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DEPARTMENT OF HOMELAND SECURITY

RIN 1615–AC42

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1235

[EOIR Docket No. 18–0102; A.G. Order No. 4922–2020]

RIN 1125–AA94

Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review

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

ACTION: Final rule; correction.

SUMMARY: The Department of Justice is correcting a final rule that appeared in the **Federal Register** on December 11, 2020. That document amended Department of Homeland Security and Department of Justice (''the Departments'') regulations governing credible fear determinations. Individuals found to have a credible fear will have their claims for asylum, withholding of removal under Immigration and Nationality or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adjudicated by an immigration judge within the Executive Office for Immigration Review in streamlined proceedings (rather than under section 240 of the Act). The final rule also specifid what standard of review applies in such streamlined proceedings.

DATES: Effective on January 11, 2021.

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

SUPPLEMENTARY INFORMATION: In FR Rule Doc. 2020–26875, appearing on page 80400 in the **Federal Register** of Friday, December 11, 2020, the following correction is made:

§ 1235.6 [Corrected]

■ 1. On page 80400, in the third column, in part 1235, in amendatory instruction 38c is corrected to read ''Revising paragraphs (a)(2)(i) and (iii); and''.

Dated: January 7, 2021.

Rosemary Hart,

Special Counsel and Liaison to the Federal Register.

[FR Doc. 2021–00409 Filed 1–8–21; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2020–08]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of, or failure to file, certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires Federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under Federal law; and (2) that a Federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in Federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires Federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2021.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedure Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

[2] Public Law 114–74, sec. 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act sec. 3(2).

[4] Inflation Adjustment Act sec. 4(a).

[5] *See* Inflation Adjustment Act sec. 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Russell T. Vought, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–21–10, Dec. 23, 2020, *https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act sec. 5.

[7] Inflation Adjustment Act sec. 4(b)(2).

not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when the Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'') [11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2021 is 0.01182, or 1.182%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.01182.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), and 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$20,288	1.01182	$20,528
11 CFR 111.24(a)(2)(i)	43,280	1.01182	43,792
11 CFR 111.24(a)(2)(ii)	70,973	1.01182	71,812
11 CFR 111.24(b)	6,069	1.01182	6,141
11 CFR 111.24(b)	15,173	1.01182	15,352

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act sec. 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, sec. 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, sec. 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, sec. 5(b)(1).

[13] Inflation Adjustment Act, sec. 5(a), (b)(1).

[14] OMB Memorandum at 1.

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended in the table below by, for each section indicated in the left column, removing the number indicated in the middle column, and adding in its place the number indicated in the right column as follows:

Section	Remove	Add
111.24(a)(1)	$20,288	$20,528
111.24(a)(2)(i)	43,280	43,792
111.24(a)(2)(ii)	70,973	71,812
111.24(b)	6,069	6,141
111.24(b)	15,173	15,352

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [1]	[$36 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$351 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$70 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$422 × [1 + (.25 × Number of previous violations)]
$10,000–24,999.99	[$151 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$704 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$298 + ($28 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1267 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$450 + ($113 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4041 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$598 + ($151 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5237 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$896 + ($187 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6735 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1199 + ($224 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8231 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1496 + ($261 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9727 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2245 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,972 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2994 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,468 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3741 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,216 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4489 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,966 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5237 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,713 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$5986 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,461 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6735 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,209 × [1 + (.25 × Number of previous violations)]
$950,000 or over	[$7482 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,958 × [1 + (.25 × Number of previous violations)].

[1] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [1]	[$70 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$704 × [1 + (.25 × Number of previous violations)].

TABLE 2 TO PARAGRAPH (b)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$5,000–$9,999.99	[$141 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$844 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$211 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1267 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$450 + ($36 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1970 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$674 + ($113 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4489 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$896 + ($151 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5986 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1347 + ($187 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7482 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1796 + ($224 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8978 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2245 + ($261 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,224 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3367 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,468 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$4489 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,966 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$5612 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,461 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$6735 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,958 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$7857 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,455 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$8978 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,951 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$10,101 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,446 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$11,224 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$23,944 × [1 + (.25 × Number of previous violations)].

[1] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $8,231.

* * * * *

§ 111.44 [Amended]

■ 4. Amend § 111.44(a)(1) by removing ''$149'' and adding in its place ''$151''.

Dated: December 30, 2020.

On behalf of the Commission.

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 313

RIN 3064–AF25

Collection of Civil Money Penalty Debt

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending the FDIC's Procedures for Corporate Debt Collection to include delinquent civil money penalties within the debt covered by those procedures.

DATES: The final rule is effective on February 10, 2021.

