUARTER—Continued

Column	Data name	Format	Data definition	Comments
48	CDINVTFUND_BAL.	Numeric	Quarter-end, county-level sum of the quantified dollar value of community development investment funds that are syndicated or sponsored by the bank for the purpose of obtaining financing from other investors and support one or more projects that are eligible for low-income housing tax credits or new markets tax credits (exclude the portion of the syndication on the bank's balance sheet and report in the appropriate column above).	Reported in thousands of dollars.
49	CDSERV_BAL	Numeric	County-level sum of CD services performed during the quarter.	Reported in thousands of dollars.
50	DONATION_MINORITY_BAL.	Numeric	County-level sum of qualifying monetary or in-kind donations provided to or that support minority depository institutions, women's depository institutions, CDFIs, low-income credit unions.	Reported in thousands of dollars.
51	DONATION_OTHER_BAL.	Numeric	County-level sum of qualifying monetary or in-kind donations other than those captured in column 50.	Reported in thousands of dollars.

Note: For the qualifying activities, report the county-level quantified dollar value of the balances for each type of activity below. Only calculate the dollar value of qualifying retail loans not originated and sold within 365 days.

10. For Table 1, Columns 52 –59, please include the mortgage and consumer loans only if the borrower income status is not available and the loan is not located in Indian country or

other tribal and native lands. For these loans, use the tract income level as a proxy to determine whether the retail loan is qualifying.

11. Calculate and report the sum, at the county level, of the quantified dollar value of all quarter-end balances for these mortgage and consumer loans that are generated by branches in LMI tracts.

TABLE 1—COLUMNS 52–59—THE QUARTER-END QUANTIFIED DOLLAR VALUE OF QUALIFYING ACTIVITIES BY COUNTY, QUARTER

Column	Data name	Format	Data definition	Comments
52	MTG_TI_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying home mortgages, where mortgages are assumed to qualify based on tract income, excluding those sold within 365 days of origination by the bank.	Reported in thousands of dollars.
53	AUTO_TI_BAL	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying auto loans, where auto loans are assumed to qualify based on tract income, excluding those sold within 365 days of origination by the bank.	Reported in thousands of dollars.
54	OTHER_RCP_TI_BAL.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying other revolving credit plans, where other revolving credit plans are assumed to qualify based on tract income, excluding other revolving credit plans sold within 365 days of origination by the bank and any overdraft plans.	Reported in thousands of dollars.
55	OTHER_CONS_TI_BAL.	Numeric	Quarter-end, county-level sum of the quantified dollar value of balances of qualifying other consumer loans, where other consumer loans are assumed to qualify based on tract income, excluding other consumer loans sold within 365 days of origination by bank and any credit cards or overdrafts.	Reported in thousands of dollars.
56	MTG_TI_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 52 that are generated by branches in LMI census tracts.	Reported in thousands of dollars.
57	AUTO_TI_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 53 that are generated by branches in LMI census tracts.	Reported in thousands of dollars.
58	OTHER_RCP_TI_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 54 that are generated by branches in LMI census tracts.	Reported in thousands of dollars.
59	OTHER_CONS_TI_BAL_LMIBR.	Numeric	Quarter-end, county-level sum of the quantified dollar value of retail loan balances reported in column 55 that are generated by branches in LMI census tracts.	Reported in thousands of dollars.

Applications and Loan Originations for Each Retail Lending Product Line

As discussed in the final rule, the quantified dollar value is required to determine the CRA evaluation measure under § 25.11 of the final rule. Additionally, the loan volume of a bank’s qualifying activities is required for the retail lending distribution tests under § 25.12 of the final rule. Both the CRA evaluation measure and the retail lending distribution tests will in turn help determine a bank’s presumptive ratings under § 25.13 of the final rule. Obtaining information on retail loan applications and originations will, in the near term, help inform the OCC about banks’ credit supply decisions across geographies, supplement existing data, and assist the OCC in assessing the CRA evaluation measure under § 25.11 of the final rule and the retail lending distribution tests under § 25.12 of the final rule. Over time, it will assist the OCC in further developing its thinking

on how to refine and improve the CRA framework.⁸

12. Report all retail loans applications.

13. For each retail loan origination, provide the unique loan identification number.

14. For each retail loan application, provide the following geographic information for the location of the loan application at the time of submission: County, MD/MSA, state, census tract, and the facility-based or deposit-based assessment area number (using the same set of unique assessment area identification numbers as in Table 1). The location of a loan application should be determined in a manner consistent with § 25.24 of the final rule. For example, the location of an application for a home mortgage loan would be determined by the address of the property to which the loan relates.

15. For each retail loan application, provide the loan type, and if the loan

was originated, provide balance at origination, origination date, and sell date.

16. For each mortgage and consumer loan application, provide the income of the applicant(s). For each loan application for a home mortgage or consumer loan, indicate the LMI status of the applicant. For each loan application from a business or farm, provide the revenue of the business or farm at the time of submission; additionally, for these loan applications, provide an indicator of the business or farm’s revenue category.

17. For each retail loan origination, indicate whether the loan was generated by a branch located in an LMI census tract.

18. Are there burdens associated with collecting or reporting the data described in this section of this information collection?

TABLE 2—FULL LIST OF RETAIL LOAN APPLICATIONS AND ORIGINATIONS

Column	Data name	Format	Data definition	Comments
1	LOAN_ID	String	Loan ID	Provide Universal Loan Identifier (ULI) if the loan was originated, and where available.
2	COUNTY	String	County FIPS	County FIPS code (3-digit), e.g., report 201 if Harris County, TX.
3	MD_MSA	String	MD/MSA	MD/MSA code (5-digit), e.g., report 26420 if Houston-The Woodlands-Sugar Land, TX.
4	STATE	String	State FIPS	State FIPS code (2-digit), e.g., report 48 if Harris County, TX.
5	TRACT	String	Census tract	Tract FIPS code (6-digit), e.g., report 223100 if Census Tract 2231 in Harris County, TX.
6	AA_ID	String	Facility-based or deposit-based assessment area number.	Numeric indicator, created by the bank, that uniquely identifies each facility-based or deposit-based assessment area. Use code -98 if a loan is not within a facility-based or deposit-based assessment area.
7	LOAN_TYPE	String	Loan type	1: Mortgage; 2: Other revolving credit plan; 3: Auto; 4: Other consumer loan; 5: Small loan to a business; 6: Small loan to a farm.
8	ACTION_TYPE	String	Loan decision	0: Loan not originated; 1: Loan originated.
9	ORIG_BAL	Numeric	Balance at origination	Reported in thousands of dollars. Use code -98 if the loan was not originated.
10	APPL_DATE	String	Application Date	MMDDYYYY
11	ORIG_DATE	String	Origination date	MMDDYYYY. Use code -98 if the loan was not originated.
12	SELL_DATE	String	Sell date	MMDDYYYY. Use code -98 if the loan was not originated or if the loan was not sold.

⁸ See various studies using application information to understand credit supply such as: Antoniadis, A. (2016, “). Liquidity Risk and the Credit Crunch of 2007–2008: Evidence from Micro-Level Data on Mortgage Loan Applications.” *Journal of Financial and Quantitative Analysis*,

51(6):, 1795–1822; and Mian, Atif, and Amir Sufi. 2009. “The Consequences of Mortgage Credit Expansion: Evidence from the U.S. Mortgage Default Crisis.”, *The Quarterly Journal of Economics*, Volume 124(, Issue 4):, November 2009, Pages 1449–1496; Puri, Manju, Jorg Rocholl, and

Sascha Steffen. (2011. “) Global retail lending in the aftermath of the US financial crisis: Distinguishing between supply and demand effects.”, *Journal of Financial Economics* 100(3):) 556–578.

TABLE 2—FULL LIST OF RETAIL LOAN APPLICATIONS AND ORIGINATIONS—Continued

Column	Data name	Format	Data definition	Comments
12	INCOME	Numeric	Income of the applicant(s)	Use income of the applicant(s) that would be used to determine LMI status. Reported in thousands of dollars. Use code -98 if the bank does not have the applicant's income, or not applicable.
13	LMIBR_IND	String	LMI branch indicator	1 if the loan origination or application was generated by a branch that is located in an LMI census tract; 0 otherwise.
14	REVENUE	Numeric	Revenue of business or farm	Use code -98 if not applicable (i.e., not a business or farm). Use code -98 if the bank does not have the revenue of the business or farm. Reported in thousands of dollars.
15	REVENUE_IND	String	Revenue indicators of the business or farm	1 if revenue of the business or farm is less than \$500,000. 2 if the revenue of the business or farm is between \$500,000 and \$1,000,000. 3 if the revenue of the business or farm is greater than \$1,000,000 and less than or equal to \$1,600,000. 4 if the revenue of the business or farm is over \$1,600,000. Use code -99 if unknown. Use code -98 if not applicable (i.e., not a business or farm).
16	LMI_IND	String	LMI indicator for the applicant	0 if the applicant is not LMI. 1 if the applicant is LMI. Use code -99 if unknown. Use code -98 if not applicable (i.e., not an application for a home mortgage or consumer loan).

Branch Locations

As discussed in the final rule, the percentage of a bank's branches located in or that serve LMI census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands is required to determine the CRA evaluation measure under § 25.11 of the final rule, which is considered in determining a bank's presumptive ratings under § 25.13 of the final rule.

19. Report the unique number of the branch, as used in the Summary of Deposits file, for the full list of branches on the last day of each year.

20. Using the same set of unique assessment area IDs as in Table 1, identify the facility-based assessment area for each branch.

21. Report the address, as well as the census tract, county, MSA/MD, and state FIPS codes, for each branch.

22. Report the year that the branch is associated with, as mentioned in Question 19. Note that the same branch will have an entry for each year for which it is open on the last day of the year.

23. Are there burdens associated with collecting or reporting the data described in this section of this information collection?

TABLE 3—FULL LIST OF BRANCHES AT YEAR-END

Column	Data name	Format	Data definition	Comments
1	UNINUMBR	String	Unique number	Unique number used in the Summary of Deposits file.
2	AA_ID	String	Facility-based assessment area number	Numeric indicator, created by the bank, that uniquely identifies each facility-based assessment area. Use code -98 if the loan is not within a facility-based assessment area.
3	BR_STREET	String	Street	Street should be based on branch's physical location, e.g., report 400 7th St. SW if 400 7th St. SW, Washington, DC 20219.

TABLE 3—FULL LIST OF BRANCHES AT YEAR-END—Continued

Column	Data name	Format	Data definition	Comments
4	BR_CITY	String	City	City should be based on branch's physical location, e.g., report Washington if 400 7th St. SW, Washington, DC 20219.
5	BR_STATE	String	State abbreviation	State abbreviation (2-letter) should be based on branch's physical location, e.g., report DC if 400 7th St. SW, Washington, DC 20219.
6	BR_ZIP	String	Zip code	Zip code (5-digit) should be based on branch's physical location, e.g., report 20219 if 400 7th St. SW, Washington, DC 20219.
7	TRACT	String	Census tract	Tract FIPS code (6-digit), e.g., report 223100 if Census Tract 2231 in Harris County, TX.
8	COUNTY	String	County	County FIPS code (3-digit), e.g., report 201 if Harris County, TX.
9	MD_MSA	String	MD/MSA	MD/MSA code (5-digit), e.g., report 26420 if Houston-The Woodlands-Sugar Land, TX.
10	STATE	String	State	State FIPS code (2-digit), e.g., report 48 if Harris County, TX.
11	YEAR	String	Year	20XX.

Burden Estimates

Estimated Number of Respondents: 105.

Estimated Annual Burden: 146,000 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB 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 OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimate of the information collection burden; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Bao Nguyen,

Principal Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020-27524 Filed 12-14-20; 8:45 am]

BILLING CODE 4810-33-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 U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been 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: Andrea Gacki, Director, tel.: 202-622-2420; 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 November 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 authorities listed below.

BILLING CODE 4810-AL-P

Individuals

1. AL-ALI, Nasr (Arabic: العلي ناصر) (a.k.a. AL-ALI, Naser; a.k.a. AL-ALI, Nasir; a.k.a. AL-ALI, Nasser; a.k.a. ALI, Nasser), Damascus, Syria; DOB 01 Feb 1961; POB Manbij, Aleppo, Syria; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(ii) of Executive Order 13572 of April 29, 2011, "Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria" 76 FR 24787, 3 CFR, 2011 Comp., p. 236, (E.O. 13572), for being a senior official of the POLITICAL SECURITY DIRECTORATE, an entity whose property and interests in property are blocked pursuant to E.O. 13572.

2. ISMAIL, Ghassan Jaoudat (Arabic: إسماعيل جودت غسان) (a.k.a. ISMAEL, Ghassan Jaoudat; a.k.a. SALAMEH, Ghassan), Aleppo, Syria; DOB 1960; POB Junaynat Ruslan, Darkoush, Drekish, Tartous, Syria; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(ii) of E.O. 13572 for being a senior official of the SYRIAN AIR FORCE INTELLIGENCE, an entity whose property and interests in property are blocked pursuant to E.O. 13572.

3. TOUMEH BIN MOHAMMED, Nabil (Arabic: محمد بن طعمة نبيل) (a.k.a. MOHAMMED TOHMA, Nabil (Arabic: طعمة محمد نبيل); a.k.a. TOUMEH, Nabil; a.k.a. TU'MAH, Nabil; a.k.a. "BIN MOHAMMED TOAMEH, Nabil"; a.k.a. "TOHMA, Nabil" (Arabic: "طعمة نبيل")), Damascus, Syria; DOB 04 Jan 1957; POB Damascus, Syria; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(i) of Executive Order 13573 of May 18, 2011, "Blocking Property of Senior Officials of the Government of Syria," 76 FR 29143, 3 CFR, 2011 Comp., p. 241, (E.O. 13573), for being a senior official of the Government of Syria.

4. BIN AHMED RUSHDI AL-QATIRJI, Hussam (Arabic: قاطرجي رشدي أحمد بن سام) (a.k.a. AL-QATIRJI, Hossam (Arabic: القاطرجي سام); a.k.a. AL-QATIRJI, Hussam; a.k.a. KATARJI, Hussam; a.k.a. KATERJI, Hussam; a.k.a. KHATARJI, Hussam; a.k.a. KHATIRJI, Hussam; a.k.a. QATARJI, Hossam; a.k.a. QATERJI, Hussam; a.k.a. QATIRJI BIN AHMED RUSHDI, Hussam (Arabic: رشدي أحمد بن قاطرجي سام)), Syria; DOB 11 Jan 1982; POB Raqqa, Syria; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13573 for being a senior official of the Government of Syria.

5. IMAD AL-DIN AL-MADANI, Kamal (Arabic: المدني الدين عمد كمال) (a.k.a. AMAD AL-DIN AL-MADANI, Kamal; a.k.a. IMAD AL-DEEN AL-MADANI, Kamal), Beirut, Lebanon; DOB 08 Dec 1980; nationality Lebanon; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(ii) of Executive Order 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions

with Respect to Syria,” 77 FR 52209, 3 CFR, 2011 Comp., p. 264, (E.O. 13582), for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SALLIZAR SHIPPING SAL, a person whose property and interests in property are blocked pursuant to E.O. 13582.

6. IMAD AL-DIN AL-MADANI, Tariq (Arabic: المدني الدين عماد طارق) (a.k.a. AMAD AL-DIN AL-MADANI, Tariq; a.k.a. IMAD AL-DEEN AL-MADANI, Tarek; a.k.a. IMAD AL-DIN AL-MADANI, Tareq), Beirut, Lebanon; DOB 12 Dec 1984; nationality Lebanon; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, SALLIZAR SHIPPING SAL, a person whose property and interests in property are blocked pursuant to E.O. 13582.

7. KHITI, Amer Taysir (Arabic: خيتي تيسير عمار) (a.k.a. KHEITI, Amer Tayseer; a.k.a. KHEITI, Amer Taysir), Damascus, Syria; DOB 31 Jul 1980; POB Douma, Syria; nationality Syria; alt. nationality Sudan; Gender Male (individual) [SYRIA].

Designated pursuant to section 1(b)(i) of E.O. 13573 for being a senior official of the Government of Syria.

Entities

1. MILITARY CONSTRUCTION ESTABLISHMENT (Arabic: الإنشاءات تنفيذية مؤسسة عسكرية) (a.k.a. MILITARY CONSTRUCTION IMPLEMENTATION CORPORATION; a.k.a. "MATAA" (Arabic: "ماتع"; a.k.a. "MCIC"), Kafarsouseh Circle, next to Al-Rafai Mosque, Damascus, Syria; Hama, Syria; Lattakia, Syria; Tartous, Syria; Jableh, Syria; Organization Established Date 1972; Organization Type: Construction of buildings; alt. Organization Type: Construction of roads and railways; alt. Organization Type: Construction of other civil engineering projects [SYRIA].]

Designated pursuant to section 1(b)(ii) of E.O. 13573 for being an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria.

2. PRODUCTIVE PROJECTS ADMINISTRATION (Arabic: الإنتاجية المشاريع إدارة) (a.k.a. INTAJIA (Arabic: الانتاجية); a.k.a. INTAJIA PPA), P.O. Box 4703, Customs Free Zone, Damascus, Syria; Aleppo, Syria; Website <http://intajia.sy>; Organization Established Date 1973; Organization Type: Manufacture of pharmaceuticals, medicinal chemical and botanical products [SYRIA].

Designated pursuant to section 1(b)(ii) of E.O. 13573 for being an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria.

3. TOUMEH INTERNATIONAL GROUP (Arabic: الدولية طعمة مجموعة), Damascus, Syria; Organization Established Date 1975; Organization Type: Activities of holding companies [SYRIA] (Linked To: TOUMEH BIN MOHAMMED, Nabil).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, NABIL TOUMEH BIN MOHAMMED, a person whose property and interests in property are blocked pursuant to E.O. 13573.

4. AL-RESAFA REFINERY COMPANY PRIVATE JSC (a.k.a. AL-RUSAFA REFINERY COMPANY (Arabic: الرصافة صفا شركة)), Al-Rusafa, Raqqa, Syria; Organization Established Date 09 Feb 2020; Organization Type: Manufacture of refined petroleum products [SYRIA].

Identified as an entity in which PUBLIC ESTABLISHMENT FOR REFINING AND DISTRIBUTION, ARFADA PETROLEUM PRIVATE JOINT STOCK COMPANY, and SALLIZAR SHIPING SAL, persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC, own, directly or indirectly, a 50 percent or greater interest, as set forth in 31 CFR 542.411.

5. ARFADA PETROLEUM PRIVATE JOINT STOCK COMPANY (Arabic: أرفادا شركة البترول الخاصة المغفلة المساهمة البترولوية) (a.k.a. ARFADA PETROLEUM COMPANY JSC; a.k.a. ARVADA PETROLEUM COMPANY JSC), Mashroua Dummar, Lot No. 13,

Building 12/2, Damascus, Syria; Website <https://www.arfada.com/>; Organization Established Date 24 Apr 2018; Organization Type: Support activities for petroleum and natural gas extraction; Registration Number 18394 (Syria) [SYRIA] [SYRIA-CAESAR].

Designated pursuant to section 1(b)(i) of E.O. 13582, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Syria Civilian Protection Act of 2019, Public Law 116-92, § 7401 *et seq.* (Dec. 20, 2019) (the Caesar Act), for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA) or a senior political figure of the GOVERNMENT OF SYRIA. Additionally identified as an entity in which MUHAMMAD AL-QATIRJI and HUSSAM BIN AHMED RUSHDI AL-QATERJI, persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC, own, directly or indirectly, a 50 percent or greater interest, as set forth in 31 CFR 542.411.

6. COASTAL REFINERY COMPANY PRIVATE JSC (a.k.a. AL-SAHEL REFINERY COMPANY; a.k.a. COAST REFINERY COMPANY (Arabic: الساحل صافة شركة)), Tartous, Syria; Organization Established Date 09 Feb 2020; Organization Type: Manufacture of refined petroleum products [SYRIA].

Identified as an entity in which PUBLIC ESTABLISHMENT FOR REFINING AND DISTRIBUTION, ARFADA PETROLEUM PRIVATE JOINT STOCK COMPANY, and SALLIZAR SHIPPING SAL, persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC, own, directly or indirectly, a 50 percent or greater interest, as set forth in 31 CFR 542.411.

7. PUBLIC ESTABLISHMENT FOR REFINING AND DISTRIBUTION (Arabic: المنظمة العامة لتكرير النفط وتوزيع و النفطية المشتقات توزيع و النفط لتكرير العامة المؤسسة) (a.k.a. GENERAL ORGANIZATION FOR REFINING AND DISTRIBUTION OF PETROLEUM PRODUCTS; a.k.a. THE PUBLIC ESTABLISHMENT FOR OIL REFINING AND THE DISTRIBUTION OF OIL DERIVATIVES), Tripoli Road, P.O. Box 342, Homs, Syria; Website <http://perd.sy/>; Organization Established Date 2009; Organization Type: Support activities for petroleum and natural gas extraction [SYRIA].

Identified as an entity falling within the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

8. SALLIZAR SHIPPING SAL (Arabic: ش.م.ش. ساليزار), 1st Floor, Shuwairi Bldg., Boulevard Saib Salam, al-Masraa, Beirut Corniche, Lebanon; Organization Established Date 12 Apr 2018; Registration Number 1024992 (Lebanon) [SYRIA] [SYRIA-CAESAR].

Designated pursuant to section 1(b)(i) of E.O. 13582, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the GOVERNMENT OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA) or a senior political figure of the GOVERNMENT OF SYRIA.

9. SYRIAN MINISTRY OF PETROLEUM AND MINERAL RESOURCES (Arabic: وزارة النفط والمعدنية الثروة و النفط) (a.k.a. MINISTRY OF OIL AND MINERAL RESERVES), Dummar, P.O. Box 31483, Damascus, Syria; Website <http://mopmr.gov.sy/> [SYRIA].

Identified as an entity falling within the definition of the GOVERNMENT OF SYRIA as set forth in section 8(d) of E.O. 13582 and section 542.305 of the Syrian Sanctions Regulations, 31 CFR part 542.

10. KHITI HOLDING GROUP (Arabic: القابضة خيتي جموعة) (a.k.a. KHEITI HOLDING GROUP; a.k.a. KHITI HOLDING COMPANY; a.k.a. KHITI HOLDING PRIVATE JSC), Mazzeh Highway, Damascus, Syria; Mashroa Domar, Damascus, Syria; Website www.khitiholding.com; alt. Website www.khitiholding.com; Organization Established Date 2018; Organization Type: Activities of holding companies [SYRIA] (Linked To: KHITI, Amer Taysir).

Designated pursuant to section 1(b)(iv) of E.O. 13573 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, AMER TAYSIR KHITI, a person whose property and interests in property are blocked pursuant to E.O. 13573.

Dated: November 9, 2020.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2020-25183 Filed 12-14-20; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the

Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Sale of Residence From Qualified Personal Residence Trust.

DATES: Written comments should be received on or before February 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202)317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Sale of Residence From Qualified Personal Residence Trust.

OMB Number: 1545-1485.

Regulation Project Number: TD 8743.

Abstract: Internal Revenue Code section 2702(a)(3) provides special favorable valuation rules for valuing the gift of a personal residence trust. Regulation section 25.2702-5(a)(2) provides that if the trust fails to comply with the requirements contained in the regulations, the trust will be treated as complying if a statement is attached to the gift tax return reporting the gift stating that a proceeding has been commenced to reform the instrument to comply with the requirements of the regulations.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 3 hours, 7 minutes.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 7, 2020.

Martha R. Brinson,
Tax Analyst.

[FR Doc. 2020-27555 Filed 12-14-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5498-QA & 1099-QA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning ABL Account Contribution Information; Distributions From ABL Accounts.

DATES: Written comments should be received on or before February 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: ABL Account Contribution Information; Distributions From ABL Accounts.

OMB Number: 1545-2262.

Form Numbers: 5498-QA; 1099-QA.

Abstract: Public Law 113-295, ABL Act of 2014, granted States, agencies and/or their instrumentalities the authority to allow for the establishment of special accounts that allow individuals and families to set aside money for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life, without impacting eligibility for other social service financial assistance programs such as Medicaid. Form 5498-QA is used to report to the beneficiaries the contributions, rollovers, and program to program transfers associated with these accounts. Form 1099-QA allows these individuals and families to draw from the special account.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Form 5498-QA

Estimated Number of Responses: 10,000.

Estimated Time per Respondent: 11 min.

Estimated Total Annual Burden Hours: 1,900.

Form 1099-QA

Estimated Number of Responses: 10,000.

Estimated Time per Respondent: 10 min.

Estimated Total Annual Burden Hours: 1,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2020.

Martha R. Brinson,
Tax Analyst.

[FR Doc. 2020-27553 Filed 12-14-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning carryover of passive activity losses and credits and at-risk losses to bankruptcy estates of individuals.

DATES: Written comments should be received on or before February 16, 2021, to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202)317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Carryover of Passive Activity Losses and Credits and At-Risk losses to Bankruptcy Estates of Individuals.

OMB Number: 1545-1375.

Regulation Project Number: TD 8537.

Abstract: These regulations relate to the application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 12 mins.

Estimated Total Annual Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020-27552 Filed 12-14-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form W-12**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal.

DATES: Written comments should be received on or before February 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202)317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal.

OMB Number: 1545-2190.

Form Number: W-12.

Abstract: Paid tax return preparers are required to get a preparer tax identification number (PTIN), and to pay the fee required with the application. A third party administers the PTIN application process. Most applications are filled out on-line. Form W-12 is used to collect the information required by the regulations and to

collect the information the third party needs to administer the PTIN application process.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Total Annual Burden Hours: 1,464,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 7, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020-27554 Filed 12-14-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 720-X**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to

reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Amended Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before February 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Amended Quarterly Federal Excise Tax Return.

OMB Number: 1545-1759.

Form Number: 720-X.

Abstract: Form 720X is used to make adjustments to liability reported on forms 720 you have filed for previous quarters. It can be filed by itself or it can be attached to any subsequent Form 720. Code section 6416(d) allows taxpayers to take a credit on a subsequent return rather than filing a refund claim. The creation of Form 720X is to provide a uniform standard for trust fund accounting.

Current Actions: There are no changes being made to Form 720-X at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 22,000.

Estimated Time per Response: 6 hrs., 56 mins.

Estimated Total Annual Burden Hours: 152,460.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2020.

Martha R. Brinson,
Tax Analyst.

[FR Doc. 2020-27551 Filed 12-14-20; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0110]

Agency Information Collection Activity Under OMB Review: Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "currently under 30-day Review—Open for Public Comments" or by using the search function. Refer to "OMB Control No. 2900-0110".

FOR FURTHER INFORMATION CONTACT:

Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421-1354, or email danny.green2@va.gov. Please refer to "OMB Control No. 2900-0110" in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan.

OMB Control Number: 2900-0110.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-6381 is completed by Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan. The data furnished on the form is essential to determinations for assumption approval, release of liability, and substitution of entitlement in accordance with 38 U.S.C. 3713(a) and 3714 and 3702(b)(2).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 196, on October 8, 2020, page 63660.

Affected Public: Individuals or Households.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 250 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. 2020-27513 Filed 12-14-20; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0862]

Agency Information Collection Activity: Decision Review Request: Higher-Level Review

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 16, 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. 2900-0862" 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 U.S.C. 3501-3521.

Title: Decision Review Request: Higher-Level Review (VA Form 20-0996).

OMB Control Number: 2900-0862.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 20-0996, *Decision Review Request: Higher-Level Review* is used by a claimant to formally request a Higher-Level Review of an initial VA decision, in accordance with the Appeals Modernization Act. The information collected is used by VA to identify the issues in dispute which the claimant seeks review of in the Higher-Level Review Lane. Additionally, the information collected is used to schedule a telephonic informal conference, when requested.

This is revision to the form. Changes include significant revisions to the

instructions section to make them easier to understand. New sections were added to the form to provide clarify and easier completion: Claimant's Identification Information, Benefit Type, SOC/SSOC Opt-In from Legacy Appeals System, and Authorized Representative Signature. The section on requesting informal conferences was edited to make it easier to understand and complete. Examples were added to the Issues for Higher-Level Review section. Formatting changes were made to simplify the form. Optical character recognition boxes were added to assist scanning technology.

There is a decrease in the respondent burden because the associated control number originally included two forms but we are using this revision to separate the two forms into two control numbers and only VA Form 20-0996 will remain under the current control number.

Affected Public: Individuals and households.

Estimated Annual Burden: 23,375 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 85,500.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020-27467 Filed 12-14-20; 8:45 am]

BILLING CODE 8320-01-P



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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 219, 240 and 242

Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 219, 240 and 242**

[Docket No. FRA–2018–0053, Notice No. 2]

RIN 2130–AC40

Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; technical amendment.

SUMMARY: FRA is revising its regulation governing the qualification and certification of locomotive engineers to make it consistent with its regulation for the qualification and certification of conductors. The changes include: Amending the program submission process; handling engineer and conductor petitions for review with a single FRA review board (Operating Crew Review Board or OCRB); and revising the filing requirements for petitions to the OCRB. To ensure consistency throughout its regulations, FRA is also making conforming amendments to its regulations governing the control of alcohol and drug use, and the qualification and certification of conductors. The changes would reduce regulatory burdens on the railroad industry while maintaining the existing level of safety.

DATES: This regulation is effective January 14, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time.

FOR FURTHER INFORMATION CONTACT: Christian Holt, Staff Director-Operating Practices Division, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–366–0978); or Alan H. Nagler, Senior Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:**Table of Contents for Supplementary Information**

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- II. Discussion of General Comments and Conclusions

- A. Remote Control Operators and Operations
- B. Defining Main Track
- C. Newly Hired Employee
- D. Preventing Public Disclosure of Confidential Information
- E. General Docketing and Service Concerns
- F. Issues Beyond the Scope of This Rulemaking
- G. Minor Revisions Identified
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 - A. Executive Orders 12866 and 13771 and DOT Regulatory Policies and Procedures
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I. Executive Summary

On May 9, 2019, FRA issued a notice of proposed rulemaking (NPRM) to amend title 49 Code of Federal Regulations (CFR) part 240, Qualification and Certification of Locomotive Engineers (part 240).¹ In response to that NPRM, FRA received three written comments.

This final rule responds to those comments and amends part 240 by: Making part 240 more consistent with the language in 49 CFR part 242, Qualification and Certification of Conductors (part 242); creating two provisions under which railroads may issue temporary locomotive engineer certifications; merging FRA's locomotive engineer and conductor review boards; adopting aspects of part 242 for locomotive engineer certification; providing labor representatives with the ability to provide input on a railroad's part 240 program; and allowing for and encouraging the use of electronic document submission of a railroad's part 240 program. This final rule also makes technical amendments to part 242 to: (1) Make the requirement for calibration of audiometers used during hearing tests for conductors the same as the requirement in part 240 for locomotive engineers; and (2) conform the definition of "main track" in part 242 to the definition of "main track" in part 240.

Additionally, this final rule makes conforming amendments to title 49 CFR part 219, Control of Alcohol and Drug

Use (part 219) to update two cross-references to part 240. Updating these references is necessary to ensure consistency between part 219 and part 240, as amended.

The final rule will create new costs. First, each locomotive engineer certification manager will need to review the amendments made to part 240 to ensure compliance is maintained. Second, amendments to part 240 will require each railroad to provide a copy of its part 240 plan to the president of each labor organization whenever the railroad files a submission, resubmission, or makes a material modification to its plan. Third, a railroad will need to maintain service records for certified locomotive engineers who are not performing service that requires locomotive engineer certification. For the 20-year period of analysis, the cost of the final rule will be \$233,779 (undiscounted), \$171,764 (PV 7%), and \$200,775 (PV 3%).

The final rule will also create cost savings. First, adding clarity in part 240 and conforming language in part 240 to part 242 will reduce stakeholder burden related to review and compliance with part 240. Second, it will reduce the burden on a railroad when providing another railroad with information about a former employee's prior service records. Third, it will update the program submission process to allow for electronic document submission, which will reduce stakeholder paperwork and submission costs related to part 240 program submissions and locomotive engineer certification petitions. Fourth, it will remove the requirement for railroads to obtain a waiver from the annual testing requirements for certified locomotive engineers who are not performing service that requires certification. For the 20-year period of analysis, the cost savings of the final rule will be \$12.3 million (undiscounted), \$6.9 million (PV 7%), and \$9.4 million (PV 3%).

As shown in Table ES.1, the regulatory evaluation quantifies the economic impact of the final rule in terms of cost savings and new costs accruing to stakeholders. For the 20-year period of analysis, the final rule will result in a net cost savings of \$12.0 million (undiscounted), \$6.8 million (PV 7%), and \$9.2 million (PV 3%). This final rule is an Executive Order (E.O.) 13771 deregulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

¹84 FR 20472 (May 9, 2019).

TABLE ES.1—FINAL RULE: NEW COSTS, COST SAVINGS, AND NET COST SAVINGS; 20-YEAR PERIOD

Cost of proposed rule	Undiscounted	Present value 7%	Annualized 7%	Present value 3%	Annualized 3%
New Costs:					
Review amendments	\$118,383	\$110,638	\$10,443	\$114,935	\$7,725
Provide copy of part 240 plan to labor organization	2,263	1,199	113	1,683	5,657
Maintain service records	113,133	59,927	5,657	84,157	5,657
Total new costs	233,779	171,764	16,213	200,775	19,039
Cost Savings					
Conforming part 240 to part 242	11,838,340	6,709,732	633,351	9,070,417	609,675
Former employee paperwork	113,133	59,927	5,657	84,157	5,657
Petition submission process	109,620	58,066	5,481	81,543	5,481
Plan submission process	6,800	3,602	340	5,058	340
Government cost savings	92,448	48,970	4,622	60,933	4,096
Removing waiver requirement	113,133	59,927	5,657	84,157	5,657
Total cost savings	12,273,475	6,940,223	655,108	9,386,266	630,904
Net Cost Savings	12,039,696	6,768,459	638,895	9,185,491	611,866

The final rule will create benefits. First, the final rule will amend the part 240 program submission process to require railroads to solicit labor input, providing for fully informed decisions by railroads. Second, it affords railroads additional time and flexibility to comply with some regulatory requirements. Third, it creates certain provisions that allow for temporary locomotive engineer certificates. Fourth, electronic filing will make information more accessible to interested stakeholders and the public. Because FRA lacks sufficient information related to these four benefits, this analysis could not accurately quantify these benefits. Therefore, the rule's economic analysis qualitatively explains benefits.

The final rule will also reduce Governmental administrative costs, including mailing, filing, and storing costs related to amendments to part 240, by allowing the Government and stakeholders to transmit and store documents electronically.

II. Discussion of General Comments and Conclusions

FRA received three written comments in response to the NPRM. The Association of American Railroads and the American Short Line and Regional Railroad Association submitted one set of joint comments (collectively referred to as "Railroad Commenters"). A second set of joint comments was submitted by a group of seven labor organizations (collectively referred to as "Labor Commenters").² The American

² The labor organizations that submitted the Labor Comments are: The American Train Dispatchers Association; the Brotherhood of Locomotive Engineers and Trainmen; the Brotherhood of Maintenance of Way Employees Division; the Brotherhood of Railroad Signalmen; the Brotherhood Railway Carmen Division; the

Association of Nurse Practitioners submitted the third comment.

Some of the specific comments are discussed in the Section-by-Section Analysis or in the Regulatory Impact and Notices portion of this final rule directly with the provisions and statements to which they specifically relate. Other comments apply more generally to the final rule as a whole, and FRA is discussing them here. Please note that the order in which the comments are discussed in this document, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter.

A. Remote Control Operators and Operations

In the NPRM, FRA proposed several changes to part 240 to clarify the locomotive engineer certification requirements for remote control operators, including defining "remote control operator (RCO)," "operator control unit (OCU)," and "remote control locomotive (RCL)."

FRA received two comments that opposed FRA's changes related to certification of RCOs. Labor Commenters asserted that FRA should not address RCO issues in this rulemaking because the proposed changes would not be conforming changes to part 242 and would thus be beyond the scope of this rulemaking. Labor Commenters also recommended FRA address remote control safety and operational issues to a much greater degree than proposed. Railroad Commenters asserted that the RCO

International Association of Sheet Metal, Air, Rail and Transportation Workers—Transportation Division; and the National Conference of Firemen & Oilers District, Local 32BJ/SEIU.

proposed changes are unnecessary, create confusion, and potentially create new administrative burdens.

FRA's Response

FRA was persuaded by the comments that the proposed changes regarding RCOs were not strictly conforming changes and that the proposed changes had the potential to create unforeseen problems. Considering that the regulated community understands how to certify RCOs under the current regulatory requirements, and the intent of the proposed changes was to "catch up [with] industry practice" in implementing the existing regulations,³ FRA is not adopting the proposed clarifying requirements regarding remote control operations in this final rule.

B. Defining Main Track

In the NPRM, FRA proposed to revise part 240's definition of "main track" to be the same as the definition in part 242 by revising the existing definition to include a reference to positive train control (PTC) as a method of operation that would make a track a "main track." Railroad Commenters noted that they opposed making this conforming change because PTC is not a method of operation.

FRA's Response

In considering these comments, FRA recognizes that it did not explain the inclusion of PTC as a method of operation in the part 242 rulemaking notices. Upon further review, FRA agrees with the comment that PTC is not a method of operation but rather is a technology that helps enforce compliance with a railroad's method(s)

³ 84 FR 20479.

governing train operations. For this reason, the final rule does not make any changes to the definition of main track in part 240.

C. Newly Hired Employee

In the NPRM, FRA proposed to delete the definition for the term “newly hired employee” because the term is not used in part 240. Labor Commenters noted that although the term “newly hired employee” is not used in part 240, the terms “newly hired engineer” and “newly hired conductor” are used in parts 240 and 242, respectively. Labor Commenters explain that these existing terms “establish the benchmark by which a railroad may rely upon qualification determinations made by a prior railroad employer of a candidate for certification.” Accordingly, Labor Commenters suggest that instead of deleting the existing definition of “newly hired employee,” FRA change the term to “newly hired” and integrate it into reporting and accident analysis requirements in a future rulemaking.

FRA’s Response

FRA reviewed the regulatory history to determine the origins of the definition of “newly hired employee” and whether deleting the term as proposed would be the correct approach. FRA notes that the term is not used or defined in part 242. FRA found that its original 1989 proposal for part 240 contained a section titled “Content and duration of student training programs.”⁴ As proposed in the 1989 NPRM, § 240.63 contained a requirement for training applicable only to “newly hired employees.”⁵ However, in the final rule implementing the 1989 NPRM, FRA explained that a premise of FRA’s original proposal was that every engineer would be trained, tested, and evaluated using the same criteria so that the regulatory requirements would resemble a motor vehicle licensing scheme employed by State governments for issuance of commercial truck driver licenses.⁶ The final rule implementing this initial proposal, however, took a more individualized, railroad-centric approach that allowed each railroad to formulate a program for setting qualification standards and submitting that program to FRA for approval. As such, the final rule did not adopt proposed § 240.63 or any similar requirement. FRA, however, erroneously adopted the unnecessary definition of “newly hired employee”

into the 1991 final rule implementing the original 1989 proposal. Thus, the definition is a legacy term left over from the original 1989 NPRM and is not applicable to part 240 as it currently exists.

FRA recognizes that, as Labor Commenters note, existing § 240.225(a) refers to a “newly hired engineer” and existing § 242.215 refers to a “newly hired conductor.” Those undefined terms, however, are not equivalent to the term “newly hired employee” (e.g., a newly hired engineer must be a previously certified locomotive engineer, while a newly hired employee could be an individual who has no prior railroad experience or has less than one year of railroad transportation service). Accordingly, in this final rule, FRA is deleting the existing definition of “newly hired employee” from part 240 as proposed.

D. Preventing Public Disclosure of Confidential Information

In the NPRM, FRA proposed to have parties submit part 240 petitions for FRA review of railroads’ certification decisions (§ 240.403) through DOT’s public docket website at www.regulations.gov. Labor Commenters ask that FRA revise its proposal to include procedures for a party to request that certain information filed in these proceedings be protected from public disclosure (e.g., personally identifiable information and medical records). Labor Commenters note that locomotive engineers typically file petitions under § 240.403 on their own behalf or petitions are filed by local union representatives, not an attorney. Labor Commenters cite to the Federal Rules of Civil Procedure as an example of how this information could be protected.

FRA’s Response

Although FRA recognizes the Labor Commenters’ concern about the importance of protecting personal information from public disclosure, FRA notes that the Agency’s regulations already include procedures for any person submitting documents or information to FRA to request confidential treatment of that information.⁷ Accordingly, FRA finds it is unnecessary to include any additional procedures in part 240. FRA notes that the existing filing procedures have been utilized in both parts 240 and 242 for years, and FRA is unaware of any concern raised that it failed to provide confidential treatment of information upon request in any such filing under

part 240 or 242. The changes FRA proposed to § 240.403(b)(2) and that are being adopted in this final rule are limited to moving the Agency’s docket management procedures from the old-fashioned, paper dockets kept at FRA’s headquarters to modern, electronic dockets that are web-based.

FRA’s changes to § 240.403 will not only align it with the corresponding procedures in part 242 (§ 242.505) but also with the administrative hearing filing procedures in both parts 240 and 242 (§§ 240.407 and 242.507). Those filing procedures have been in place for many years and FRA believes the procedures are sufficient to enable filers to request protection of personally identifiable information, including medical records, with minimal burden.

In proceedings under § 240.403, FRA uses the Federal Government’s on-line docket system at www.regulations.gov. That docket system maintains a privacy and security notice on its website that warns users that the material and personally identifiable information filed in a document may be publicly disclosed in a docket or on the internet. Under the existing procedures of § 240.403 and with FRA’s amendments to that section, a party must decide for itself if there is personally identifiable information or other types of information that should be kept confidential, and it is that party’s duty to request confidentiality. FRA notes that social security numbers or employee identification numbers are not generally necessary in any filings under § 240.403. Accordingly, FRA encourages parties to redact those numbers from any documents submitted to a docket.

As noted, FRA’s procedures for requesting confidential treatment of any document or portion of any document are in 49 CFR 209.11. Parties should follow the procedures specified in that regulation when requesting that FRA treat information or documents submitted as confidential information. In general, when requesting confidential treatment of information in a filing, a party should include in its filing a description of each item redacted or not disclosed and the rationale for each non-disclosure (e.g., contains medical information). FRA will then contact the party to obtain any information indicated as redacted if FRA believes it is relevant to issuance of a decision. Questions regarding confidential treatment can be directed to FRA’s Office of the Chief Counsel.

E. General Docketing and Service Concerns

Labor Commenters raised several general docketing and service concerns.

⁴ 54 FR 50890 (Dec. 11, 1989) (see proposed 49 CFR 240.63).

⁵ 54 FR at 50930.

⁶ 56 FR 28228, 28230 (June 19, 1991).

⁷ 49 CFR 209.11.

For instance, the commenters indicate that some labor representatives and members have experienced problems associated with uploading large files or multiple files to *Regulations.gov*. Similarly, the commenters state that some labor representatives have experienced difficulty emailing large files to parties (including FRA) as an alternative form of service from mailing copies of the documents. The labor organizations also seek FRA's answer to the question of how their members and labor representatives are to determine that service/delivery of emails is completed.

FRA's Response

Just like petitions submitted in conductor certification cases, petitions to the OCRB for the review of a railroad's decision to deny, recertify, or revoke a locomotive engineer's certification may be hand delivered or mailed, and may additionally be submitted by fax or electronically, consistent with the standards and requirements established by the Federal Docket Management System and posted on the *Regulations.gov* website.