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The Debt Collection Improvement Act of 1996 (DCIA) requires Federal agencies to collect debts owed to the United States in accordance with regulations that either adopt, or at least are consistent with, standards prescribed by the Department of Justice (DOJ) and Department of the Treasury (Treasury).[1] Treasury has issued regulations applicable to collection under the DCIA, and these regulations, known as the Federal Claims Collection Standards (FCCS), became effective on December 22, 2000. The purpose of the DCIA is to enhance the efficiency and effectiveness of the Federal Government's efforts to collect debt owed to the United States. A principal feature of the DCIA was the creation of the Treasury Offset Program (TOP), a Government-wide database of delinquent debtors that offsets (reduces) Federal payments to recipients who also owe delinquent debt to the United States and that remits the offset amount to the creditor agency.

The FDIC is amending its regulations, in accordance with the DCIA, to add the collection of civil money penalty (CMP) debt to the FDIC's existing debt-collection regulations found in 12 CFR part 313. Part 313 does not currently provide for collection of CMP debt. The amendments would allow the FDIC to refer debts arising from its enforcement-related activities to Treasury for collection, thereby improving the effectiveness of the FDIC's debt-collection efforts.

II. Background

In 2002, the FDIC, in compliance with the DCIA, promulgated 12 CFR part 313

[1] *See* Public Law 104–134, 110 Stat. 1321–358 (codified at 31 U.S.C. 3701 *et seq.*).

governing the collection of certain debts owed to the FDIC in its corporate capacity by Federal employees, including FDIC employees, and certain third parties.[2] The FDIC amended part 313 in 2006 to include criminal restitution debt.[3] Part 313, in its present form, applies only to debts owed to and payments made by the FDIC acting in its corporate capacity, and criminal restitution debt owed to the FDIC in either its corporate capacity or its receivership capacity.[4]

The DCIA authorizes the FDIC to collect delinquent CMP debts that arise from its supervision and enforcement functions,[5] but the current part 313 does not apply—aside from criminal restitution debt noted above—to ''debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities.'' [6]

III. Discussion of the Amendments to Part 313

The rule amends FDIC regulations to provide for the collection of CMP debt. It will do so by adopting existing Treasury regulations concerning debt-collection procedures as to the collection of CMP debt. It will improve the effectiveness of the FDIC's debt-collection efforts, primarily by allowing the FDIC to refer debts arising from its enforcement-related activities to Treasury for collection. The rule will not affect the FDIC's existing authority under part 313 to collect other forms of debt, including debt owed to the FDIC in its corporate capacity or for the collection of criminal restitution debt.

The legal authority for the amendments is found, in part, in the DCIA itself. The DCIA's definition of ''debt'' includes ''any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization or entity other than another Federal agency.'' [7] The FDIC is amending part 313 in accordance with the FDIC's authority under 12 U.S.C. 1819(a) to prescribe rules and regulations governing its operations.

Accordingly, the FDIC is amending part 313 as follows:

Section 313.1 (Scope) is revised to include CMP debt in part 313. This section also notes that subparts B through G of part 313 do not apply to the collection of CMP debt.

Section 313.3 (Definitions) is amended to include CMP debtors among the list of debtors, under paragraph (u), to whom a creditor agency (the FDIC) may send a written notice that, among other statements, claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The rule makes a technical revision to paragraph (d) to substitute ''the Bureau of the Fiscal Service'' as the successor Treasury entity to ''FMS'' (Treasury's former Financial Management Service) and to note that the FDIC has the statutory authority, under 12 U.S.C. 1818(i)(2)(F), to compromise, modify, or remit any CMP that the FDIC may assess or has already assessed under 12 U.S.C. 1818(i)(2)(A)–(C). Section 313.3 is also revised at paragraphs (j), (m), (n), and (q) to include three divisions of the FDIC, as well as the directors of those divisions (or their designees), since the enforcement and supervisory activities of those divisions may result in the assessment of CMPs.

Section 313.4 (Delegations of authority) contains technical amendments to clarify the following delegations: (1) Authority to collect debt, other than criminal restitution debt and CMP debt, on behalf of the FDIC in its corporate capacity is delegated to the Director of the Division of Administration or Director of the Division of Finance, as applicable, or to the applicable Director's designee; and (2) authority to collect criminal restitution debt on behalf of the FDIC in either its receivership or corporate capacity is delegated to the Director of the Division of Resolutions and Receiverships, or to her or his designee.

The rule creates a new part 313, subpart H, which concerns the collection of CMP debt. Section 313.181 (Scope) states that subpart H establishes FDIC procedures for the collection of CMP debt. Section 313.182 (Purpose) notes that the purpose of subpart H is to implement Federal statutes and regulatory standards authorizing the FDIC to collect delinquent CMPs. Section 313.183 (Definitions) indicates that the definitions provided at section 313.3 apply to subpart H to the extent they are applicable.