The process for filing a petition to the OCRB requires filing in a docket that does not yet exist as the petition itself serves as a request to open a new non-rulemaking docket. To open a new non-rulemaking docket, a filer first electronically submits a document to a pre-existing docket called a "shell docket." This is accomplished by going to *Regulations.gov* and entering FRA's shell docket number "FRA-2007-0003" in the search box. This will open a window for the shell docket and allow a filer to click on "Comment Now." The filer will then enter the required information and upload one or more files. While entering something in the comment box is required, FRA recommends that filers only use the comments box to list the documents they are filing, as the documents they upload will contain their argument(s) and supporting documentation. After entering the information and uploading any documents, there is an opportunity to preview the information submitted and to receive a receipt. Whether submitting a petition by mail, electronically, or by other method, FRA recommends that the party retain a receipt or other proof of the petition's filing date. Further, once a docket is created for a petition, FRA recommends the filing party return to *Regulations.gov* and sign up for email alerts to keep updated on any changes or additions that occur in the docket folder. Typically, the filing party will know that FRA received the submission when

FRA sends an acknowledgment letter notifying the party of the petition's assigned docket number. If the petition is deficient because it does not meet the minimum requirements or arrangements need to be made to handle confidential information, FRA will contact the filing party and provide further instructions before issuing an acknowledgment letter with the docket number.

Labor Commenters expressed concern that some labor representatives and members have experienced problems uploading large files or multiple files to *Regulations.gov*. FRA is aware that *Regulations.gov* has imposed a size limit on uploaded files. *Regulations.gov* has a "help" tab, and the user can choose "FAQs" in the drop-down menu. One of the FAQs asks "how many files can I upload to the comment form" and the answer provided is "up to 20 files, but each file cannot exceed 10MB." The answer also clarifies that valid file types include: .bmp, .docx, .gif, .jpeg, .jpg, .pdf, .png, .pptx, .rtf, .sgml, .tif, .tiff, .txt, .wpd, .xlsx, and .xml. Parties have several options for overcoming this size limitation. For example, in some cases it is possible for a filer to split the files and then upload them onto *Regulations.gov*. Another option would be to file as many documents as possible through uploading at FRA's shell docket on *Regulations.gov*, and leave a comment in the comment box describing the large files that cannot be uploaded and how the filing party intends to submit those files. For example, a comment could be entered stating that a large video file will be provided to FRA on a memory storage device sent through the mail, such as a USB memory stick. Comments can also request FRA contact the commenter to discuss other arrangements, such as emailing the file or providing FRA with a way to download the document from a cloud-based file hosting service such as Dropbox. Although FRA can currently receive CD-ROM and DVD-ROM disks, the readers for these disks are becoming antiquated and therefore more difficult for FRA to access reliably. Documents that are not in an acceptable format, including files on proprietary software that FRA does not license to use, will need conversion to an acceptable format or other arrangements will be required that will allow FRA to review the files. If a file cannot be placed in a docket or viewed by FRA, the file cannot be made part of the administrative record, and therefore cannot be considered by FRA in reviewing the petition.

Similarly, Labor Commenters state that some labor representatives have experienced difficulty emailing large

files to parties or FRA as an alternative form of service from mailing copies of the documents. Serving documents under FRA's administrative procedures should be no different than serving documents on parties in Federal court litigation. That is why the definition of the term "serve or service" in part 240 states that the term has the same meaning given in Rule 5 of the Federal Rules of Civil Procedure. Service of documents on another party is the responsibility of the party performing service. If files are too large to email, the party performing service must make arrangements to perform the service by mail or other mutually agreed upon method with the party to be served. A party performing service by email has a duty to choose an option for service where it receives a receipt automatically or it can ask the receiving party to reply that receipt was completed satisfactorily. Without proof of completeness, service cannot be proven, and is thus presumably incomplete. Any questions regarding files, filing, and service should be directed to FRA's Office of the Chief Counsel.

F. Issues Beyond the Scope of This Rulemaking

In the NPRM, FRA explained that issues that go beyond conforming FRA's locomotive engineer regulation with FRA's conductor certification regulation and updating and clarifying the existing requirements for locomotive engineer certification, are best saved for a separate, future rulemaking.⁸ In response to the NPRM, FRA received several comments which FRA has determined go beyond the scope of this rulemaking and are best saved for such a separate, future rulemaking.

The American Association of Nurse Practitioners (AANP) commented that the definition of medical examiners should include nurse practitioners. AANP commented that nurse practitioners are authorized to become certified medical examiners under the Federal Motor Carrier Safety Administration's (FMCSA) regulations and the National Transportation Safety Board (NTSB) includes nurse practitioners in the category of medical professionals who should be eligible for training and certification as transportation medical examiners for medical fitness for duty tests. FRA finds that the issue of whether nurse practitioners should be included in the definition of medical examiners is best saved for a separate, future rulemaking, as the issue is complex, and FRA expects additional commenters would

⁸ 84 FR at 20473.

have submitted comments if FRA had provided notice of this issue in the NPRM. In addition, FRA notes that if a nurse practitioner is a licensed or certified technician, the nurse practitioner is permitted to perform the vision and hearing acuity examinations required in parts 240 and 242. However, both parts 240 and 242 require a medical examiner, who is defined as a person licensed as a doctor of medicine or doctor of osteopathy, to conduct any medical evaluation to determine if the locomotive engineer or conductor candidate can operate safely in the event the candidate fails the vision or hearing acuity examination. Although AANP's comment indicates that nurse practitioners can be trained and certified to perform those type of medical evaluations, beyond the standard testing, AANP did not address the fact that FMCSA has medical examiner certification requirements in its regulations, while FRA does not.⁹ Accordingly, this issue is not addressed in this final rule.

Railroad Commenters raised several issues that are beyond the scope of this rulemaking and, as such, FRA is not addressing them in this final rule. For instance, Railroad Commenters advocate that FRA should amend its approach regarding requirements for joint operations territory, even though FRA explained in the NPRM that it was not proposing any changes to the requirements in § 240.229 because doing so would not conform part 240 to part 242.

Labor Commenters also raised several issues that are best saved for a separate, future rulemaking and thus FRA is not addressing them in this final rule. For instance, Labor Commenters advocated for amending § 240.129, so that instead of requiring that a certified engineer be given an operational monitoring observation and unannounced compliance test within 30 days of return to service following a period of not performing a service that requires engineer certification, the certified engineer be provided 30 working trips or tours of duty in engineer service following a return before such testing. Labor Commenters also suggested that FRA amend its denial and revocation procedures, §§ 240.219(c) and 240.307(c)(11), to require each railroad to provide more specificity in its decision as to the citation allegedly violated, and notify the person in writing of the right to request FRA review and the applicable time limits. Since these proposals go beyond the scope of this rulemaking, which FRA

intended merely to conform part 240 to part 242 and clarify part 240's existing requirements, FRA declines to address them in this final rule. Labor Commenters also included a history and analysis of international legal issues that go beyond the scope of this rulemaking.

G. Minor Revisions Identified

With this final rule, FRA is making many minor revisions that were proposed in the NPRM to fix grammatical errors, typographical errors, reference errors, and superfluous language and citations. These revisions include the following sections: 240.11(d); 240.207(b); 240.209(b) and (c); 240.211(b); 240.215(e); 240.217(a) and (d); 240.225(b); 240.305(b)(2); 240.307(g) and (i); 240.309(b)(4) and (e)(1), (2), (8), and (9); and appendix D. FRA identified these amendments as proposed in the NPRM and received no comments in response. Accordingly, FRA is adopting the proposed revisions without further discussion in this final rule.

H. Rejecting the Addition of Implementation Dates

In the NPRM, FRA raised the issue of whether the final rule should include any implementation dates beyond the final rule's effective date. For example, FRA asked for comments considering whether the NPRM adequately addressed the time necessary for each railroad to incorporate into its part 240 program the changes required in this rulemaking. Labor Commenters suggested that FRA use a two-tiered implementation approach that would provide Class I, intercity passenger, and commuter railroads with six months from the date of publication to amend part 240 programs and provide all other railroads subject to part 240 one year. Railroad Commenters did not comment on this issue. After considering the comments and the revisions to part 240 being adopted in this final rule, FRA has concluded that the revisions will not, by themselves, require material modifications to a railroad's part 240 certification program. Thus, no railroad will be obligated to file its complete part 240 program with FRA after only making any necessary modifications resulting from this final rule. Further, as the Railroad Commenters did not request an implementation schedule, and the regulatory revisions will not result in material modifications to a railroad's program, it is unnecessary to create an implementation schedule.

Similarly, in the NPRM, FRA proposed amending § 240.403 to shorten the time limit for filing a denial of certification petition with the OCRB

from 180 days to 120 days, and asked whether FRA should delay implementation of that shortened time limit. FRA did not receive any comments in response to this question. Accordingly, FRA has concluded that delaying implementation of that shortened time period is not necessary. Consequently, if a railroad's denial decision is on or after the effective date of this final rule, any petition in response to that denial decision must be filed with FRA within 120 days.

III. Section-by-Section Analysis

This section responds to public comments and identifies any changes made from the provisions as proposed in the NPRM. Provisions that received no comment, and are otherwise being finalized as proposed, are not discussed again here.¹⁰

Part 219

While drafting the final rule, FRA identified two cross-references in part 219 that required updating to reflect the part 240 amendments. As discussed below, the final rule revises these cross-references in §§ 219.25 and 219.1003 to ensure they conform with part 240, as amended. Although the NPRM did not specifically propose these revisions, they are both non-substantive in nature and within the scope of the rulemaking because they merely conform part 219 with part 240 as amended by the final rule.

Section 219.25 Previous Employer Drug and Alcohol Checks

Paragraph (b) of this section contains a cross-reference to former § 240.119(c), which this final rule is redesignating as § 240.119(e). FRA is therefore revising paragraph (b) to update the cross-reference from § 240.119(c) to § 240.119(e). This section and the revised cross-reference refer to the requirement for a railroad that is considering initially certifying or recertifying a locomotive engineer to review the person's records from the previous 60 consecutive months and consider any Federal alcohol and drug violations.

Section 219.1003 Referral Program Conditions

Paragraph (j) of this section contains a cross-reference to former § 240.119(e), which this final rule is redesignating as § 240.119(g). FRA is therefore revising paragraph (j) to update the cross-reference from § 240.119(e) to § 240.119(g). This section and the revised cross-reference refer to the

⁹ 49 CFR 390.103 through 390.115.

¹⁰ See 84 FR at 20473–95.

various referral programs allowed in part 219 and explains when confidentiality is waived.

Part 240

Section 240.7 Definitions

FRA is amending this section by: (1) Adding definitions for “conductor,” “drug and alcohol counselor,” “ineligible or ineligibility,” “on-the-job training (OJT),” “physical characteristics,” “plant railroad,” “Substance Abuse Professional,” “territorial qualifications,” and “tourist, scenic, historic, or excursion operations that are not part of the general system of transportation”; (2) revising the definitions of “file, filed and filing,” “FRA Representative,” “instructor engineer,” “medical examiner,” “qualified,” “railroad rolling stock,” and “substance abuse disorder”; (3) removing the definitions for “EAP Counselor” and “newly hired employee”; and (4) replacing the defined term “service” with the term “serve or service.” These amendments will make the definitions in part 240 consistent with the definitions in part 242 and, rather than republish the analysis provided for those definitions, FRA references the analysis as proposed in the NPRM.¹¹

Instructor Engineer

In the NPRM, FRA proposed to revise the definition of “instructor engineer” to make it as similar as possible to the definition of “qualified instructor” in part 242, by: (1) Establishing a role for employee representative participation; and (2) establishing methods for identifying instructors through railroad and employee representative coordination, as well as by the railroad unilaterally.

Although FRA received comments on the proposed changes to this definition, FRA is adopting the revised definition as proposed. Thus, the analysis provided in the NPRM is applicable. The following is a summary of the comments received and FRA’s responses.

Railroad Commenters reiterated concerns raised by at least one Railroad Safety Advisory Committee (RSAC) Conductor Certification Working Group (RSAC Working Group or Working Group)¹² member that FRA addressed

in the NPRM.¹³ Railroad Commenters objected to the proposed requirement that, for each railroad that has designated employee representation, if the railroad seeks to designate a person as an instructor engineer when the designated employee representative declines to provide concurrence, the railroad would be required to select only a person who has a minimum of 12 months of service working in the class of service for which the person is designated to instruct. FRA disagrees with the Railroad Commenters that FRA did not provide a basis for justifying this proposed requirement. FRA’s view is based on the understanding that an instructor is typically not a railroad officer or supervisor, but instead a person with current, relevant experience who can be counted on to impart knowledge and demonstrate safety-related tasks through OJT training.¹⁴ FRA views instructor engineers as mentors that would not be directly testing or making certification decisions. When the conductor certification rule was first proposed in 2010, FRA explained that the purpose of the additional requirements was to allow employees, through their representatives, to have input in the selection of instructors who might be viewed as inexperienced. FRA’s position was that if the railroad selected a person to instruct, but the person had less than 12 months of service working in the class of service, it is fair to presume the person might lack the experience necessary to instruct.¹⁵ The conductor rule does not absolutely prohibit the railroad from selecting a person that lacks the 12-month experience requirement, but instead requires the railroad to work with the employees’ representative(s) in the instructor selection process, unless the employees lack such representation. Considering the mentor relationship, if a location lacks experienced engineers and the railroad’s employees are represented, the designated employee representative would have an interest in selecting those engineers who would be in the best position to help fellow colleagues get the proper instruction needed to obtain or retain certification.

Also in response to AAR’s and ASLRRRA’s comment, FRA believes it is helpful to recall that, in the conductor rule, the minimum of 12-months’ service working as a train service employee may be at any time during that person’s career.¹⁶ Likewise, in the

engineer context, FRA reads the 12-month experience requirement in the class of service for which the person will instruct to pertain also to the collective number of months over the person’s career, and not just the previous 12 months.

Medical Examiner

FRA is revising the definition of “medical examiner” to be the same as the definition of “medical examiner” in part 242 by removing the portion of the definition stating that the medical examiner owes “a duty to the railroad.” Instead, consistent with part 242, FRA is amending the definition to state “the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an employee.”

Newly Hired Employee

As discussed in Section II.C, above, FRA is deleting the definition of “newly hired employee” because that term is not used (or necessary) in part 240.

Qualified

As proposed in the NPRM, FRA is revising the definition of “qualified” to be the same as the definition of “qualified” in part 242. Under the proposed definition, a qualified person is a person who has successfully completed all instruction, training, and examination programs required by the employer and the applicable parts of this chapter, and therefore may reasonably be expected to be proficient on all safety-related tasks the person is assigned to perform. The existing definition in part 240 focuses on an individual’s knowledge, whereas the definition as proposed in the NPRM and adopted in this final rule focuses not only on the individual’s knowledge through completion of training plan requirements but also on whether the individual could reasonably be expected to be proficient at performing all assigned tasks. The update to the definition of “qualified” is to ensure a railroad’s instruction and training program not only provides knowledge of how to perform a task, but also adequately prepares an individual to perform the task proficiently. For example, a qualified locomotive engineer would need to be taught the railroad’s rules and procedures for performing different types of brake tests. An individual who receives only classroom training would be expected to have the requisite knowledge to perform the brake tests, and an individual who is provided OJT or hands-on training would be expected to perform the tasks on the brake test proficiently. Without both instruction and hands-on practice,

¹¹ See 84 FR at 20474–78.

¹² The RSAC provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency’s major stakeholder groups, including railroads and labor organizations. For more information regarding the RSAC process and the conduct of the Working Group, see 76 FR 69802, 69802–69804 (Nov. 9, 2011).

¹³ 84 FR 20472, 20476 (May 9, 2019).

¹⁴ 84 FR at 20475.

¹⁵ 75 FR at 69170 (Nov. 10, 2010).

¹⁶ 76 FR at 69806 (Nov. 9, 2011).

the person could not be expected to be qualified to perform brake tests.

Labor Commenters questioned whether FRA's proposed definition of "qualified" would have a negative impact by lowering the standard for what it means to be qualified. Labor Commenters suggested that FRA's proposed definition is subject to multiple interpretations, including one that would mean the railroad is no longer required to provide instruction, training, and examination so that the candidate for qualification has a foundation from which qualification—actual knowledge and proficiency—can be demonstrated. Labor Commenters proposed an alternative definition for "qualified," asking that FRA consider it to mean "a person who has demonstrated actual knowledge and proficiency of the subject on which the person is qualified by successfully completing all instruction, training and examination programs required by the railroad and the applicable parts of this chapter."

FRA concluded that Labor Commenters' alternative definition of "qualified" would stray from this rule's purpose of conforming part 240 with part 242, and FRA does not view the conforming definition as lowering the standard of the meaning of "qualification." Although FRA's change to the definition focuses on proficiency in safety-related tasks over knowledge, the analysis in determining whether someone is qualified is the same. If the person passes all required training and examination, then the presumption is the person has the knowledge necessary to complete any necessary tasks proficiently. If a person is asked to perform a task that exceeds the training provided, the person could not be expected to have the required knowledge and the person would therefore not be qualified to perform that task safely. For these reasons, FRA is adopting the proposed definition without change from the NPRM.

Section 240.103 Approval of Design of Individual Railroad Programs by FRA

FRA is making three changes to this section, which will make the filing and FRA approval process for individual railroads' part 240 programs the same as for conductor certification programs under § 242.103. First, FRA is revising paragraph (a) to clarify that the primary method for a railroad to submit its certification program is by email to *FRAOPCERTPROG@dot.gov*. Previously, FRA would wait until a railroad contacted FRA and asked to submit its program electronically. It is more efficient to publish this FRA email

address and encourage electronic filing. FRA expects that there are few railroads that do not have sufficient internet access to submit a certification program by email, but is leaving the mailing option open for those smaller entities whose internet service may still be unreliable. The revisions were not proposed in the NPRM, but they address an issue of agency policy or procedure previously addressed in appendix B to part 240. FRA expects that by moving this information from an appendix to this section, railroads will find the information more easily and will spend less time figuring out the submission process.

Second, FRA is revising paragraphs (b) and (c) of this section to require railroads to provide a copy of their program submissions, resubmissions, and material modifications to the president of each labor organization that represents the railroad's certified locomotive engineers. The revision will also allow any designated representative of certified locomotive engineers to submit comments to FRA on the railroad's submission within 45 days of the railroad's filing with FRA. Although FRA, not the commenters, will decide whether to approve a railroad's submission, FRA expects comments will be useful in determining whether the railroad's program conforms to the criteria in this final rule.

The final revisions to paragraphs (b) and (c) of this section are different from the proposed rule. For instance, in the NPRM, FRA used the term "serve or service," which is defined in this part and refers to the legal issue of service of process during adjudication. Because the exchange of certification programs and comments to those certification programs are not adjudicatory matters, FRA is revising these requirements to reflect that each railroad and labor organization president must provide, not serve, its documents to each other, and affirm to FRA that it has done so, without the need to abide by strict legal rules for service of process. FRA is not specifying the methods that a railroad or president of a labor organization must use to provide documents to the other party, as FRA expects each party to use those methods it uses in the normal course of business with each other. Also, FRA is adding an email address to make it easier for parties to submit programs or comments to programs. Further, although the NPRM proposed that each railroad affirm that it provided a copy of its program to the president of each labor organization that represents the railroad's employees subject to this part, the labor organization presidents would have

been required to certify that they sent their comments to the railroad; thus, for consistency, FRA is requiring that both parties must affirm that they provided the other party with a copy of the documents they submit to FRA under this requirement. Finally, FRA is making technical amendments to § 242.103 so that the locomotive engineer and conductor certification rules use the same language.

Third, in paragraph (h) (which revises former paragraph (e) and is the same as paragraph (i) of § 242.103), FRA is requiring a railroad intending to make material modifications to its FRA-approved program to submit to FRA a description of its intended material modification 60 days before implementing the modification (as opposed to the prior requirement to do so 30 days in advance). This revision will allow time for the labor organizations to comment on the proposed modification(s) under paragraph (c) of this section and for FRA to consider any comments from the relevant labor organizations.

In response to the proposed revisions to this section, Labor Commenters requested that FRA amend the final rule to clarify that a representative labor organization has the right to comment on the entirety of a railroad's program—even when a particular filing is a resubmission or a material modification—and that such comments will be considered by FRA. FRA is declining to amend the requirement to make this clarification as doing so would not conform the requirement to the parallel requirement in part 242. However, despite the lack of an explicit option to comment on the entirety of a railroad's program, FRA invites any person, including any labor organization, to inform FRA's Chief Safety Officer of any safety concern regarding a railroad's certification program at any time.

Section 240.107 Types of Service

The only change to this section is to the heading. The section heading is changed from "Criteria for designation of classes of service," to the same section heading in its part 242 counterpart.

FRA is not making several other changes that were proposed to this section because, as explained in the discussion of specific comments and conclusions, above, FRA is not adding additional types of service that identify remote control operators. See Section II.A.