Section 313.184 outlines how the FDIC will collect CMP debt. Paragraph (a) states that the FDIC will follow Treasury regulations set forth at 31 CFR part 285, as applicable and consistent with subpart H, for the collection of CMP debt, including centralized offset of Federal payments to collect non-tax debts that may be owed to the FDIC. Paragraph (b) notes that nothing in subpart H shall be construed to require the FDIC to provide duplicate notice or other procedural protections that have already been provided or afforded to a CMP debtor in the course of administrative or judicial litigation or otherwise. Paragraph (c) says that, for CMP debtors, and for purposes of 31 U.S.C. 3716(b)(1), the FDIC adopts without change the regulations on collection by administrative offset set forth at 31 CFR 901.3 and other relevant sections of the FCCS applicable to such offset, to the extent those regulations are consistent with subpart H. Finally, paragraph (d) states that nothing in subpart H precludes the collection of debts through any other available means or precludes the FDIC from engaging in litigation or the compromise of debt as provided under 12 U.S.C. 1818(i) or any other applicable law or regulation.

IV. Expected Effects

The FDIC is amending part 313 in accordance with the FDIC's authority under 12 U.S.C. 1819(a) to prescribe rules and regulations governing its operations. The rule would not directly affect any FDIC-supervised institutions. The rule could indirectly affect FDIC-insured instructions and individuals who are delinquent with respect to CMPs that have been assessed against them by the FDIC. According to the FDIC's information, the sum of delinquent CMPs owed to the FDIC amounts to approximately $1 million. The delinquent CMP funds represent a preexisting obligation owed by the individuals or institutions; therefore, the rule will have no effect on these obligations. However, the rule, as amended, could increase the portion of these obligations that is ultimately collected under part 313.

V. Alternatives Considered

As discussed previously, part 313 does not currently apply to the collection of delinquent CMPs. The FDIC believes that it can increase the effectiveness of its delinquent CMP collection efforts through the use of administrative offset. The DCIA states that agencies, before collecting a claim by administrative offset, must either adopt the FCCS without change or prescribe agency regulations for collecting debts by administrative offset that are consistent with the FCCS. The

[2] *See* 67 FR 48525 (July 25, 2002).

[3] 71 FR 75659 (Dec. 18, 2006).

[4] 12 CFR 313.1(c)(1)–(2).

[5] The FDIC assesses CMPs under the Federal Deposit Insurance Act, 12 U.S.C. 1818(i), and a variety of other statutes. *See, e.g.,* 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u–2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); and 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

[6] 12 CFR 313.1(c)(3).

[7] 37 U.S.C. 3701(b)(1).

FDIC has considered these two approaches and has decided to adopt the FCCS without change for the collection of delinquent CMPs.

VI. Administrative Law Matters

A. Administrative Procedure Act

The FDIC is issuing this final rule without prior notice and the opportunity for public comment ordinarily prescribed by the Administrative Procedure Act (APA).[8] Pursuant to section 553(b)(A) of the APA, general notice and the opportunity for public comment are not required with respect to a rule of ''agency organization, procedure, or practice.''[9]

As discussed above, this final rule amends the FDIC regulations to provide for the collection of CMP debt. It will do so by adopting existing Treasury regulations concerning debt-collection procedures as to the collection of CMP debt. These amendments relate solely to agency procedure and practice. For this reason, the FDIC finds that general notice and opportunity for public comment are not required under the APA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[10] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[11] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(A) of the APA, the FDIC has determined that general notice and opportunity for public comment is not required as the final rule is a rule of agency procedure and practice. Accordingly, the FDIC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[12] the FDIC 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 final rule does not create new or modify existing information collection requirements. Accordingly, no submission to OMB will be made with respect to the final rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[13] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[14] Because the final rule does not impose any reporting, disclosure, or other new requirements on insured depository institutions, the requirements of RCDRIA do not apply.

E. Congressional Review Act

For purposes of the Congressional Review Act (CRA), OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[15] If a rule is deemed a ''major rule'' by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.

The CRA defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[16]

The OMB has determined that this final rule is not a major rule for purposes of the CRA. As required by the CRA, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[17] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 313

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Government employees, Wages.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 1819 (Seventh and Tenth), the FDIC amends 12 CFR part 313 as follows:

PART 313—PROCEDURES FOR COLLECTION OF CORPORATE DEBT, CRIMINAL RESTITUTION DEBT, AND CIVIL MONEY PENALTY DEBT

■ 1. Revise the authority citation for part 313 to read as follows:

Authority: 5 U.S.C. 5514; 12 U.S.C. 1818(i), 1819(a); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701, 3711, 3716).

■ 2. Revise the heading for part 313 to read as set forth above.

■ 3. Revise subpart A to read as follows:

Subpart A—Scope, Purpose, Definitions, and Delegations of Authority

Sec.
313.1 Scope.
313.2 Purpose.
313.3 Definitions.
313.4 Delegations of authority.
313.5 through 313.19 [Reserved]

Subpart A—Scope, Purpose, Definitions, and Delegations of Authority

§ 313.1 Scope.