Section 240.111 Individual's Duty To Furnish Data on Prior Safety Conduct as Motor Vehicle Operator

FRA is amending several requirements in § 240.111 to clarify that, for purposes of motor vehicle driving record checks and the reporting of certain motor vehicle incidents, the requirements apply equally to a person with a foreign-issued driver license as to a person with a U.S.-issued driver license. The final rule differs from the proposed version as the proposal contained an incorrect reference in § 240.111(h) to § 240.115(b)(1) and (2) when the reference should have read § 240.115(h)(1) and (2). No comments were received recommending specific changes to this section and the final rule is otherwise identical to the proposed rule; thus, the analysis provided in the NPRM is applicable.¹⁷

Section 240.115 Criteria for Consideration of Prior Safety Conduct as a Motor Vehicle Operator

This section provides the requirements and procedures a railroad must follow when evaluating an engineer's or engineer candidate's prior conduct as a motor vehicle operator. FRA is revising this section in its entirety to be consistent with paragraphs (a) through (f), and (n) and (o) of § 242.111. The final rule is identical to the proposed rule; thus, the analysis provided in the NPRM is applicable.¹⁸

Labor Commenters requested alternative language to proposed paragraphs (c) and (d) of this section. As proposed, paragraphs (c) and (d) would provide a 60-day grace period for obtaining motor vehicle operator records, if the records were timely requested. The labor organizations expressed concern that the proposed language could lead to an unintended consequence whereby a railroad could create a temporary locomotive engineer workforce, with each person temporarily certified for a 60-day period. Although theoretically possible, FRA does not share the labor organizations' concerns that the grace period provided for obtaining motor vehicle operator records will encourage any railroad to create a temporary engineer workforce. The proposed amendment, which FRA is adopting in this final rule, will apply to a person who has met all the other qualifications for certification but is solely missing the motor vehicle records check requirement. The proposed and final rule amendments to this section do not

revise the determinations required as a prerequisite to certification or recertification in § 240.203, including the knowledge testing, performance skills testing, and vision and hearing acuity evaluation requirements. Thus, to take advantage of the flexibility FRA proposed and is making final in this rulemaking, each person that a railroad would want to certify temporarily must already have fulfilled all the qualification requirements, except that the railroad has not yet obtained the motor vehicle records to ensure the person did not incur any alcohol- or drug-related convictions that might indicate the person has an active substance abuse disorder. A railroad that invests the resources necessary to certify a person should want to complete the process by obtaining the motor vehicle operator records, which would allow the railroad to certify the person for up to three years, not temporarily certify the person for 60 days. Further, paragraph (e) prevents a railroad from perpetually certifying or recertifying the same person without obtaining the required motor vehicle driving records and conducting an evaluation of those records. Thus, to create a temporary certification workforce, a railroad would need to employ an available group of people who are qualified for certification except that they are each missing motor vehicle operator records. The theoretical situation is too remote to consider it a reason not to conform the two certification rules in this manner.

Section 240.117 Criteria for Consideration of Operating Rules Compliance Data

The requirements in this section provide the criteria and procedures a railroad must follow to evaluate an engineer's or engineer candidate's compliance with specific types of operating rules and practices. FRA is revising this section to improve clarity and conform the section to the corresponding provisions of the conductor certification rule in § 242.403. No comments were received recommending specific changes to this section and the final rule is identical to the proposed rule other than for an edit to paragraph (d) of this section to remove introductory text, including the phrase "[e]xcept as provided for in paragraph (i) of this section." FRA is removing as unnecessary introductory text from corresponding § 242.403(d) in the conductor certification rule, and FRA removed paragraph (i) from this section through a rulemaking that was

effective February 22, 2010.¹⁹ For these reasons, the analysis provided in the NPRM is applicable.²⁰

Section 240.121 Criteria for Vision and Hearing Acuity Data

This section contains the requirements for visual and hearing acuity railroads must incorporate into their locomotive engineer certification programs. FRA is amending paragraphs (a) and (d)²¹ of this section to conform to § 242.117(a) and (i). These revisions will update part 240's testing procedures and standards for the hearing acuity requirements. No comments were received recommending specific changes to this section and the final rule is identical to the proposed rule except for the revision to paragraph (d)(3), explained below; thus, the analysis provided in the NPRM is applicable.²²

FRA is changing proposed paragraph (d)(3) to eliminate the reference to the American National Standards Institute (ANSI) 2004 standard for calibration of audiometric devices. Existing paragraph (d) of this section references the ANSI 1969 calibration standard for audiometric devices (ANSI S3.6–1969, "Specifications for Audiometers"). The companion provision in part 242, however, cites the 2004 version of ANSI's calibration standard.²³ Accordingly, in the NPRM, FRA proposed to update the ANSI standard referenced in paragraph (d) to the 2004 standard to conform to part 242.

However, ANSI revised the standard in 2018 and FRA expects ANSI will continue to revise the standard in the future. The audiometers covered by the ANSI standard are devices designed for use in determining the hearing threshold level of an individual in comparison with a selected hearing threshold level for reference. The ANSI standard provides specifications and tolerances for pure tone, speech, and masking signals and describes the minimum test capabilities of different types of audiometers.

To make clear that audiometers are not subject to a single industry standard, versions of which may change with time, FRA is amending this paragraph to remove the specific citation to the 1969 version of ANSI S3.6 and not adopt the

¹⁹ 74 FR 68173 (Dec. 23, 2009).

²⁰ See 84 FR at 20481–82.

²¹ In the NPRM, FRA erroneously cited to paragraph (c) instead of (d) in the Section-by-Section Analysis, although the regulatory text of the proposed rule contained the correct paragraph cite. 84 FR at 20482, 20509.

²² See 84 FR at 20482.

²³ See the discussion of 49 CFR 242.117(i)(3) in the Section-by-Section Analysis, below.

¹⁷ See 84 FR at 20479–80.

¹⁸ See 84 FR at 20480–81.

proposed specific citation to the 2004 ANSI standard. Instead, this paragraph now expressly provides for use of a formal industry standard, such as ANSI S3.6. This change will allow a licensed or certified audiologist, or a technician responsible to that licensed or certified audiologist, the flexibility to use an audiometer calibrated to a formal industry standard, whether the standard is an older version of ANSI S3.6, a newer version of the standard, or a similar industry standard issued by an organization other than ANSI.

Separately, FRA is amending paragraph (b) to remove an unnecessary heading, “[f]itness requirement.” FRA discovered the technical error in preparing the final rule, and this correction makes the locomotive engineer rule consistent with an identical change to the conductor rule.

Section 240.123 Training

This section requires railroads to provide their certified locomotive engineers initial and continuing education to ensure each engineer maintains the necessary knowledge, skill, and ability to carry out the duties of a locomotive engineer. FRA is revising this section’s heading to be the same as that for § 242.119 (Training). FRA also is amending this section’s text to be similar to § 242.119’s, and to relate the training and education requirements of part 240 to the requirements of 49 CFR part 243 (part 243) for the training, qualification, and oversight of safety-related railroad employees.

Railroad Commenters objected to the proposed language amending § 240.123(c), providing that initial training of an untrained person must comply with § 243.101 of this chapter. Railroad Commenters stated that such a revision would require a railroad to resubmit its part 243 program to FRA even though FRA did not identify any specific deficiencies with existing railroad training plans for locomotive engineers. FRA addressed this issue in the NPRM and the analysis in the proposed rule provides additional background not repeated in the discussion below.²⁴

In summary, FRA is adding the cross-reference to part 243 to conform the rule to the parallel part 242 requirement and believes the cross-reference is helpful as a reminder of the requirement in part 243. Because there is an existing requirement, FRA is not creating a new burden. Locomotive engineer and conductor training programs have been, and continue to be, sufficiently robust to meet the part 243 standards. These

certification training programs are already required to be submitted to FRA for review and approval under parts 240 and 242, and thus railroads are exempt from submitting them under part 243, unless a railroad’s plan did not provide sufficient detail regarding the OJT components (§ 243.103(b)). When that is the case, the railroad is only required to supplement the certification training program with the updated OJT portion as a material modification, as required in §§ 240.103(e) and 242.103(i).

FRA expects each railroad to evaluate the OJT components in its part 240 training program and supplement its certification program only if necessary. The deadlines for implementing the modifications are governed by part 243. Please note that FRA amended the implementation deadlines for compliance with § 243.101; consequently, railroads and other employers that employ locomotive engineers were required to modify locomotive engineer OJT programs beginning January 1, 2020, depending on the size of the railroad operation.²⁵

No additional comments were received recommending specific changes to this section and the final rule is identical to the proposed rule; thus, the analysis provided in the NPRM is applicable.²⁶

Section 240.307 Revocation of Certification

This section provides the procedures a railroad must follow to revoke a certified locomotive engineer’s certification. FRA is amending this section to clarify its intent and make it the same as § 242.407, which addresses the revocation of conductor certifications. As discussed in Section II.F, above, Labor Commenters recommended specific changes to paragraph (c)(11) of this section. As noted in Section II.F, FRA has determined that those suggestions are beyond the scope of this rulemaking. No other comments were received recommending specific changes to this section and the final rule is identical to the proposed rule; thus, the analysis provided in the NPRM is applicable.²⁷

Section 240.308 Multiple Certifications

Proposed paragraph (d) contained an unnecessary heading, “[p]assenger railroad operations,” based on its corresponding provision in the

conductor certification rule, § 242.213(e). FRA discovered the technical error in preparing the final rule and is correcting § 242.213(e). Accordingly, FRA is not adopting the heading proposed in paragraph (d) of this section for consistency with the conductor rule, and is instead making clear in the rule text that this paragraph applies to passenger train operations.

Subpart E—Dispute Resolution Procedures

Subpart E details the opportunities and procedures for an individual to appeal a decision by a railroad to deny certification or recertification or to revoke an individual’s locomotive engineer certification. In the NPRM, FRA proposed some changes to the appeals process contained in §§ 240.401 through 240.411. The comments received recommending specific changes to this subpart are addressed in section II.A, above, or in the Section-By-Section analysis, below. However, the final rule is identical to the proposed rule; thus, the analysis provided in the NPRM is applicable.²⁸

Section 240.401 Review Board Established

This section provides that an individual who is denied certification or recertification or has his or her engineer certification revoked, and believes that a railroad incorrectly determined that he or she failed to meet the “qualification” requirements of part 240, may petition FRA to review the railroad’s decision. FRA is amending this section to delegate initial responsibility for adjudicating denial of locomotive engineer certification or recertification and revocation disputes to FRA’s OCRB. Accordingly, the Locomotive Engineer Review Board (LERB), which previously had this responsibility, will merge into the OCRB, which also has the responsibility for adjudicating denial of conductor certification or recertification and revocation disputes.

Labor Commenters requested that FRA “provide confirmation that (1) the Review Board will be comprised of an odd number of senior FRA staff members with pertinent experience, and (2) the number of Review Board members will be provided by FRA order.” Labor Commenters made this request while acknowledging FRA’s position, as stated in the NPRM, that the number of board members is an issue of internal agency organization, procedure, or practice that is normally left for an agency to decide. Such internal agency decisions are authorized even if made

²⁵ Contractors and Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more are required to submit their Part 243 programs by May 1, 2021. 85 FR 10 (Jan. 2, 2020).

²⁶ See 84 FR at 20482–83.

²⁷ See 84 FR at 20487–89.

²⁸ See 84 FR at 20490–94.

²⁴ 84 FR at 20482–83.

without notice to the public. *See* 5 U.S.C. 553(b)(3)(A). Accordingly, FRA declines to adopt the Labor Commenters' specific suggestions in this final rule. The revisions to § 240.401 make the section the same as the corresponding section in part 242 (§ 242.501). The revisions do not, however, change FRA's right to use any number of FRA employees as OCRB members, in coordination with Agency resources and priorities.

Section 240.403 Petition Requirements

This section provides the requirements for obtaining FRA review of a railroad's decision to deny certification, deny recertification, or revoke an individual's locomotive engineer certification. FRA is revising this section to make it the same as the corresponding provision in part 242 (§ 242.503). The final rule will provide a single process for aggrieved parties to submit FRA locomotive engineer petitions under part 240 and conductor certification petitions under part 242.

FRA is revising paragraph (b) so that a person filing a petition under part 240 will need to file the same information and documentation that is required under part 242. The final rule is different than the NPRM in that FRA did not propose revisions to paragraph (b)(5) or (6). Existing paragraph (b)(5) requires that a petitioner provide a copy of all written documents in the petitioner's possession that document the railroad's decision that is being challenged. FRA is revising paragraph (b)(5) to add that a petitioner is required to provide a copy of all written documents that are reasonably available to the petitioner that document the railroad's decision. Without a complete record, the OCRB may not be able to determine whether a railroad's decision was improper. FRA wants petitioners to request a complete copy of the documents the railroad used in making its decision and, by revising this requirement, FRA is requiring petitioners to request a copy of any documents from the investigative hearing or railroad's denial decision that were not provided to them voluntarily. However, FRA recognizes that a petitioner cannot provide the OCRB with documents that the railroad refuses to provide. In that case, when a petitioner requests documents from a railroad and is denied those documents, the petitioner should explain that situation in the petition and provide the Board with any corroborating documents to substantiate that claim. Paragraph (b)(6) is the same, existing requirement, but an "and" was added to the end because it is no longer the last

item in the list of paragraph (b)'s petition requirements.

FRA is revising paragraph (c) to require that a petition for review of a railroad's revocation or denial decision be filed with FRA within 120 days of the date the railroad serves the decision on the petitioner. This revision will make this provision of part 240 the same as the corresponding provision in part 242 (*see* § 242.503(c)). The labor organizations' comment requests that FRA not reduce the time limit for petitioning FRA on a railroad's denial of certification or recertification from 180 days to 120 days. The labor organizations' comment contends that the longer period is appropriate because it is often difficult to obtain a complete record. FRA does not agree with this comment for several reasons. FRA believes that 120 days is itself a significant period for an aggrieved locomotive engineer or locomotive engineer candidate to consider whether to request FRA review and submit necessary supporting materials. Part 242 has always imposed this 120-day time limit and FRA has not previously heard that the time limit is too short. To the extent a party finds it difficult to obtain the decision record from the railroad, FRA offers that the party may file its petition with any documents it has and add a description in the petition of the missing documents. FRA expects each railroad to submit any missing evidence it relied on in making its denial decision, even if the railroad chooses not to submit an argument in response to the petition. By making FRA aware of missing documents, the OCRB can follow up as appropriate. Further, although the regulatory text plainly describes the different deadlines for petitioning FRA to review a railroad's decision to deny certification or recertification and to review a railroad's decision to revoke certification, some locomotive engineers and their representatives have claimed the different deadlines have confused them into filing a late petition, believing the deadline to be within 180 days of a railroad's revocation decision instead of the required 120 days. The final rule amendment will eliminate any such confusion.

Section 240.405 Processing Certification Review Petitions

FRA is revising this section, which details how petitions for review will be handled by FRA, to make it the same as the corresponding provision in part 242 (§ 242.505). FRA received comments on this section, some of which are addressed in the discussion of specific comments and conclusions, above, in

the section addressing issues beyond the scope of this rulemaking.²⁹ Two comments and one additional revision are addressed below.

FRA received a comment from AAR and ASLRRRA objecting to proposed § 240.405(d)(2) requiring service of a copy of a railroad's response to an OCRB petition on petitioner's representative, if any. The AAR and ASLRRRA suggest that this revision would establish a new burden because the change would require railroads to track down and provide service to the person's representative at the railroad's on-the-property hearing even if that is not the same person who assisted the individual in filing an OCRB petition. FRA believes the commenters misunderstood the proposal. FRA never intended the proposal to be construed as requiring service on a representative that no longer appears to be representing the person. FRA's reference to service on petitioner's representative, if any, is a reference to any representative identified in the petition. FRA is aware that some petitioners file a petition without identifying a representative in the petition. When that happens, this final rule will only require the railroad to serve the petitioner with a copy of the railroad's response.

FRA received a comment from labor organizations objecting to proposed § 240.405(l) because, unlike the rule for the LERB, the proposal did not include the requirement that every OCRB decision contain findings of fact on which the decision is based. In the NPRM, FRA explained that removal of the requirement is necessary because issuing findings of fact may not be appropriate for, or relevant to, some decisions. The revision also conforms to the OCRB's requirement in § 242.505(l). FRA notes that the labor organizations' comment recommends amending the regulation by providing flexibility to the OCRB to exclude findings of fact "where such findings are not appropriate or relevant," which also seems to result in the same outcome. For these reasons, FRA is issuing the final rule as proposed.

FRA is revising proposed § 240.405(i) to clarify the OCRB's standard of review for procedural issues. The final rule will require that when considering procedural issues, the Board will determine whether the petitioner suffered substantial harm that was caused by the failure to adhere to the dictated procedures for making the railroad's decision. The restated standard uses active voice and removes the passive voice language that similarly

²⁹ *See* Section II.F.

explained that the Board will determine whether substantial harm was caused by the petitioner by the railroad's failure to adhere to the dictated procedures. Although the Board will apply the revised standard in the same way as before, the final rule is expected to help the parties better understand the standard.

Section 240.411 Appeals

FRA is amending paragraphs (a) and (f) so that the instructions for appealing to the Administrator are the same in both parts 240 and 242 (§ 242.511). In the NPRM, FRA proposed to revise this section so that an aggrieved party requesting an appeal to the Administrator would file a copy of the appeal with the Administrator in addition to filing a copy in the docket.³⁰ Although no comments were received regarding this section, FRA is revising the filing requirements so that an aggrieved party will only need to file one copy of an appeal with FRA, instead of the proposed two copies. With the elimination of paper dockets, it is much easier for FRA to know when a document is added to an existing docket. Parties that are filing an appeal, whether under paragraph (a) or (f), would already have a docket number and would be expected to know how to file a document, as they would have already filed at least once, and probably several times, in that same docket kept electronically at www.regulations.gov. Rather than revising this section to require a party to file with FRA in two different places, FRA is amending both parts 240 and 242 so that an aggrieved party needs to file its appeal only in the electronic, public docket.

Appendix A

In the NPRM, FRA stated that it would likely need to make corresponding changes in the final rule to appendix A to part 240 (appendix A), which then contained the schedule of civil penalties for violations of part 240. Meanwhile, as published on May 23, 2019, FRA removed and reserved appendix A, as FRA moved all its schedules of civil penalties from the CFR to FRA's website.³¹ Thus, there is no need to amend appendix A and it will remain reserved.

Nonetheless, FRA will modify the schedule of civil penalties on its website at www.railroads.dot.gov as necessary to reflect the requirements of the final rule. Because such penalty schedules are statements of agency policy, notice and comment are not required before their

issuance.³² In addition, FRA invited but did not receive any comments on the civil penalties for violations of part 240.

Appendix B

As explained in the NPRM, appendix B to part 240 (appendix B) provides both the organizational requirements and a narrative description of the submission required under §§ 240.101 and 240.103. FRA is updating job titles and clarifying requirements in appendix B. In the NPRM, FRA proposed revising appendix B to provide railroads with the option to file their part 240 program submissions electronically by adopting language from part 242's appendix B. As a matter of agency policy or procedure, FRA decided that the certification program submission process could be further streamlined. FRA accomplished this streamlining by adding an email address for direct electronic submission of a railroad's engineer certification program. There is no secure website for uploading a railroad submission, so FRA eliminated the proposed language in the appendix requesting information to set up a secure account for such a submission. Email is the primary method of railroad submission, and the publication of FRA's email address for such submission should make the submission process easier for each railroad that must submit. Although FRA is not making similar conforming changes to part 242's appendix B, FRA revised § 242.103 to provide the same email address and submission information for conductor certification programs as for locomotive engineer certification programs in revised § 240.103. Therefore, under both rules, railroad submission of certification programs should primarily be completed by email, without regard to the size of the paper or the need to mail FRA contact information to arrange for electronic submission.

Two comments recommending specific changes to appendix B are discussed below. FRA is revising appendix B based on one of the comments. Otherwise, the analysis provided in the NPRM is applicable.³³

FRA received a comment from AAR and ASLRRR objecting to the proposed revision requiring a railroad to comply with requirements for training organizations or learning institutions in § 243.111 of this chapter if the railroad were to train another railroad's employees. The comment refers specifically to the proposed language for amending appendix B, "Section 5 of the Submission: Training, Testing, and

Evaluating Persons Not Previously Certified."³⁴ In appendix B, Section 5, FRA proposed that a railroad that plans to accept responsibility for the initial training of locomotive engineers may authorize another railroad or a non-railroad entity to perform the actual training effort if the other entity complies with the requirements for training organizations and learning institutions in § 243.111 of this chapter. The comment suggests that many small railroads work together when training their employees and may, for example, allow one railroad to conduct an operating rules class for the employees of multiple railroads. FRA is also aware that some railroads, especially Class I railroads, have robust training programs administered at specific training centers that could potentially accommodate appropriate training for employees of other railroads. The railroad associations indicate the revision would result in a new burden that could create inefficiencies and costs, and thereby adversely affect safety. After considering the comment, FRA has removed the reference equating a railroad that is not training its own employees with a training organization or learning institution. FRA believes that while these entities may share some common features, a railroad that has an approved training program is not a training organization or learning institution, and therefore does not have an obligation to comply with 49 CFR 243.111. FRA will nonetheless continue to monitor the practice of unaffiliated railroads providing training for any other railroad's employees, to help ensure the appropriateness of such training.

FRA received a comment from the labor organizations requesting that FRA revise appendix B to underscore that a railroad's certification program should explain, in detail, how its OJT program ensures training on the manual dexterity, cognitive ability, and human-machine interface skills necessary to be considered qualified. Appendix B, "Section 3 of the Submission: Training Persons Previously Certified," mentions OJT in a list of the type of formal training necessary for effective evaluation of a railroad's training program. FRA expects the program to include the subject matter covered, the frequency and duration of the training sessions, and the type of formal training employed, as well as specify which aspects of the program are voluntary or mandatory. Testing each certified person or candidate is required to determine whether the person is qualified to do the work, and passing

³⁰ 84 FR at 20493–94.

³¹ 84 FR 23730.

³² 5 U.S.C. 553(b)(3)(A).

³³ See 84 FR at 20494.

³⁴ 84 FR at 20518.

such training is proof that the person's training is effective. FRA does not believe a person would be able to pass operational monitoring or skill performance testing without having all the skills the labor organizations mention in their comment as necessary. In addition, FRA believes that manual dexterity and cognitive ability may be difficult to measure, train, or test; thus, adding them as necessary requirements could be correspondingly difficult for railroads to implement. For these reasons, FRA is not revising appendix B in response to this comment.

Part 242

Section 242.7 Definitions

FRA is amending the definition of "main track" after discovering a technical error while addressing a comment on the text in an identical provision in part 240. FRA recognizes that it did not explain the inclusion of PTC as a method of operation in the part 242 rulemaking notices. Upon further review, FRA agrees with Railroad Commenters that PTC is not a method of operation but rather is a technology that helps enforce compliance with a railroad's method(s) governing train operations. For this reason, FRA is removing the reference to PTC, as defined in 49 CFR part 236, to correct the technical error.

FRA is amending the definition of "Substance abuse disorder" so that the locomotive engineer and conductor certification rules use the same language. In the NPRM, FRA proposed that part 240 conform to the definition in part 242. After the NPRM's publication, FRA decided that the definition in part 242 is improved by moving the word "successfully" in both places it is found in the definition without changing its meaning.

Section 242.103 Approval of Design of Individual Railroad Programs by FRA

FRA is making technical amendments to § 242.103 so that the locomotive engineer and conductor certification rules use the same language. For example, FRA is revising paragraph (b) so that, like § 240.103(a), both rules reference that the primary method for a railroad to submit its certification programs is by email to FRAOPCERTPROG@dot.gov. FRA is also clarifying that mailing will remain an option, although FRA expects that option will be exercised only by those smaller railroads that do not have internet access suitable for emailing the program.

The NPRM proposed certain requirements found in this section for

adoption in § 240.103. However, as FRA described above in the analysis for § 240.103(b) and (c), some minor changes were made to improve the clarity of the proposed requirements to the locomotive engineer rule and FRA is making technical amendments to the conductor rule so the two certification rules contain the same requirements. For instance, FRA is revising paragraphs (c) and (d) of this section to require railroads to provide a copy of their program submissions, resubmissions, and material modifications to the president of each labor organization that represents the railroad's certified conductors, rather than serve a copy. FRA is finalizing this change to part 242 because the term "serve or service," which is defined in this part, refers to the legal issue of service of process during adjudication and the exchange of certification programs and comments to those certification programs are not adjudicatory matters. Thus, FRA is revising these requirements to reflect that each railroad and labor organization president must provide, not serve, its documents to each other, and affirm to FRA that it has done so, without the need to abide by strict legal rules for service of process. FRA is not specifying the methods that a railroad or president of a labor organization must use to provide documents to the other party as FRA expects each party to use those methods it uses in the normal course of business with each other. Also, FRA is adding an email address to make it easier for parties to submit programs or comments to programs. Finally, although part 242 required that each railroad affirm that it provided a copy of its program to the president of each labor organization that represents the railroad's employees subject to this part, the labor organization presidents were required to certify that they sent their comment to the railroad; hence, for consistency, FRA is requiring that both parties affirm they provided the other party with a copy of the documents they submit to FRA under this requirement.

Section 242.117 Vision and Hearing Acuity

FRA is amending paragraph (g) to remove an unnecessary heading, "[f]itness requirement." FRA discovered the technical error in preparing the final rule, and this correction makes the conductor rule consistent with an identical change to the locomotive engineer rule.

FRA is amending paragraph (h)(3) to correct the reference from appendix E to appendix D to this part. FRA discovered the technical error in preparing the final rule, and this correction makes the

reference to appendix D consistent with the other references to appendix D in this section.

FRA is amending paragraph (i)(3) for consistency with corresponding changes to 49 CFR 240.121(d). Section 242.117(i)(3) referenced the 2004 version of the ANSI calibration standard for audiometric devices (ANSI S3.6–2004, "Specifications for Audiometers") whereas 49 CFR 240.121(d) cited the 1969 version of that standard. See the discussion of 49 CFR 240.121(d) in the Section-by-Section Analysis, above. Further, ANSI revised this standard in 2018 and FRA expects ANSI will continue to revise the standard in the future. The audiometers covered by the ANSI standard are devices designed for use in determining the hearing threshold level of an individual in comparison with a selected hearing threshold level for reference. The ANSI standard provides specifications and tolerances for pure tone, speech, and masking signals and describes the minimum test capabilities of different types of audiometers.

To make clear that audiometers are not subject to a single industry standard, versions of which may change with time, FRA is amending this paragraph to remove the specific citation to the 2004 version of ANSI S3.6 and instead provide for use of a formal industry standard, such as ANSI S3.6. This will allow a licensed or certified audiologist, or a technician responsible to that licensed or certified audiologist, the flexibility to use an audiometer calibrated to a formal industry standard, whether the standard is an older version of ANSI S3.6, a newer version of the standard, or a similar industry standard, whether or not issued by ANSI.

Section 242.213 Multiple Certifications

FRA is amending paragraph (e) to remove an unnecessary heading, "[p]assenger railroad operations," and is instead making clear in the rule text that this paragraph applies to passenger train operations. FRA discovered the technical error in preparing the final rule, and this correction makes the conductor rule consistent with its corresponding provision in the locomotive engineer rule.

Section 242.403 Criteria for Revoking Certification

FRA is revising § 242.403(d) to remove unnecessary introductory text. FRA is making a corresponding technical revision to § 240.117(d) to remove the same text. No substantive change is intended.

Section 242.503 Petition Requirements

FRA is revising § 242.503(c)(2) so that the locomotive engineer and conductor certification rules use the same language. The change reverses the phrase “timely file” to “file timely” to match the language in § 240.403(c)(2) without changing its meaning.

Section 242.505 Processing Certification Review Petitions

FRA is revising § 242.505(i) to clarify the OCRB’s standard of review for procedural issues and make the standard the same as in § 240.405(i). The final rule requires that, when considering procedural issues, the Board determines whether the petitioner suffered substantial harm that was caused by the failure to adhere to the dictated procedures for making the railroad’s decision. The restated standard uses active voice and removes the passive voice language that similarly explained that the Board will determine whether substantial harm was caused the petitioner by the railroad’s failure to adhere to the dictated procedures. Although the Board will apply the revised standard in the same way as before, the final rule is expected to help the parties better understand the standard.

FRA is also making certain technical revisions to this section. Specifically, FRA is revising paragraphs (h) through (k) to remove unnecessary introductory text and is revising paragraph (k) to replace the word “regulation” with “part.” These technical revisions do not affect the meaning of this section.

Section 242.511 Appeals

FRA is amending paragraphs (a) and (f) so that the instructions for appealing to the Administrator are the same in both parts 240 and 242. FRA is revising the filing requirements to eliminate the requirement for an aggrieved party to file two copies of an appeal rather than one. With the elimination of paper dockets, it is much easier for FRA to know when a document is added to an

existing docket. Parties that are filing an appeal, whether under paragraph (a) or (f), would already have a docket number and would be expected to know how to file a document, as they would have already filed at least once, and probably several times, in that same docket kept electronically at www.regulations.gov. Filing in the docket will be sufficient to notify FRA, and the final rule will eliminate the requirement to file a separate copy with the Administrator.

Appendix E to Part 242—Application of Revocable Events

FRA is amending appendix E to part 242 so that both part 240 and part 242 will contain the same table that explains, in spreadsheet-style form, when an individual certified as both an engineer and conductor will be permitted to work following a certification revocation. In the NPRM, FRA proposed adding the same table to part 240 that is found in appendix E to part 242, and designating it as new appendix G to part 240. However, in adding the table to part 240, FRA made slight changes to include some citations to the different periods of revocation that may be applied in part 240 when a locomotive engineer has a drug or alcohol violation, as only the conductor citations were in the part 242 version of the table. The table in appendix E to part 242 is expected to continue to be a useful reference, and this non-substantive revision will conform part 240 with part 242. FRA considered not revising appendix E to part 242 but was concerned that any differences between the two appendices might lead to confusion. The appendices are intended to be identical, insofar as practical, to promote proper understanding and application of both regulations.

IV. Regulatory Impact and Notices

A. Executive Orders 12866 and 13771 and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action and has been

evaluated in accordance with existing policies and procedures under E.O. 12866 and DOT’s Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5. The rule is non-significant under the policies and procedures of E.O. 12866 and under DOT’s Rulemaking Procedures. This final rule is also an E.O. 13771 deregulatory action.

The primary purpose of the final rule is to reduce the differences between FRA’s two operating crew certification regulations and to make engineer certification more efficient. Some of the amendments address the part 240 certification review and program submission processes. Other changes reduce the burden on the regulated community by addressing compliance difficulties noted through experience enforcing part 240. Further, some changes codify longstanding agency interpretations of whether a railroad or individual meets and maintains compliance with part 240 requirements.

FRA has prepared and placed in the docket (Docket No. FRA–2018–0053) a regulatory evaluation. The regulatory evaluation details estimated costs and costs savings that railroads subject to the final rule are likely to incur over a twenty-year period. The table below summarizes the costs, cost savings, and net cost savings estimated to come from issuing the final rule. For the 20-year period of analysis, the cost of the final rule will be \$233,779 (undiscounted), \$171,764 (PV 7%), and \$200,775 (PV 3%). The total cost savings of the final rule over 20 years will be \$12.3 million (undiscounted), \$6.9 million (PV 7%), and \$9.4 million (PV 3%). For the 20-year period of analysis, the final rule will result in a net cost savings of \$12.0 million (undiscounted), \$6.8 million (PV 7%), and \$9.2 million (PV 3%).

TABLE 1—SUMMARY OF THE FINAL RULE’S TOTAL NEW COSTS, TOTAL COST SAVINGS, NET COST SAVINGS (TWENTY-YEAR PERIOD), PV 7 PERCENT AND PV 3 PERCENT

Cost of proposed rule	Undiscounted	Present value 7%	Annualized 7%	Present value 3%	Annualized 3%
New Costs:					
Review amendments	\$118,383	\$110,638	\$10,443	\$114,935	\$7,725
Provide a copy of part 240 plan to labor organization	2,263	1,199	113	1,683	5,657
Maintain service records	113,133	59,927	5,657	84,157	5,657
Total new costs	233,779	171,764	16,213	200,775	19,039
Cost Savings:					
Conforming part 240 to part 242	11,838,340	6,709,732	633,351	9,070,417	609,675
Former employee paperwork	113,133	59,927	5,657	84,157	5,657
Petition submission process	109,620	58,066	5,481	81,543	5,481

TABLE 1—SUMMARY OF THE FINAL RULE’S TOTAL NEW COSTS, TOTAL COST SAVINGS, NET COST SAVINGS (TWENTY-YEAR PERIOD), PV 7 PERCENT AND PV 3 PERCENT—Continued

Cost of proposed rule	Undiscounted	Present value 7%	Annualized 7%	Present value 3%	Annualized 3%
Plan submission process	6,800	3,602	340	5,058	340
Government cost savings	92,448	48,970	4,622	60,933	4,096
Removing waiver requirement	113,133	59,927	5,657	84,157	5,657
Total cost savings	12,273,475	6,940,223	655,108	9,386,266	630,904
Net Cost Savings	12,039,696	6,768,459	638,895	9,185,491	611,866

The final rule will create benefits, though FRA did not monetize them. Some non-quantifiable benefits include: affording railroads additional time and flexibility to comply with some regulatory requirements, and creating certain provisions that allow for temporary locomotive engineer certificates. For example, the amendments to § 240.103 will afford railroads an additional 30 days, increasing from 30 days to 60 days, for a railroad to submit a description of its intended material modification to its part 240 plan. This additional time to respond to FRA amounts to an unquantified benefit to the railroad. In addition, the amendments to § 240.115 will allow for a temporary certification lasting 60 days for individuals who have properly requested motor vehicle operator information needed to certify or recertify as a locomotive engineer. Such temporary certifications amount to an unquantified benefit to workers and railroads. That is, under the amendments to § 240.115, workers may begin work as locomotive engineers sooner and railroads will have available a larger pool of workers who will be qualified to work as locomotive engineers.

The regulatory evaluation compares the final rule’s costs and benefits, and estimates the final rule will be cost beneficial because the rule is expected to provide net cost savings and benefits.

B. Regulatory Flexibility Act and Executive Order 13272; Regulatory Flexibility Certification

The final rule will impact 741 railroads of which 93 percent (690) are small entities. Therefore, FRA has determined that this final rule will have an impact on a substantial number of small entities.

However, FRA has determined that the impact on entities affected by the final rule will not be significant as the final rule is deregulatory. Therefore, the impact on entities will be positive, taking the form of costs savings that are greater than any new costs imposed on the entities.

For the railroad industry over a 20-year period, FRA estimates that issuing the final rule will result in new costs of \$171,764 (PV 7%) and \$200,775 (PV 3%). Based on information currently available, FRA estimates that \$97,905 (PV 7%) and \$114,442 (PV 3%) of the total costs associated with implementing the final rule will be

borne by small entities. Therefore, less than 60 percent of the final rule’s total cost will be borne by small businesses. In addition, FRA estimates that the final rule will result in cost savings over 20 years of \$6.9 million (PV 7%), and \$9.4 million (PV 3%). For the 20-year period of analysis, the final rule will result in a net cost savings of \$12.0 million (undiscounted), \$6.8 million (PV 7%), and \$9.2 million (PV 3%). FRA expects that small entities will accrue 94 percent of the cost savings associated with implementing the final rule.

Thus, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.³⁵ The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section ³⁶	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent ³⁷
240.9—Waivers	741 railroads	2 waiver petitions	1 hour	2	\$152
240.101/103—Certification program: Written program for certifying qualifications of locomotive engineers—amendments.	741 railroads	25 amendments	5 minutes	2	152
—Certification programs for new railroads	5 new railroads	5 programs	1 hour	5	380
—Final review and submission of certification programs for new railroads.	5 new railroads	5 reviews	1 hour	5	380
(b)(1)—RR provision of copy of certification program submission or resubmission to president of each labor union representing employees simultaneously with filing with FRA (See footnote 36).	62 railroads	62 copies	5 minutes	5	380
(b)(2)—RR affirmative statement that it has served certification program copy to each labor union president (See footnote 36).	62 railroads	62 copies	5 minutes	5	380
(c)—RR employee comment on submission, resubmission or material modification of RR certification program (See footnote 36).	62 railroads	62 comments	8 hours	496	37,696

³⁵ 44 U.S.C. 3501 *et seq.*

³⁶ The revisions to the estimates under OMB control number 2130–0533 are due to adding conforming language in Part 240 to Part 242. Also,

burden requirements under § 240.308 are covered under OMB control number 2130–0544 (§ 242.213).

³⁷ Throughout the tables in this document, the dollar equivalent cost is derived from the Surface

Transportation Board’s Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

CFR section ³⁶	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent ³⁷
(h)—RR material modifications to program after initial FRA approval (formerly under (e)).	741 railroads	10 modified programs ...	10 minutes	2	152
240.105(b)—(c) Written reports/determinations of DSLE performance skills.	741 railroads	10 reports	30 minutes	5	575
240.109/App. C—Prior safety conduct	17,667 candidates	25 responses	5 minutes	2	116
240.111/App. C—Driver's license data requests from chief of driver licensing agency of any jurisdiction, including foreign countries.	17,667 candidates	17,667 requests	10 minutes	2,945	223,820
—NDR match—notifications and requests for data.	741 railroads	177 notices + 177 requests.	5 mins + 5 mins	30	2,010
—Written response from candidate on driver's license data.	741 railroads	20 cases/comments	10 minutes	3	174
240.111(g)—Notice to RR of absence of license ..	53,000 candidates	4 letters	5 minutes	0.3	19
240.111(h)—Duty to furnish data on prior safety conduct as motor vehicle operator.	741 railroads	100 communications	5 minutes	8	464
240.113—Duty to furnish data on prior safety conduct as an employee of a different RR.	17,667 candidates	353 requests + 353 responses.	5 mins + 5 mins	59	4,130
240.115(d)—RR temporary certification or recertification of locomotive engineer for 60 days after having requested the motor vehicle information specified in paragraph (h) of this section (See footnote 36).	741 railroads	25 recertifications	5 minutes	2	152
(i)(2)—RR drug and alcohol counselor request of employee's record of prior counseling or treatment (See footnote 36).	17,667 candidates	200 requests + 200 records.	5 minutes	33	1,914
(i)(3)—Conditional certification based on recommendation by DAC of employee aftercare and/or follow-up testing for alcohol/drugs (See footnote 36).	17,667 candidates	100 conditional certifications/DAC recommendations.	1 hour	100	5,800
(i)(4)—RR employee evaluation by DAC as having an active substance abuse disorder (See footnote 36).	17,667 candidates	100 DAC evaluations	1 hour	100	5,800
240.117(i)(4)—RR employee completion of training/retraining prior to return to service—records (See footnote 36).	53,000 locomotive engineers.	400 trained/retrained records.	5 minutes	33	1,914
240.119(c)—Written records indicating dates that the engineer stopped performing or returned to certification service + compliance/observation test (See footnote 36).	741 railroads	400 records	5 minutes	33	1,914
240.119(d)—Self-referral to EAP re: Active substance abuse disorder.	53,000 locomotive engineers.	150 self-referrals	5 minutes	13	754
240.119(e)(3)(ii)—RR notification to person that recertification has been denied or revoked (See footnote 36).	741 railroads	200 notifications	30 minutes	100	5,800
240.119(e)(4)(iii)—Locomotive engineer waiver of investigation in case of one violation of §219.101 (See footnote 36).	53,000 locomotive engineers.	200 waivers	2 minutes	7	406
240.121—Criteria—vision/hearing acuity data—new railroads.	5 railroads	5 copies	5 minutes	0.4	32
—Conditioned certification	741 railroads	5 reports	5 minutes	0.4	48
—Not meeting standards—Notice by employee.	741 railroads	10 notifications	15 minutes	3	174
240.129(b)—RR documents on file regarding determination made regarding fitness, including DAC written document (See footnote 36).	53,000 locomotive engineers.	1,000 records	5 hours	83	6,308
240.201/221—List of qualified DSLEs	741 railroads	741 updates	5 minutes	62	4,712
—List of qualified loco. engineers	741 railroads	741 updated lists	5 minutes	62	4,712
240.201/223/301—Loco. engineer certificates	53,000 candidates	17,667 certificates	5 minutes	1,472	111,872
240.207—Medical certificate showing hearing/vision standards are met:	53,000 candidates	17,667 certificates	30 minutes	8,834	1,015,910
—Written determinations waiving use of corrective device.	741 railroads	30 determinations	5 minutes	3	345
240.219(a)—RR notification letter to employee of certification denial + employee written rebuttal (See footnote 36).	17,667 candidates	45 letters + 45 responses.	30 minutes	45	3,420
—RR notice/written documents/records to candidate that support its pending denial decision (See footnote 36).	741 railroads	45 documents/records ..	2 minutes	2	152
240.229—Joint operations—notice—not qualified	321 railroads	184 employee calls	5 minutes	15	870
240.301(b)—Temporary replacement certificates valid for no more than 30 days (See footnote 36).	741 railroads	600 replacement certificates.	30 minutes	300	22,800
(c)—Engineer's notice of non-qualification to RR.	53,000 engineers or candidates.	100 notifications	5 minutes	8	464
(d)—Relaying certification denial or revocation status to other certifying railroad.	1,060 engineers	2 letters	15 minutes	1 hour	58
240.307(a-b)—Notice to engineer of disqualification.	741 railroads	1,100 letters	1 hour	1,100	73,700
240.307(b)(4)—RR provision to employee of copy of written information and list of witnesses that it will present at hearing (See footnote 36).	741 railroads	690 copies/list	5 minutes	58	4,408

CFR section ³⁶	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent ³⁷
240.307(b)(5)—RR determination on hearing record whether person no longer meets certification requirements of part 240 (See footnote 36).	741 railroads	690 hearing determinations.	1 hour	690	52,440
240.307(c)(11)(i)(ii)—RR written decision after close of hearing containing findings of fact & whether a revocable event occurred (See footnote 36).	741 railroads	690 written decisions	30 minutes	345	26,220
240.307(c)(11)(iii)—RR service of written decision on employee and employee's representative (See footnote 36).	741 railroads	690 copies	5 minutes	58	4,408
240.307(f)—Person's waiver of right to hearing under this section (See footnote 36).	741 railroads	750 written waivers	5 minutes	63	3,654
240.307(j)—RR update of record with relevant information (See footnote 36).	741 railroads	50 updated records	10 minutes	8	608
240.309—RR oversight resp.: Detected poor safety conduct—annotation.	15 railroads	6 annotations	15 minutes	2	116
—Railroad annual review	51 railroads	51 reviews	3	153	11,628
Recordkeeping					
240.205—Data to EAP counselor	741 railroads	177 records	5 minutes	15	1,725
240.209/213—Written tests	53,000 candidates	17,667 testing record retention.	1 minute	294	22,344
240.211/213—Performance test	53,000 candidates	17,667 testing record retention.	1 minute	294	22,344
240.215—Retaining info. supporting determination	741 railroads	17,667 records	5 minutes	1,472	111,872
240.303—Annual operational monitoring observation.	53,000 candidates	53,000 testing record retention.	1 minute	883	67,108
240.303—Annual operating rules compliance test	53,000 candidates	53,000 testing record retention.	1 minute	883	67,108
240.307(b)(4)—RR hearings/hearing records (See footnote 36).	741 railroads	690 hearings/records	4 hours	2,760	209,760
Total	741 railroads	224,566 responses	N/A	23,964	2,146,751

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Federal Railroad Administration, at 202-493-0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells via email at Hodan.Wells@dot.gov.

OMB must 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 part 240 is 2130-0533.

D. Federalism Implications

Executive Order 13132, “Federalism,” ³⁸ 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 having “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local

officials in the process of developing the regulation.

FRA has analyzed this final rule under the principles and criteria contained in Executive Order 13132. FRA has determined this final rule will not have a substantial direct effect on the States or their political subdivisions; on the relationship between the Federal Government and the States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined this final rule does not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This final rule could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106 (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters),

³⁸ 64 FR 43255, Aug. 10, 1999.

except when the State law, regulation, or order qualifies under the “essentially local safety or security hazard” exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act³⁹ (NEPA), the Council of Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA’s NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. 40 CFR 1508.4. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), “[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not

result in significantly increased emissions of air or water pollutants or noise.”

The purpose of this rulemaking is to make FRA’s regulation governing the qualification and certification of locomotive engineers consistent with its regulation for the qualification and certification of conductors. 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. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.⁴⁰ FRA has concluded that no such unusual circumstances exist with respect to this regulation and the final rule 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.⁴¹ FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).⁴²

G. 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)⁴³ require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and has determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

⁴⁰ 23 CFR 771.116(b).

⁴¹ See 16 U.S.C. 470.

⁴² See Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

⁴³ 91 FR 27534 (May 10, 2012).

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,⁴⁴ each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 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 (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”⁴⁵ FRA has evaluated this final rule under Executive Order 13211 and determined that this rule is not a “significant energy action” within the meaning of Executive Order 13211.

Executive Order 13783 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.⁴⁶ FRA has evaluated this final rule under Executive Order 13783 and determined that this rule will not burden the development or use of domestically produced energy resources.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

⁴⁴ Public Law 104–4, 2 U.S.C. 1531.

⁴⁵ 66 FR 28355 (May 22, 2001).

⁴⁶ 82 FR 16093 (Mar. 31, 2017).

³⁹ 42 U.S.C. 4321 *et seq.*

49 CFR Part 240

Administrative practice and procedure, Locomotive engineer, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Conductor, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends parts 219, 240, and 242 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

- 1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Div. A, Pub. L. 110–432, 122 Stat. 4889 (49 U.S.C. 20140, note) and 49 CFR 1.89.

- 2. Section 219.25 is amended by revising paragraph (b) to read as follows:

§ 219.25 Previous employer drug and alcohol checks.

* * * * *

(b) When determining whether a person may become or remain certified as a locomotive engineer or a conductor, a railroad must comply with the requirements in § 240.119(e) (for engineers) or § 242.115(e) (for conductors) of this chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months before the review of the person's records.

- 3. Section 219.1003 is amended by revising paragraph (j) to read as follows:

§ 219.1003 Referral program conditions.

* * * * *

(j) *Locomotive engineers and conductors.* Consistent with §§ 240.119(g) and 242.115(g) of this chapter, for a certified locomotive engineer, certified conductor, or a candidate for engineer or conductor certification, the referral program must state that confidentiality is waived (to the extent the railroad receives from a DAC official notice of the active drug abuse disorder and suspends or revokes the certification, as appropriate) if the employee at any time refuses to

cooperate in a recommended course of counseling or treatment.

* * * * *

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

- 4. The authority citation for part 240 is revised to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*; 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

- 5. Section 240.1 is amended by revising paragraph (c) to read as follows:

§ 240.1 Purpose and scope.

* * * * *

(c) The locomotive engineer certification requirements prescribed in this part apply to any person who meets the definition of locomotive engineer contained in § 240.7, regardless of the fact that the person may have a job classification title other than that of locomotive engineer.

- 6. Section 240.3 is revised to read as follows:

§ 240.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

- (1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 240.7);
- (2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 240.7; or
- (3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

- 7. Section 240.5 is revised to read as follows:

§ 240.5 Effect and construction.

(a) FRA does not intend, by use of the term locomotive engineer in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person authorized by a railroad to operate a locomotive.

(b) FRA does not intend by issuance of these regulations to alter the authority of a railroad to initiate disciplinary

sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 240.308, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

- 8. Section 240.7 is amended by:
- a. Adding in alphabetical order definitions for “Conductor” and “Drug and alcohol counselor”;

- b. Removing the definition of “EAP counselor”;

- c. Revising the definitions of “File, filed and filing” and “FRA Representative”;

- d. Adding in alphabetical order a definition for “Ineligible or ineligibility”;

- e. Revising the definitions of “Instructor engineer” and “Medical examiner”;

- f. Removing the definition of “Newly hired employee”;

- g. Adding in alphabetical order definitions for “On-the-job training (OJT),” “Physical characteristics,” and “Plant railroad”;

- h. Revising the definitions of “Qualified” and “Railroad rolling stock”;

- i. Adding in alphabetical order a definition for “Serve or service”;

- j. Removing the definition of “Service”;

- k. Revising the definition of “Substance abuse disorder”; and

- l. Adding in alphabetical order definitions for “Substance Abuse Professional,” “Territorial qualifications,” and “Tourist, scenic, historic, or excursion operations that are not part of the general system of transportation.”

The additions and revisions read as follows:

§ 240.7 Definitions.

* * * * *

Conductor means the crewmember in charge of a “train or yard crew” as defined in part 218 of this chapter.

* * * * *

Drug and alcohol counselor (DAC) means a person who meets the credentialing and qualification requirements of a "Substance Abuse Professional" (SAP), as provided in 49 CFR part 40.

File, filed and filing mean submission of a document under this part on the date when the DOT Docket Clerk or FRA receives it, or if sent by mail, the date mailing was completed.

FRA Representative means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified State railroad safety inspector acting under part 212 of this chapter.

Ineligible or ineligibility means that a person is legally disqualified from serving as a certified locomotive engineer. The term covers a number of circumstances in which a person may not serve as a certified locomotive engineer. Revocation of certification pursuant to § 240.307 and denial of certification pursuant to § 240.219 are two examples in which a person would be ineligible to serve as a certified locomotive engineer. A period of ineligibility may end when a condition or conditions are met. For example, a period of ineligibility may end when a person meets the conditions to serve as a certified locomotive engineer following an alcohol or drug violation pursuant to § 240.119.

Instructor engineer, as used in this part:

(1) Means a person who has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary operating experience to instruct effectively in the field, and has the following qualifications:

- (i) Is a certified locomotive engineer under this part; and
- (ii) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present, to teach others proper train handling procedures; or
- (iii) In absence of concurrence provided in paragraph (1)(ii) of this definition, has a minimum of 12 months service working in the class of service for which the person is designated to instruct.

(2) If a railroad does not have designated employee representation, then a person employed by the railroad

need not comply with paragraph (1)(ii) or (iii) of this definition to be an instructor engineer.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified, full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an employee.

On-the-job training (OJT) means job training that occurs in the workplace, *i.e.*, the employee learns the job while doing the job.

Physical characteristics means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. *Physical characteristics* includes both main track physical characteristics (*see* definition of "main track" in this section) and other than main track physical characteristics.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means a person who has successfully completed all instruction, training and examination programs required by the employer and the applicable parts of this chapter, and that the person therefore may reasonably be expected to be proficient on all safety-

related tasks the person is assigned to perform.

Railroad rolling stock is on-track equipment that is either a "railroad freight car" (as defined in § 215.5 of this chapter) or a "passenger car" (as defined in § 238.5 of this chapter).

Serve or service, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of "filing" in this section.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is "active" within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or has failed to complete primary treatment successfully or participate in aftercare successfully as directed by a DAC or SAP.

Substance Abuse Professional (SAP) means a person who meets the qualifications of a Substance Abuse Professional, as provided in part 40 of this title.

Territorial qualifications means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions, including familiarity with applicable main track and other than main track physical characteristics of the territory over which the locomotive or train movement will occur.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.*, there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

■ 9. Section 240.11 is amended by revising paragraph (d) to read as follows:

§ 240.11 Penalties and consequences for noncompliance.

* * * * *

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal rail safety laws.

■ 10. Section 240.103 is revised to read as follows:

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations. The primary method for a railroad's submission is by email to *FRAOPCERTPROG@dot.gov*. For those railroads that are unable to send the program by email, the program may be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) Each railroad shall:

(1) Simultaneous with its filing with FRA, provide a copy of the submission filed pursuant to paragraph (a) of this section, a resubmission filed pursuant to paragraph (f) of this section, or a material modification filed pursuant to paragraph (g) of this section to the president of each labor organization that represents the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) of this section, a resubmission filed pursuant to paragraph (f) of this section, or a material modification filed pursuant to paragraph (g) of this section a statement affirming that the railroad has provided a copy to the president of each labor organization that represents the railroad's employees subject to this part, together with a list of the names and addresses of persons provided a copy.

(c) Not later than 45 days from the date of filing a submission pursuant to paragraph (a) of this section, a resubmission pursuant to paragraph (f) of this section, or a material modification pursuant to paragraph (g) of this section, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement

of the interest of the commenter in the proceeding;

(2) Each comment shall be submitted by email to *FRAOPCERTPROG@dot.gov* or by mail to the Associate

Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590; and

(3) The commenter shall affirm that a copy of the comment was provided to the railroad.

(d) The submission required by paragraph (a) of this section shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to certify initially a person as an engineer in an appropriate class of service, or

(2) To recertify only engineers previously certified by other railroads.

(e) A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

(f) A railroad's program is considered approved and may be implemented 30 days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received so long as the railroad has complied with the requirements of paragraph (g) of this section.

(g) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms to this part.

(2) If the program does not conform, the railroad shall resubmit its program.

(h) A railroad that intends to modify materially its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this part at least

60 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The modification submission shall contain a description that conforms to the pertinent portion of the procedures contained in appendix B of this part.

(3) The modification submission will be handled in accordance with the procedures of paragraphs (b) and (c) of this section as though it were a new program.

■ 11. Section 240.105 is amended by adding paragraph (d) to read as follows:

§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.

* * * * *

(d) Each railroad is authorized to designate a person as a designated supervisor of locomotive engineers with additional conditions or operational restrictions on the service the person may perform.

■ 12. Section 240.107 is amended by revising the section heading to read as follows:

§ 240.107 Types of service.

* * * * *

■ 13. Section 240.111 is amended by revising paragraph (a)(2), revising and republishing paragraph (c), and revising paragraphs (d), (e), (f), and (h) to read as follows:

§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) * * *

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning his or her driving record available to that railroad.

* * * * *

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a State or foreign country, which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration,

1200 New Jersey Avenue SE, Washington, DC 20590 in accordance with the procedures contained in appendix C of this part unless the person's motor vehicle driving license was issued by a State or the District of Columbia.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies of a State or the District of Columbia, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) If advised by the railroad that a driver licensing agency or the National Highway Traffic Safety Administration has informed the railroad that additional information concerning that person's driving history may exist in the files of a State agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

* * * * *

(h) Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in § 240.115(h)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For purposes of this paragraph (h) and § 240.115(h), "State action" means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, or deny a motor vehicle driver's license.

■ 14. Section 240.113 is revised to read as follows:

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record pertaining to compliance or non-compliance with §§ 240.111, 240.117, and 240.119 to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) [Reserved]

■ 15. Section 240.115 is revised to read as follows:

§ 240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Except as provided in paragraphs (c) through (f) of this section, each railroad, prior to initially certifying or recertifying any person as a locomotive engineer for any type of service, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(c) A railroad shall initially certify a person as a locomotive engineer for 60 days if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 240.109.

(d) A railroad shall recertify a person as a locomotive engineer for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 240.109.

(e) Except as provided in paragraph (f) of this section, if a railroad which certified or recertified a person pursuant to paragraph (c) or (d) of this section does not obtain and evaluate the information required pursuant to paragraph (h) of this section within 60

days of the pertinent dates identified in paragraph (c) or (d) of this section, that person will be ineligible to perform as a locomotive engineer until the information can be evaluated.

(f) If a person requests the information required pursuant to paragraph (h) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person may petition for a waiver of the requirements of paragraph (b) of this section in accordance with the provisions of part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligibility requirements provided in § 240.109.

(g) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision or at a time other than that specifically provided for in § 240.111, § 240.117, § 240.119, or § 240.205.

(h) A railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; or

(2) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State or foreign law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(i) If such an incident is identified:

(1) The railroad shall provide the data to the railroad's DAC, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or

drugs deemed necessary by the DAC consistent with the technical standards specified in § 240.119(d)(3).

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 240.119(b) will apply.

(5) If the person fails to comply with the requirements of paragraph (i)(2) of this section, the person shall be ineligible to perform as a locomotive engineer until such time as the person complies with the requirements.

■ 16. Section 240.117 is amended by:

■ a. Revising paragraphs (a), (c)(1) and (3), (d), and (e)(5) and (6);

■ b. Adding paragraph (f)(4);

■ c. Revising paragraphs (g)(3)(i) and (ii);

■ d. Redesignating paragraph (h) as paragraph (i); and

■ e. Adding new paragraph (h).

The revisions and additions read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad shall adopt and comply with a program which meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

* * * * *

(c)(1) A certified locomotive engineer who has demonstrated a failure to comply with railroad rules and practices described in paragraph (e) of this section shall have his or her certification revoked.

* * * * *

(3) A certified locomotive engineer who is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer or conductor shall not have his or her certification revoked based on actions taken or not taken while performing that duty.

(d) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (5) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

(e) * * *

(5) Failure to comply with prohibitions against tampering with

locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D, and appendix C to part 218); or

(6) Incidents of noncompliance with § 219.101 of this chapter; however, such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of this section.

(f) * * *

(4) A railroad shall not be permitted to deny or revoke an employee's certification based upon additional conditions or operational restrictions imposed pursuant to § 240.107(d).

(g) * * *

(3) * * *

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (5) of this section, the person shall have his or her certificate revoked for a period of 30 calendar days.

(ii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (5) of this section, that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of 180 calendar days.

* * * * *

(h) Any or all periods of revocation provided in this section may consist of training.

* * * * *

■ 17. Section 240.119 is revised to read as follows:

§ 240.119 Criteria for consideration of data on substance abuse disorders and alcohol/drug rules compliance.

(a) *Program requirement.* Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) *Determination requirement.* Each railroad, prior to initially certifying or recertifying any person as a locomotive engineer for any type of service, shall determine that the person meets the eligibility requirements of this section.

(c) *Recordkeeping requirement.* In order to make the determination required under paragraph (d) of this section, a railroad shall have on file

documents pertinent to that determination, including a written document from its DAC which states his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder.

(d) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a locomotive engineer.

(2) Except as provided in paragraph (g) of this section, a certified locomotive engineer who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (f) of this section.

(3) In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

(e) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider conduct described in paragraph (e)(2) of this section that occurred within a period of 60 consecutive months prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph (e)(1).

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this paragraph (e) shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked.

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards:

(i) In the case of a single violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (f) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying referral program described in § 219.1001 of this chapter and the locomotive engineer waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (f) of this section). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.

(iv) A refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative shall be treated, for purposes of ineligibility under this paragraph (e), in the same manner as a violation of:

(A) Section 219.102 of this chapter, in the case of a refusal to provide a urine specimen for testing; or

(B) Section 219.101 of this chapter, in the case of a refusal to provide a breath sample for alcohol testing or a blood specimen for mandatory post-accident toxicological testing.

(f) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (e) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a SAP to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of subpart H of part 219 of this chapter, has had an alcohol test with an alcohol concentration of less than .02 and presented a urine sample that tested negative for controlled substances assayed.

(2) A locomotive engineer placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) This paragraph (f) does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(g) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter to treat qualified referrals for substance abuse counseling and treatment as confidential; and the certification status of a locomotive engineer who is successfully assisted under the procedures of that section shall not be adversely affected.

However, the railroad shall include in its referral policy, as required pursuant to § 219.1003(j) of this chapter, a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

■ 18. Section 240.121 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 240.121 Criteria for vision and hearing acuity data.

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad

officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

* * * * *

(d) Except as provided in paragraph (e) of this section, each person shall have a hearing test or audiogram that shows the person's hearing acuity meets or exceeds the following thresholds: The person does not have an average hearing loss in the better ear greater than 40 decibels with or without use of a hearing aid, at 500 Hz, 1,000 Hz, and 2,000 Hz. The hearing test or audiogram shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of and is maintained and used in accordance with a formal industry standard, such as ANSI S3.6, "Specifications for Audiometers."

* * * * *

■ 19. Section 240.123 is amended by revising the section heading and paragraph (a), revising and republishing paragraph (c), and adding paragraphs (e) and (f) to read as follows:

§ 240.123 Training.

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

* * * * *

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training that, at a minimum, complies with the program

requirements of § 243.101 of this chapter and:

- (1) Is composed of classroom, skill performance, and familiarization with physical characteristics components;
- (2) Includes both knowledge and performance skill testing;
- (3) Is conducted under the supervision of a qualified class instructor;
- (4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:
 - (i) Personal safety;
 - (ii) Railroad operating rules and procedures;
 - (iii) Mechanical condition of equipment;
 - (iv) Train handling procedures (including use of locomotive and train brake systems);
 - (v) Familiarization with physical characteristics including train handling; and
 - (vi) Compliance with Federal railroad safety laws, regulations, and orders; and
- (5) Is conducted so that the performance skill component shall meet the following conditions:
 - (i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;
 - (ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and
 - (iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

* * * * *

- (e) A railroad shall designate in its program required by this section the time period in which a locomotive engineer must be absent from a territory or yard, before requalification on physical characteristics is required.
- (f) A railroad's program shall include the procedures used to qualify or requalify a person on the physical characteristics.

* * * * *

■ 20. Section 240.125 is amended by revising the section heading and paragraph (a), revising and republishing paragraph (c), and adding paragraphs (e), (f), and (g) to read as follows:

§ 240.125 Knowledge testing.

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have

violated the requirements of this section.

* * * * *

- (c) The testing methods selected by the railroad shall be:
 - (1) Designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains;
 - (2) Objective in nature;
 - (3) Administered in written form;
 - (4) Cover the following subjects:
 - (i) Personal safety practices;
 - (ii) Operating practices;
 - (iii) Equipment inspection practices;
 - (iv) Train handling practices including familiarity with the physical characteristics of the territory; and
 - (v) Compliance with Federal railroad safety laws, regulations, and orders;
 - (5) Sufficient to accurately measure the person's knowledge of the covered subjects; and
 - (6) Conducted without open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

* * * * *

(e) For purposes of paragraph (c) of this section, the railroad must provide the person(s) being tested with an opportunity to consult with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

(f) The documentation shall indicate whether the person passed or failed the test.

(g) If a person fails to pass the test, no railroad shall permit or require that person to function as a locomotive engineer prior to that person's achieving a passing score during a reexamination of the person's knowledge.

■ 21. Section 240.127 is amended by revising paragraph (a) to read as follows:

§ 240.127 Criteria for examining skill performance.

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

* * * * *

■ 22. Section 240.129 is amended by revising paragraphs (a), (b), (c) introductory text, (c)(2), (d) introductory text, (e) introductory text, and (e)(1) and adding paragraph (h) to read as follows:

§ 240.129 Criteria for monitoring operational performance of certified engineers.

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Each railroad shall have a program to monitor the operational performance of those it has determined as qualified as a locomotive engineer in any class of service. The program shall include procedures to address the testing of certified engineers who are not given both an operational monitoring observation and an unannounced compliance test in a calendar year pursuant to paragraph (h) of this section. At a minimum, such procedures shall include the following:

(1) A requirement that an operational monitoring observation and an unannounced compliance test must be conducted within 30 days of a return to service as a locomotive engineer; and

(2) The railroad must retain a written record indicating the date that the engineer stopped performing service that requires certification pursuant to this part, the date that the engineer returned to performing service that requires certification pursuant to this part, and the dates that the operational monitoring observation and the unannounced compliance test were performed.

(c) The procedures for the operational monitoring observation shall:

* * * * *

(2) Be designed so that each engineer shall be monitored each calendar year by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational monitoring observation will be conducted;

* * * * *

(d) The operational monitoring observation procedures may be designed so that the locomotive engineer being monitored either:

* * * * *

(e) The unannounced compliance test program shall:

(1) Be designed so that, except for as provided in paragraph (h) of this section, each locomotive engineer shall be given at least one unannounced compliance test each calendar year;

* * * * *

(h) A certified engineer who is not performing a service that requires certification pursuant to this part need not be given an unannounced compliance test or operational monitoring observation. However, when the certified engineer returns to a service that requires certification pursuant to this part, that certified engineer must be tested pursuant to this section and § 240.303 within 30 days of his or her return.

■ 23. Section 240.205 is revised to read as follows:

§ 240.205 Procedures for determining eligibility based on prior safety conduct.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service other than student, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

(b) In order to make the determination required under paragraph (a) of this section, a railroad shall have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its DAC either reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

■ 24. Section 240.207 is amended by revising paragraphs (b)(2) introductory text and (b)(2)(i) to read as follows:

§ 240.207 Procedures for making the determination on vision and hearing acuity.

* * * * *

(b) * * *

(2) A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that:

(i) The person can nevertheless be certified under certain conditions; or
* * * * *

■ 25. Section 240.209 is amended by revising paragraphs (b) and (c) to read as follows:

§ 240.209 Procedures for making the determination on knowledge.

* * * * *

(b) In order to make the determination required by paragraph (a) of this section,

a railroad shall have written documentation showing that the person either:

(1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part; or

(2) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her knowledge.

■ 26. Section 240.211 is amended by revising paragraph (b) to read as follows:

§ 240.211 Procedures for making the determination on performance skills.

* * * * *

(b) In order to make this determination, a railroad shall have written documentation showing the person either:

(1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part; or

(2) Did not achieve a passing grade in such testing.

* * * * *

■ 27. Section 240.215 is amended by revising and republishing paragraph (e) and revising paragraph (j) to read as follows:

§ 240.215 Retaining information supporting determinations.

* * * * *

(e) The information concerning demonstrated performance skills that the railroad shall retain includes:

(1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based including the observations and evaluation of the designated supervisor of locomotive engineers;

(2) If a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the designated supervisor of locomotive engineers; and

(3) The relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the

engineer's operating performance in accordance with § 240.129.

* * * * *

(j) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

■ 28. Section 240.217 is amended by revising paragraphs (a) and (d) to read as follows:

§ 240.217 Time limitations for making determinations.

(a) A railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making a determination concerning:

(1) Eligibility and the eligibility data being relied on was furnished more than 366 days before the date of the railroad's certification decision;

(2) Visual and hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's recertification decision;

(3) Demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision;

(4) Demonstrated knowledge and the knowledge examination being relied on was conducted more than 24 months before the date of the railroad's certification decision if the railroad administers a knowledge testing program pursuant to § 240.125 at intervals that do not exceed 24 months; or

(5) Demonstrated performance skills and the performance skill testing being relied on was conducted more than 366 days before the date of the railroad's certification decision.

* * * * *

(d) A railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or recertify that person.

■ 29. Section 240.219 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 240.219 Denial of certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the locomotive engineer candidate with any written documents or records, including written statements, related to failure to meet a requirement of this part that support its pending denial decision.

* * * * *

(c) If a railroad denies a person certification or recertification, it shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The basis for a railroad's denial decision shall address any explanation or rebuttal information that the locomotive engineer candidate may have provided in writing pursuant to paragraph (a) of this section. The document explaining the basis for the denial shall be served on the person within 10 days after the railroad's decision and shall give the date of the decision.

(d) A railroad shall not deny the person's certification for failing to

comply with a railroad operating rule or practice that constitutes a violation under § 240.117(e)(1) through (5) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the engineer's ability to comply with that railroad operating rule or practice.

■ 30. Section 240.221 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 240.221 Identification of qualified persons.

* * * * *

(d) The listing required by paragraphs (a), (b), and (c) of this section shall:

(1) Be updated at least annually;

(2) Be available at the divisional or regional headquarters of the railroad; and

(3) Be available for inspection or copying by FRA during regular business hours.

(e) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the list required by this section; or

(2) Otherwise falsify such list through material misstatement, omission, or mutilation.

(f) Nothing in this section precludes a railroad from maintaining the list required under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Any amendment to the list is either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Each amendment to the list uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits

reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

■ 31. Section 240.223 is amended by revising and republishing paragraph (a) to read as follows:

§ 240.223 Criteria for the certificate.

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad or parent company that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued (including the person's name, employee identification number, the year of birth, and either a physical description or photograph of the person);

(4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;

(5) Show the effective date of each certification held;

(6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section;

(7) Show the date of the person's last operational monitoring event as required by §§ 240.129(c) and 240.303(b), unless that information is reflected on supplementary documents which the locomotive engineer has in his or her possession when operating a locomotive; and

(8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

* * * * *

■ 32. Section 240.225 is revised to read as follows:

§ 240.225 Reliance on qualification determinations made by other railroads.

(a) A railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall

address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how it will train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program.

(b) A railroad relying on another's certification shall determine that:

(1) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(2) The prior certification was for the same classification of locomotive or train service as the certification being issued under this section;

(3) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125; and

(5) The person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

■ 33. Revise the heading of subpart D to read as follows:

Subpart D—Administration of the Certification Program

■ 34. Section 240.301 is revised to read as follows:

§ 240.301 Replacement of certificates.

(a) A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates at no cost to engineers. That system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate or temporary replacement certificate.

(b) At a minimum, a temporary replacement certificate must identify the person to whom it is being issued (including the person's name, identification number and year of birth); indicate the date of issuance; and be authorized by a supervisor of locomotive engineers or other individual designated in accordance with § 240.223(b). Temporary replacement certificates may be delivered electronically and are valid for a period no greater than 30 days.

■ 35. Section 240.303 is amended by revising paragraphs (b) and (c) to read as follows:

§ 240.303 Operational monitoring requirements.

* * * * *

(b) The program shall be conducted so that each locomotive engineer, except as provided in § 240.129(h), shall be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

(c) The program shall be conducted so that each locomotive engineer, except as provided in § 240.129(h), shall be given at least one unannounced, compliance test each calendar year.

* * * * *

■ 36. Section 240.305 is amended by revising and republishing paragraph (b) to read as follows:

§ 240.305 Prohibited conduct.

* * * * *

(b) Each locomotive engineer who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty as an engineer; and

(2) Display that certificate upon the receipt of a request to do so from:

(i) A representative of the Federal Railroad Administration;

(ii) A State inspector authorized under part 212 of this chapter;

(iii) An officer of the issuing railroad; or

(iv) An officer of another railroad when operating a locomotive or train in joint operations territory.

* * * * *

■ 37. Section 240.307 is amended by:

■ a. Revising paragraph (a);

■ b. Republishing the introductory text to paragraph (b);

■ c. Revising paragraphs (b)(1) and (4);

■ d. Redesignating paragraphs (b)(5) and (6) as paragraphs (b)(6) and (7);

■ e. Adding a new paragraph (b)(5); and

■ f. Revising paragraphs (c)(2), (9), and (11), (g), (i), and (j)(2).

The revisions and additions read as follows:

§ 240.307 Revocation of certification.

(a) Except as provided for in § 240.119(e), a railroad that certifies or recertifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires reliable information regarding violation(s) of § 240.117(e) or § 240.119(c) shall revoke the person's engineer certificate.

(b) Pending a revocation determination under this section, the railroad shall:

(1) Upon receipt of reliable information regarding violation(s) of

§ 240.117(e) or § 240.119(c), immediately suspend the person's certificate;

* * * * *

(4) No later than the convening of the hearing and notwithstanding the terms of an applicable collective bargaining agreement, the railroad convening the hearing shall provide the person with a copy of the written information and list of witnesses the railroad will present at the hearing. If requested, a recess to the start of the hearing will be granted if that information is not provided until just prior to the convening of the hearing. If the information was provided through statements of an employee of the convening railroad, the railroad will make that employee available for examination during the hearing required by paragraph (b)(3) of this section. Examination may be telephonic where it is impractical to provide the witness at the hearing;

(5) Determine, on the record of the hearing, whether the person no longer meets the certification requirements of this part stating explicitly the basis for the conclusion reached;

* * * * *

(c) * * *

(2) The hearing shall be conducted by a presiding officer, who can be any proficient person authorized by the railroad other than the investigating officer.

* * * * *

(9) The record in the proceeding shall be closed at the conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances, the record shall be left open for such time as the presiding officer grants for that purpose.

* * * * *

(11) The decision shall:

(i) Contain the findings of fact as well as the basis therefor, concerning all material issues of fact presented on the record and citations to all applicable railroad rules and practices;

(ii) State whether the railroad official found that a revocable event occurred and the applicable period of revocation with a citation to § 240.117 or § 240.119; and

(iii) Be served on the employee and the employee's representative, if any, with the railroad to retain proof of that service.

* * * * *

(g) A railroad that has relied on the certification by another railroad under the provisions of § 240.227 or § 240.229, shall revoke its certification if, during the period that certification is valid, the railroad acquires information that

convinces it that another railroad has revoked its certification in accordance with the provisions of this section. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing and no additional hearing is required prior to a revocation by more than one railroad arising from the same facts.

* * * * *

(i) A railroad:

(1) Shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice that constitutes a violation under § 240.117(e)(1) through (5); or

(2) May decide not to revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 240.117(e)(1) through (5) was of a minimal nature and had no direct or potential effect on rail safety.

(j) * * *

(2) Prior to the convening of the hearing provided for in this section.

* * * * *

■ 38. Section 240.308 is added to read as follows:

§ 240.308 Multiple certifications.

(a) A person may hold both conductor and locomotive engineer certification.

(b) A railroad that issues multiple certificates to a person, shall, to the extent possible, coordinate the expiration date of those certificates.

(c) Except as provided in paragraph (d) of this section, a locomotive engineer, including a remote control operator, who is operating a locomotive without an assigned certified conductor must either be:

(1) Certified as both a locomotive engineer under this part and as a conductor under part 242 of this chapter; or

(2) Accompanied by a person certified as a conductor under part 242 of this chapter but who will be attached to the crew in a manner similar to that of an independent assignment.

(d) If the conductor is removed from a passenger train for a medical, police or other such emergency after the train departs from an initial terminal, the train may proceed to the first location where the conductor can be replaced without incurring undue delay without the locomotive engineer being a certified conductor. However, an assistant conductor or brakeman must be on the train and the locomotive

engineer must be informed that there is no certified conductor on the train prior to any movement.

(e) During the duration of any certification interval, a person who holds a current conductor and/or locomotive engineer certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied conductor or locomotive engineer recertification under § 240.219 or § 242.401 of this chapter or has his or her conductor or locomotive engineer certification revoked under § 240.307 or § 242.407 of this chapter by another railroad.

(f) A person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(1) through (5) or (12) of this chapter may not work as a locomotive engineer during the period of revocation. However, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(6) through (11) may work as a locomotive engineer during the period of revocation.

(1) For purposes of determining the period for which a person may not work as a certified locomotive engineer due to a revocation of his or her conductor certification, only violations of § 242.403(e)(1) through (5) or (12) of this chapter will be counted. Thus, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked three times in less than 36 months for two violations of § 242.403(e)(6) and one violation of § 242.403(e)(1) would have his or her conductor certificate revoked for 1 year, but would not be permitted to work as a locomotive engineer for one month (*i.e.*, the period of revocation for one violation of § 242.403(e)(1)).

(g) A person who holds a current conductor and locomotive engineer certificate and who has had his or her locomotive engineer certification revoked under § 240.307 may not work as a conductor during the period of revocation.

(h) A person who has had his or her locomotive engineer certification revoked under § 240.307 may not obtain a conductor certificate pursuant to part 242 of this chapter during the period of revocation.

(i) A person who had his or her conductor certification revoked under § 242.407 of this chapter for violations

of § 242.403(e)(1) through (5) or (12) of this chapter may not obtain a locomotive engineer certificate pursuant to this part 240 during the period of revocation.

(j) A railroad that denies a person conductor certification or recertification under § 242.401 of this chapter shall not, solely on the basis of that denial, deny or revoke that person's locomotive engineer certification or recertification.

(k) A railroad that denies a person locomotive engineer certification or recertification under § 240.219 shall not, solely on the basis of that denial, deny or revoke that person's conductor certification or recertification.

(l) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified as a conductor and a locomotive engineer. The certificate must comply with § 240.223 and § 242.207 of this chapter.

(m) A person who holds a current conductor and locomotive engineer certification and who is involved in a revocable event under § 240.307 or § 242.407 of this chapter may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke for the revocable event must be based on the work the person was performing at the time the event occurred.

■ 39. Section 240.309 is amended by:
 ■ a. Revising paragraphs (b)(4), (e)(1), (2), (8), and (9), and (f) through (h); and
 ■ b. Adding paragraph (i).

The revisions and addition read as follows:

§ 240.309 Railroad oversight responsibilities.

* * * * *

(b) * * *

(4) If the railroad conducts joint operations with another railroad, the number of locomotive engineers employed by the other railroad(s) that: Were involved in events described in this paragraph (b) and were determined to be certified and to have possessed the necessary territorial qualifications for joint operations purposes by the controlling railroad.

* * * * *

(e) * * *

(1) Incidents involving noncompliance with part 218 of this chapter;

(2) Incidents involving noncompliance with part 219 of this chapter;

* * * * *

(8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating

or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive; and

(9) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels.

(f) For reporting purposes, an instance of poor safety conduct involving a person who holds both conductor certification pursuant to part 242 of this chapter and locomotive engineer certification pursuant to this part need only be reported once (either under § 242.215 of this chapter or this section). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

(g) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected:

- (i) Imposition of informal discipline;
- (ii) Imposition of formal discipline;
- (iii) Provision of informal training; or
- (iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the railroad:

- (i) The person was withheld from service;
- (ii) The person was dismissed from employment; or
- (iii) The person was issued demerits.

If more than one form of punishment was imposed only that punishment deemed the most severe shall be shown.

(h) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: The National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

(i) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report under part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

■ 40. Section 240.401 is revised to read as follows:

§ 240.401 Review board established.

(a) Any person who has been denied certification, denied recertification, or has had his or her certification revoked and believes that a railroad incorrectly determined that he or she failed to meet the certification requirements of this part when making the decision to deny or revoke certification, may petition the Federal Railroad Administrator to review the railroad's decision.

(b) The Administrator has delegated initial responsibility for adjudicating such disputes to the Operating Crew Review Board.

(c) The Operating Crew Review Board shall be composed of employees of the Federal Railroad Administration selected by the Administrator.

■ 41. Section 240.403 is amended by:

- a. Revising and republishing paragraph (b);
- b. Revising paragraphs (c) and (d); and
- c. Removing paragraph (e).

The revisions and addition read as follows:

§ 240.403 Petition requirements.

* * * * *

(b) Each petition shall:

- (1) Be in writing;
- (2) Be filed with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its website at <http://www.regulations.gov>;
- (3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:
 - (i) The petitioner's full name;
 - (ii) The petitioner's current mailing address;

(iii) The petitioner's daytime telephone number;

(iv) The petitioner's email address (if available);

(v) The name and address of the railroad; and

(vi) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought;

(5) Be supplemented by a copy of all written documents in the petitioner's possession or reasonably available to the petitioner that document that railroad's decision;

(6) Be filed in a timely manner; and

(7) Be supplemented, if requested by the Operating Crew Review Board, with a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide written explanation in response to an Operating Crew Review Board request if written documents that should be reasonably available to the petitioner are not supplied.

(c) A petition seeking review of a railroad's decision to deny certification or recertification or revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner will be denied as untimely except that the Operating Crew Review Board for cause shown may extend the petition filing period at any time in its discretion:

(1) Provided that the request for extension is filed before the expiration of the period provided in this paragraph (c); or

(2) Provided that the failure to file timely was the result of excusable neglect.

(d) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with § 240.411.

■ 42. Section 240.405 is revised to read as follows:

§ 240.405 Processing certification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall contain the docket number assigned to the petition and a statement of FRA's intention that the Board will attempt to render a

decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and where the petition may be accessed.

(c) Within 60 days from the date of the notification provided in paragraph (b) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition. Late filings will only be considered to the extent practicable.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding and provide the railroad's email address (if available);

(2) Serve a copy of the information being submitted to FRA to the petitioner and petitioner's representative, if any; and

(3) File the information with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The form of such information may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its website at <http://www.regulations.gov>.

(e) Each petition will then be referred to the Operating Crew Review Board for a decision.

(f) Based on the record, the Board shall have the authority to grant, deny, dismiss, or remand the petition.

(g) If the Board finds that there is insufficient basis for granting or denying the petition, the Board shall issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(h) When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for granting the petition.

(i) When considering procedural issues, the Board will determine whether the petitioner suffered substantial harm that was caused by the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision. To establish grounds upon which the Board may grant relief, Petitioner must show:

(1) That procedural error occurred; and

(2) The procedural error caused substantial harm.

(j) Pursuant to its reviewing role, the Board will consider whether the railroad's legal interpretations are correct based on a *de novo* review.

(k) The Board will determine whether the denial or revocation of certification or recertification was improper under this part (*i.e.*, based on an incorrect determination that the person failed to meet the certification requirements of this part) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, *i.e.*, it will not consider whether the railroad properly applied its own more stringent requirements.

(l) The Board's written decision shall be served on the petitioner, including the petitioner's representative, if any, and the railroad.

■ 43. Section 240.407 is amended by revising paragraphs (a) and (c) and revising and republishing paragraph (d) to read as follows:

§ 240.407 Request for a hearing.

(a) If adversely affected by the Operating Crew Review Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 240.409.

* * * * *

(c) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Operating Crew Review Board's decision will constitute final agency action.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name, address, telephone number, and email address (if available) of the respondent and the requesting party's designated representative, if any;

(2) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and

(3) The signature of the requesting party or the requesting party's representative, if any.

* * * * *

■ 44. Section 240.409 is amended by revising paragraphs (a), (p), and (q) to read as follows:

§ 240.409 Hearings.

(a) An administrative hearing for a locomotive engineer certification petition shall be conducted by a

presiding officer, who can be any person authorized by the Administrator, including an administrative law judge.

* * * * *

(p) The petitioner before the Operating Crew Review Board, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the "hearing petitioner." The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence. Hence, if the hearing petitioner is the railroad involved in taking the certification action, that railroad will have the burden of proving that its decision to deny certification, deny recertification, or revoke certification was correct. Conversely, if the petitioner before the Operating Crew Review Board is the hearing petitioner, that person will have the burden of proving that the railroad's decision to deny certification, deny recertification, or revoke certification was incorrect. Between the petitioner before the Operating Crew Review Board and the railroad involved in taking the certification action, the party who is not the hearing petitioner will be a respondent.

* * * * *

■ 45. Section 240.411 is amended by revising paragraphs (a) and (f) to read as follows:

§ 240.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

* * * * *

(f) An appeal from an Operating Crew Review Board decision pursuant to § 240.403(d) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board's

decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

■ 46. Revise appendix B to part 240 to read as follows:

Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a locomotive engineer in accordance with the requirements of this part (see §§ 240.101, 240.103, 240.105, 240.107, 240.123, 240.125, 240.127, and 240.129). It also contains guidance on how FRA will exercise its review and approval responsibilities.

Submission by a Railroad

As provided for in § 240.101, each railroad must have a program for determining the certification of each person it permits or requires to operate a locomotive. In designing its program, a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, and the operational design characteristics of the track and equipment being operated including train length, train makeup, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests can be in letter or narrative format. The primary method for a railroad's submission is by email to *FRAOPCERTPROG@dot.gov*. For a railroad that is unable to send the program by email, the program shall be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Simultaneous with its filing with FRA, each railroad must provide a copy of its submission to the president of each labor organization that represents the railroad's employees subject to this part.

A railroad that electronically submits an initial program or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or

disapproval notices from FRA by email or mail.

Organization of the Submission

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and email and mailing addresses of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient merely to repeat the person's name in a subsequent section.

Section 1 of the Submission: General Information and Elections

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and email and mailing addresses) and a statement electing either to accept responsibility for educating previously untrained persons to be qualified locomotive engineers or recertify only engineers previously certified by other railroads. § 240.103(b).

If a railroad elects not to provide initial locomotive engineer training, the railroad is obligated to state so in its submission. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad. A railroad that makes this election can rescind it by obtaining FRA approval of a modification of its program. § 240.103(e).

If a railroad elects to accept responsibility for training persons not previously trained to be locomotive engineers, the railroad is obligated to submit information on how such persons will be trained but has no duty to conduct such training. A railroad that elects to accept the responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for assuring that such other training providers adhere to the training program the railroad submits.

This section must also state which class or classes of service the railroad will employ. § 240.107.

Section 2 of the Submission: Selection of Supervisors of Locomotive Engineers

The second section of the request must contain information concerning the railroad's procedure for selecting the person or persons it will rely on to evaluate the knowledge, skill, and ability of persons seeking certification or recertification. As provided for in § 240.105, each railroad must have a procedure for selecting supervisors of locomotive engineers which assures that persons so designated can appropriately test and evaluate the knowledge, skill, and ability of individuals seeking certification or recertification.

Section 240.105 provides a railroad latitude to select the criteria and evaluation methodology it will rely on to determine which person or persons have the required capacity to perform as a supervisor of locomotive engineers. The railroad must describe in this section how it will use that latitude and evaluate those it designates as

supervisors of locomotive engineers so as to comply with the performance standard set forth in § 240.105(b). The railroad must identify, in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected. For example, if a railroad intends to rely on one or more of the following, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

Section 3 of the Submission: Training Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for training previously certified locomotive engineers. As provided for in § 240.123(b) each railroad must have a program for the ongoing education of its locomotive engineers to assure that they maintain the necessary knowledge concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123(b) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided. The railroad must describe in this section how it will use that latitude to assure that its engineers remain knowledgeable concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.123(b). This section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the type of formal training employed (including, but not limited to, classroom, computer-based, correspondence, OJT, simulator, or laboratory training) and which aspects of the program are voluntary or mandatory.

Without assistance from automation, safe train handling involves both abstract knowledge about the appropriate use of engine controls and the application of that knowledge to trains of differing composition traversing varying terrain. Time and circumstances have the capacity to diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances also have the capacity to alter the value of previously obtained knowledge and the application of that knowledge. In formulating how it will use the discretion being afforded, each railroad must design its program to address both loss of retention of knowledge and changed circumstances, and this section of the submission to FRA must address these matters.

For example, locomotive engineers need to have their fundamental knowledge of train operations refreshed periodically. Each railroad needs to advise FRA how that need is satisfied in terms of the interval between attendance at such training, the nature of the training being provided, and methods for

conducting the training. A matter of particular concern to FRA is how each railroad acts to ensure that engineers remain knowledgeable about safe train handling procedures if the territory over which a locomotive engineer is authorized to operate is territory from which the engineer has been absent. The railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person will acquire the needed education. Similarly, the program must address how the railroad responds to changes such as the introduction of new technology, new operating rule books, or significant changes in operations including alteration in the territory engineers are authorized to operate over.

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

The fourth section of the request must contain information concerning the railroad's program for testing and evaluating previously certified locomotive engineers. As provided for in §§ 240.125 and 240.127, each railroad must have a program for the ongoing testing and evaluating of its locomotive engineers to ensure that they have the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to ensure that its locomotive engineers have the necessary vision and hearing acuity as provided for in § 240.121.

Sections 240.125 and 240.127 require that a railroad rely on written procedures for determining that each person can demonstrate his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.125 directs that, when seeking a demonstration of the person's knowledge, a railroad must employ a written test that contains objective questions and answers and covers the following subject matters: (i) Personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices (including familiarity with the physical characteristics of the territory); and (v) compliance with relevant Federal safety rules. The test must accurately measure the person's knowledge of all of these areas.

Section 240.125 provides a railroad latitude in selecting the design of its own testing policies (including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information). The railroad must describe in this section how it will use that latitude to ensure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.125.

Section 240.127 directs that, when seeking a demonstration of the person's skill, a

railroad must employ a test and evaluation procedure conducted by a designated supervisor of locomotive engineers that contains an objective evaluation of the person's skills at applying the railroad's rules and practices for the safe operation of trains. The test and evaluation procedure must examine the person's skills in terms of all of the following subject matters: (i) Operating practices; (ii) equipment inspection practices; (iii) train handling practices (including familiarity with the physical characteristics of the territory); and (iv) compliance with relevant Federal safety rules. The test must be sufficient to examine effectively the person's skills while operating a train in the most demanding type of service which the person is likely to encounter in the normal course of events once he or she is deemed qualified.

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). However, the railroad must describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. The section should also provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (see appendix E to this part) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

Section 240.121 provides a railroad latitude to rely on the professional medical opinion of the railroad's medical examiner concerning the ability of a person with substandard acuity to operate a locomotive safely. The railroad must describe in this section how it will ensure that its medical examiner has sufficient information concerning the railroad's operations to make appropriate conclusions about the ability of a particular individual to operate a train safely.

Section 5 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified

Unless a railroad has made an election not to accept responsibility for conducting the initial training of persons to be locomotive engineers, the fifth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as locomotive engineers. As provided for in § 240.123(c), a railroad that is issuing an initial certification to a person to be a

locomotive engineer must have a program for the training, testing, and evaluating of its locomotive engineers to ensure that they acquire the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123 establishes a performance standard and gives a railroad latitude in selecting how it will meet that standard. A railroad must describe in this section how it will use that latitude to ensure that its engineers will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their train operation responsibilities. This section must contain the same level of detail concerning initial training programs as that described for each of the components of the overall program contained in sections 2 through 4 of this appendix. A railroad that plans to accept responsibility for the initial training of locomotive engineers may authorize a non-railroad entity to perform the actual training effort as long as the other entity complies with the requirements for training organizations and learning institutions in § 243.111 of this chapter. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for ensuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities, to conduct training away from the railroad's own territory, must indicate how the student will be provided with the required familiarization with the physical characteristics for its territory.

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

The final section of the request must contain information concerning the railroad's program for monitoring the operation of its certified locomotive engineers. As provided for in § 240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to ensure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on event recorder downloads that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use

that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad must also describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

Section 7 of the Submission: Procedures for Routine Administration of the Engineer Certification Program

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for locomotive engineers. At a minimum, this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct, but allows the railroad to devise its own system within generalized parameters. Sections 240.115, 240.117 and 240.119 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 240.203, 240.217, and 240.219 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person is or is not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§ 240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 240.225 and 240.227 permit reliance on qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to ensure compliance with these provisions. Similarly, § 240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each

the rule's provisions described in the preceding paragraph.

FRA Review

The submissions made in conformity with this appendix will be deemed approved within 30 days after the required filing date or the actual filing date whichever is later. No formal approval document will be issued by FRA. The brief interval for review reflects FRA's judgment that railroads generally already have existing programs that will meet the requirements of this part. FRA has taken the responsibility for notifying a railroad when it detects problems with the railroad's program. FRA retains the right to disapprove a program that has obtained approval due to the passage of time as provided for in section § 240.103.

Rather than establish rigid requirements for each element of the program, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The rule, however, provides a good guide to the considerations that should be addressed in designing a program that will meet the performance standards of this rule. In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms set out in its rule. To the degree that a particular program submission materially deviates from the norms set out in its rule, FRA's review and approval process will be focused on determining the validity of the reasoning relied on by a railroad for selecting its alternative approach and the degree to which the alternative approach is likely to be effective in producing locomotive engineers who have the knowledge, skill, and ability to operate trains safely.

- 47. Revise appendix C to part 240 to read as follows:

Appendix C to Part 240—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4(a) of the Railroad Safety Improvement Act of 1988 and §§ 240.109, 240.111, and 240.205. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a locomotive engineer.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the State agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one State agency or foreign country. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers, or prospective employers to have

access to a State motor vehicle licensing agency's data concerning an individual's driving record is controlled by State law. Although many States have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some States in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a State motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals who want to serve as locomotive engineers to request that their current State driver licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular State agency, this will involve the candidate's either sending the State agency a brief letter requesting such action or executing a State agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the State agency for such a records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

The National Driver Register

In addition to seeking an individual State's data, each engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register (NDR). The NDR is a system of information created by Congress in 1960. In essence, it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other State agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Today, each State and the District of Columbia are required to send information on all revocations, suspensions, and license denials within 31 days of receipt of the convictions from the courts to the NDR and each of these driver licensing agencies has the capability to provide NDR's data. 49 U.S.C. 30304. The NDR data can also be obtained by contacting the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation directly.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: The identification of the State authority providing the information, the name of the person whose license is being affected, and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and State licensing agencies, including the District of Columbia, can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive engineer request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a State motor vehicle licensing agency or the District of Columbia. Participating States and the District of Columbia can directly access the NDR data on behalf of the prospective engineer.

Requesting NHTSA To Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to the National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

2. The request must contain:

- (a) The full legal name;
- (b) Any other names used by the person (e.g., nickname or professional name);
- (c) The date of birth;
- (d) Sex;
- (e) Height;
- (f) Weight;
- (g) Color of eyes; and
- (h) Driver's license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished, including the proper name of the railroad, and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive engineer shall sign the request, and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's social security account number, will help to identify more positively any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency To Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the State agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. Since it would be more efficient for a prospective locomotive engineer to make a single request for both aspects of the information required under this rule, FRA anticipates that a State agency inquiry should be the predominant method for making these NDR checks. Requests to State agencies may involve payment of a nominal fee established by the State agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry State was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the State licensing agency that suspended, revoked or canceled the relevant license or convicted the person of one of the violations referenced earlier in this appendix.

Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the latter event occurs, the notification will include the identification of the State motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the State with the relevant data is the same State which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the State with the relevant data is different from the State which furnished detailed data, it then is necessary to contact the individual State motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the State with the relevant information. FRA requires the certification candidate to write to the State licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the State agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad or a certification candidate go beyond these efforts to obtain the information in the control of such a State

agency, and a railroad may act upon the pending certification without the data if an individual State agency fails or refuses to supply the records.

If the non-issuing State licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional State record pertains to the certification candidate are physical description, photographs, and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record(s) which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective engineer an opportunity to review that record and respond in writing to its contents in accordance with the provisions of § 240.219. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

- 48. Revise appendix D to part 240 to read as follows:

Appendix D to Part 240—Identification of State Agencies That Perform National Driver Register Checks

Under the provisions of § 240.111, each person seeking certification or recertification as a locomotive operator must request that a check of the National Driver Register (NDR) be conducted and that the resulting information be furnished to his or her employer or prospective employer. Under the provisions of paragraphs (d) and (e) of § 240.111, each person seeking certification or recertification as a locomotive engineer must request that the National Highway Traffic Safety Administration (NHTSA) conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the State agencies that perform such checks, which today includes all State agencies and the District of Columbia. If the certification candidate received a license from one of the State agencies or the District of Columbia, he or she must request the State agency to perform the NDR check. Since these State agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that certification candidates make use of this method in preference to contacting NHTSA directly.

- 49. Add appendix G to part 240 to read as follows:

Appendix G to Part 240—Application of Revocable Events

Part 240 and Part 242 Revocable Events		Application of Part 240 and Part 242 Revocable Events												
		Periods of Revocation					Employees with Multiple Certifications							
		Main Track				Other than Main Track Where Restricted Speed or the Operational Equivalent Is in Effect	Main Track or Other than Main Track							
		1st Offense	2nd Offense Within 24 Months	3rd Offense Within 36 Months	4th Offense Within 36 Months		No Offense Within Previous 12 Months	Offense (as a Conductor)	Offense (as an Engineer)					
1	Signal Requiring Complete Stop before Passing	30 Days	6 Months	1 Year	3 Years	Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation						
2	Restricted Speed & Speed; 10 mph over													
3	Required Air Brake Test													
4	Occupying Main Track without Authority													
5	Disabling a Safety Device													
6	Shoving Movements													
7	Equipment Fouling Adjacent Tracks								Half Revocation Period	Employee May Work as an Engineer During the Period of Revocation	Not applicable			
8	Hand Operated Switches (Crossovers)								Not Applicable					
9	Hand Operated Switches Connected to Main Track								Half Revocation Period					
10	Hand Operated Crossover Switches (before & after movement)													
11	Hand Operated Derails													
12	Drug & Alcohol	Different periods of revocation may be applied (see §§ 240.117, 240.119, 242.403, & 242.115)				Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation						

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

■ 50. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 51. Section 242.7 is amended by revising the definitions of “Main track” and “Substance abuse disorder” to read as follows:

§ 242.7 Definitions.

* * * * *

Main track means a track upon which the operation of trains is governed by one or more of the following methods of operation: Timetable; mandatory directive; signal indication; or any form of absolute or manual block system.

* * * * *

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is “active” within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in

§ 219.103 of this chapter or has failed to complete primary treatment successfully or participate in aftercare successfully as directed by a DAC or SAP.

* * * * *

■ 52. Section 242.103 is amended by revising paragraphs (b), (c)(1) and (2), and (d)(2) and (3) to read as follows:

§ 242.103 Approval of design of individual railroad programs by FRA.

* * * * *

(b) A railroad commencing operations after the pertinent date specified in paragraph (a) of this section shall submit its written certification program and request for approval in accordance with the procedures contained in appendix B to this part at least 60 days prior to commencing operations. The primary method for a railroad’s submission is by email to *FRAOPCERTPROG@dot.gov*. For those railroads that are unable to send the program by email, the program may be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

(c) * * *

(1) Simultaneous with its filing with FRA, provide a copy of the submission filed pursuant to paragraph (a) or (b) of

this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section to the president of each labor organization that represents the railroad’s employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) or (b) of this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section a statement affirming that the railroad has provided a copy to the president of each labor organization that represents the railroad’s employees subject to this part, together with a list of the names and addresses of persons provided a copy.

(d) * * *

(2) Each comment shall be submitted by email to *FRAOPCERTPROG@dot.gov* or by mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590; and

(3) The commenter shall affirm that a copy of the comment was provided to the railroad.

* * * * *

■ 53. Section 242.117 is amended by revising and republishing paragraphs (g), (h), and (i) to read as follows:

§ 242.117 Vision and hearing acuity.

* * * * *

(g) In order to be currently certified as a conductor, except as permitted by paragraph (j) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix D to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(h) Except as provided in paragraph (j) of this section, each person shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses; or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix D to this part.

(i) Except as provided in paragraph (j) of this section, each person shall have a hearing test or audiogram that shows the person's hearing acuity meets or exceeds the following thresholds: The person does not have an average hearing loss in the better ear greater than 40 decibels with or without use of a hearing aid, at 500 Hz, 1,000 Hz, and 2,000 Hz. The hearing test or audiogram shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of and is maintained and used in accordance with a formal industry standard, such as ANSI S3.6, "Specifications for Audiometers."

* * * * *

■ 54. Section 242.213 is amended by revising and republishing paragraph (e) to read as follows:

§ 242.213 Multiple certifications.

* * * * *

(e) If the conductor is removed from a passenger train for a medical, police

or other such emergency after the train departs from an initial terminal, the train may proceed to the first location where the conductor can be replaced without incurring undue delay without the locomotive engineer being a certified conductor. However, an assistant conductor or brakeman must be on the train and the locomotive engineer must be informed that there is no certified conductor on the train prior to any movement.

* * * * *

■ 55. Section 242.403 is amended by revising and republishing paragraph (d) to read as follows:

§ 242.403 Criteria for revoking certification.

* * * * *

(d) In determining whether a person may be or remain certified as a conductor, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (11) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

* * * * *

■ 56. Section 242.503 is amended by revising and republishing paragraph (c) to read as follows:

§ 242.503 Petition requirements.

* * * * *

(c) A petition seeking review of a railroad's decision to deny certification or recertification or revoke certification in accordance with the procedures required by § 242.407 filed with FRA more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner will be denied as untimely except that the Operating Crew Review Board for cause shown may extend the petition filing period at any time in its discretion:

(1) Provided that the request for extension is filed before the expiration of the period provided in this paragraph (c); or

(2) Provided that the failure to file timely was the result of excusable neglect.

* * * * *

■ 57. Section 242.505 is amended by revising paragraphs (h), (i) introductory text, (j), and (k) to read as follows:

§ 242.505 Processing certification review petitions.

* * * * *

(h) When considering factual issues, the Board will determine whether there

is substantial evidence to support the railroad's decision, and a negative finding is grounds for granting the petition.

(i) When considering procedural issues, the Board will determine whether the petitioner suffered substantial harm that was caused by the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision. To establish grounds upon which the Board may grant relief, Petitioner must show:

* * * * *

(j) Pursuant to its reviewing role, the Board will consider whether the railroad's legal interpretations are correct based on a *de novo* review.

(k) The Board will determine whether the denial or revocation of certification or recertification was improper under this part (*i.e.*, based on an incorrect determination that the person failed to meet the certification requirements of this part) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, *i.e.*, it will not consider whether the railroad properly applied its own more stringent requirements.

* * * * *

■ 58. Section 242.511 is amended by revising paragraphs (a) and (f) to read as follows:

§ 242.511 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

* * * * *

(f) An appeal from an Operating Crew Review Board decision pursuant to § 242.503(d) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

■ 59. Revise appendix E to part 242 to read as follows:

Appendix E to Part 242—Application of Revocable Events

Part 240 and Part 242 Revocable Events	Application of Part 240 and Part 242 Revocable Events							
	Periods of Revocation				Employees with Multiple Certifications			
	Main Track				Other than Main Track Where Restricted Speed or the Operational Equivalent Is in Effect	Main Track or Other than Main Track		
	1st Offense	2nd Offense Within 24 Months	3rd Offense Within 36 Months	4th Offense Within 36 Months	No Offense Within Previous 12 Months	Offense (as a Conductor)	Offense (as an Engineer)	
1 Signal Requiring Complete Stop before Passing	30 Days	6 Months	1 Year	3 Years	Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation	
2 Restricted Speed & Speed; 10 mph over					Half Revocation Period	Employee May Work as an Engineer During the Period of Revocation	Not applicable	
3 Required Air Brake Test								Not Applicable
4 Occupying Main Track without Authority								Half Revocation Period
5 Disabling a Safety Device					Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation		
6 Shoving Movements							Not Applicable	
7 Equipment Fouling Adjacent Tracks							Half Revocation Period	
8 Hand Operated Switches (Crossovers)							Half Revocation Period	
9 Hand Operated Switches Connected to Main Track					Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation		
10 Hand Operated Crossover Switches (before & after movement)							Not Applicable	
11 Hand Operated Derails							Half Revocation Period	
12 Drug & Alcohol	Different periods of revocation may be applied (see §§ 240.117, 240.119, 242.403, & 242.115)				Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation	

Issued in Washington, DC.

Quintin C. Kendall,
Deputy Administrator.

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FEDERAL REGISTER

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December 15, 2020

Part III

The President

Proclamation 10126—Recognizing the Sovereignty of the Kingdom of Morocco Over the Western Sahara

Executive Order 13963—Providing an Order of Succession Within the Department of Defense

Executive Order 13964—Rebranding United States Foreign Assistance To Advance American Influence

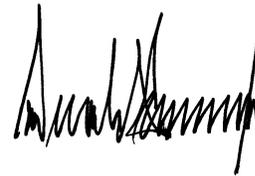
Presidential Documents

Title 3—**Proclamation 10126 of December 4, 2020****The President****Recognizing the Sovereignty of the Kingdom of Morocco Over the Western Sahara****By the President of the United States of America****A Proclamation**

The United States affirms, as stated by previous Administrations, its support for Morocco's autonomy proposal as the only basis for a just and lasting solution to the dispute over the Western Sahara territory. Therefore, as of today, the United States recognizes Moroccan sovereignty over the entire Western Sahara territory and reaffirms its support for Morocco's serious, credible, and realistic autonomy proposal as the only basis for a just and lasting solution to the dispute over the Western Sahara territory. The United States believes that an independent Sahrawi State is not a realistic option for resolving the conflict and that genuine autonomy under Moroccan sovereignty is the only feasible solution. We urge the parties to engage in discussions without delay, using Morocco's autonomy plan as the only framework to negotiate a mutually acceptable solution. To facilitate progress toward this aim, the United States will encourage economic and social development with Morocco, including in the Western Sahara territory, and to that end will open a consulate in the Western Sahara territory, in Dakhla, to promote economic and business opportunities for the region.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim that, the United States recognizes that the entire Western Sahara territory is part of the Kingdom of Morocco.

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

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

Presidential Documents

Executive Order 13963 of December 10, 2020

Providing an Order of Succession Within the Department of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.*, it is hereby ordered as follows:

Section 1. Order of Succession. (a) Subject to the provisions of section 2 of this order, the following officials of the Department of Defense, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office:

- (i) Deputy Secretary of Defense;
- (ii) Secretaries of the Military Departments;
- (iii) Under Secretary of Defense for Policy;
- (iv) Under Secretary of Defense for Intelligence and Security;
- (v) Chief Management Officer of the Department of Defense;
- (vi) Under Secretary of Defense for Acquisition and Sustainment;
- (vii) Under Secretary of Defense for Research and Engineering;
- (viii) Under Secretary of Defense (Comptroller);
- (ix) Under Secretary of Defense for Personnel and Readiness;
- (x) Deputy Under Secretary of Defense for Policy;
- (xi) Deputy Under Secretary of Defense for Intelligence and Security;
- (xii) Deputy Under Secretary of Defense for Acquisition and Sustainment;
- (xiii) Deputy Under Secretary of Defense for Research and Engineering;
- (xiv) Deputy Under Secretary of Defense (Comptroller);
- (xv) Deputy Under Secretary of Defense for Personnel and Readiness;
- (xvi) General Counsel of the Department of Defense, Assistant Secretaries of Defense, Director of Cost Assessment and Program Evaluation, Director of Operational Test and Evaluation, and Chief Information Officer of the Department of Defense;
- (xvii) Under Secretaries of the Military Departments; and
- (xviii) Assistant Secretaries of the Military Departments and General Counsels of the Military Departments.

(b) Precedence among officers designated within the same paragraph of subsection (a) of this section shall be determined by the order in which they have been appointed to such office. Where officers designated within the same paragraph of subsection (a) of this section have the same appointment date, precedence shall be determined by the order in which they have taken the oath to serve in that office.

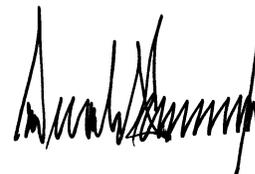
Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a) of this order in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) No individual listed in section 1(a) of this order shall act as Secretary unless that individual was appointed to an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, and that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998, as amended.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an Acting Secretary.

Sec. 3. *Revocation.* Executive Order 13533 of March 1, 2010 (Providing an Order of Succession Within the Department of Defense), is hereby revoked.

Sec. 4. *General Provision.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 10, 2020.

Presidential Documents

Executive Order 13964 of December 10, 2020

Rebranding United States Foreign Assistance To Advance American Influence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*) (FAA), as amended, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Policy. To foster goodwill between the recipients of United States foreign assistance and the American people, and to encourage the governments of nations that are receiving foreign assistance to support the United States, it is essential that recipients of United States foreign assistance be aware of the manifold efforts of American taxpayers to aid them and improve their lives. To further this awareness and to ensure United States foreign assistance supports the foreign policy objectives of the United States and maintains American influence and leadership, such assistance must appropriately and conspicuously be identified as American aid.

Sec. 2. Establishment of Standard Federal Marking Regulations. (a) Within 120 days of the date of this order, the Secretary of State (Secretary), in coordination with the Administrator of the United States Agency for International Development (Administrator) and the heads of other executive departments and agencies (agencies), as appropriate, shall initiate notice-and-comment rulemaking to brand and mark all United States foreign assistance provided under the FAA or any other law, including all assistance provided under humanitarian assistance or disaster relief programs, appropriately as “American aid,” consistent with section 641 of the FAA (22 U.S.C. 2401). Such rulemaking to establish Federal marking regulations shall include proposing any amendments necessary to any existing regulations that may be appropriate to implement the directives set forth in this order. The agencies subject to these regulations shall implement them as soon as possible after they are finalized.

(b) For the purposes of the standard Federal marking regulations described in section 2(a) of this order:

(i) Within 30 days of the date of this order, the President will select a logo that embodies the values and generosity of the American people (“single logo”); and

(ii) The single logo shall be prominently displayed on all materials related to United States foreign assistance programs, projects, and activities; on all communications and public affairs materials; on all foreign assistance goods and materials, and all packaging of such goods and materials; and on all rebranding of export packaging. The requirement to display the single logo shall not apply to purely administrative, non-deliverable items of contractors and recipients of United States foreign assistance or to the corporate or non-project materials of agencies that are not tied to projects funded under the FAA, and shall not require the rebranding of completed projects or products overseas.

(c) Within 120 days of the date of this order, agencies that are not otherwise subject to existing regulations related to the branding and marking of United States foreign assistance shall identify, to the extent permitted by law, United States foreign assistance goods, materials, and packaging solely with the single logo, and shall amend or rescind any agency procedures or guidance inconsistent with this directive. This identification requirement applies to

goods, materials, and packaging provided through non-governmental organizations and implementing partners contracted directly by or receiving funds from the United States Government consistent with subsection (b)(ii) of this section. This requirement applies, to the maximum extent practicable, to the obligation of any funds for such items after the date of this order. In instances of joint funding agreements with other donor governments, international organizations, or other parties, the single logo may be co-marked.

(d) Within 120 days of the date of this order, agencies not otherwise governed subject to regulations related to the branding and marking of United States foreign assistance shall not, unless required by law, display their logos on United States foreign assistance goods and materials or the export packaging of foreign assistance goods and materials when the single logo is used as required under subsection (b)(ii) of this section, and shall amend or rescind as necessary any agency procedures or guidance inconsistent with this directive.

(e) For purposes of subsection (b)(ii) of this section, absent the application of a specific statutory or regulatory exemption, the single logo shall be used unless the Secretary, in coordination with the Administrator and the heads of any other relevant agencies, determines that its use in connection with a certain type of aid or in a particular geographic area would raise compelling political, safety, or security concerns; or that its use would undermine the objectives of the United States in providing such aid. Any such determination to waive the single logo requirement must be made in writing. The Secretary may delegate this waiver authority, but such waiver authority shall not be delegated below the Under Secretary level within the Department of State. The Secretary may delegate this waiver authority to the Administrator, who may redelegate it to the Deputy Administrator, provided that the Secretary authorizes such redelegation.

Sec. 3. Report. Within 180 days of the date of this order, and annually thereafter, the Secretary, in coordination with the Administrator and the heads of other relevant agencies, as appropriate, shall submit to the President, through the Assistant to the President for National Security Affairs, a report on the implementation of this order.

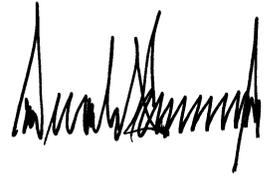
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

THE WHITE HOUSE,
December 10, 2020.

[FR Doc. 2020-27740
Filed 12-14-20; 11:15 am]
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Federal Register

Vol. 85, No. 241

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