This part establishes the Federal Deposit Insurance Corporation (FDIC) procedures for the collection of certain debts owed to the United States.

(a) This part applies to collections by the FDIC from:

(1) Federal employees who are indebted to the FDIC;

[8] 5 U.S.C. 553.

[9] 5 U.S.C. 553(b)(A).

[10] 5 U.S.C. 601 *et seq.*

[11] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[12] 44 U.S.C. 3501–3521.

[13] 12 U.S.C. 4802(a).

[14] *Id.* at 4802(b).

[15] 5 U.S.C. 801 *et seq.*

[16] 5 U.S.C. 804(2).

[17] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

(2) Employees of the FDIC who are indebted to other agencies;

(3) Other persons, organizations, or entities that are indebted to the FDIC, except those excluded in paragraph (b)(3) of this section; and

(4) Civil money penalty debtors assessed civil money penalties by the FDIC.

(b) This part does not apply:

(1) To debts or claims arising under the Internal Revenue Code of 1986 (Title 26, U.S. Code), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(2) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(3) In any case where collection of a debt is explicitly provided for or prohibited by another statute.

(c) This part applies only to:

(1) Debts owed to and payments made by the FDIC acting in its corporate capacity, that is, in connection with employee matters such as travel-related claims and erroneous overpayments, contracting act ivities involving corporate operations, debts related to requests to the FDIC for documents under the Freedom of Information Act (FOIA), or where a request for an offset is received by the FDIC from another Federal agency;

(2) Criminal restitution debt owed to the FDIC in either its corporate capacity or its receivership capacity; and

(3) Civil money penalties arising out of the FDIC's activities in its supervision or enforcement capacities.

(4) With the exception of criminal restitution debt noted in paragraph (c)(2) of this section and civil money penalty debt noted in paragraph (c)(3) of this section, this part does not apply to debts owed to or payments made by the FDIC in connection with the FDIC's liquidation, supervision, enforcement, or insurance responsibilities, nor does it limit or affect the FDIC's authority with respect to debts or claims under 12 U.S.C. 1819(a) and 1820(a).

(d) Subparts B through G of this part do not apply to the collection of civil money penalty debt.

(e) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under: Standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3711 *et seq.*); the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX); or any other applicable law.

§ 313.2 Purpose.

(a) The purpose of this part is to implement Federal statutes and regulatory standards authorizing the FDIC to collect debts owed to the United States. This part is consistent with the following Federal statutes and regulations:

(1) DCIA at 31 U.S.C. 3711 (collection and compromise of claims); section 3716 (administrative offset), section 3717 (interest and penalty on claims), and section 3718 (contracts for collection services);

(2) 5 U.S.C. 5514 (salary offset);

(3) 5 U.S.C. 5584 (waiver of claims for overpayment);

(4) 31 CFR chapter IX (Federal Claims Collection Standards);

(5) 5 CFR part 550, subpart K (salary offset);

(6) 31 U.S.C. 3720D and 31 CFR 285.11 (administrative wage garnishment);

(7) 26 U.S.C. 6402(d), 31 U.S.C. 3720A, and 31 CFR 285.2 (tax refund offset); and

(8) 5 CFR 831.1801 through 1808 (U.S. Office of Personnel Management (OPM) offset).

(b) Collectively, the statutes and regulations in paragraph (a) of this section prescribe the manner in which Federal agencies should proceed to establish the existence and validity of debts owed to the Federal Government and describe the remedies available to agencies to offset valid debts.

§ 313.3 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including Government corporations.

(b) *Board* means the Board of Directors of the FDIC.

(c) *Centralized administrative offset* means the mandatory referral to the Secretary of the Treasury by a creditor agency of a past due debt which is more than 180 days delinquent, for the purpose of collection under the Treasury's centralized offset program.

(d) *Certification* means a written statement transmitted from a creditor agency to a paying agency for purposes of administrative or salary offset, to Treasury's Bureau of the Fiscal Service for offset or to the Secretary of the Treasury for centralized administrative offset. The certification confirms the existence and amount of the debt and verifies that required procedural protections have been afforded the debtor. Where the debtor requests a hearing on a claimed debt, the decision by a hearing official or administrative law judge constitutes a certification.

(e) *Chairman* means the Chairman of the FDIC.

(f) *Compromise* means the settlement or forgiveness of a debt under 31 U.S.C. 3711 or 12 U.S.C. 1818(i)(2)(F) (for civil money penalties), in accordance with standards set forth in the FCCS and applicable Federal law.

(g) *Creditor agency* means an agency of the Federal Government to which the debt is owed, or a debt collection center when acting on behalf of a creditor agency to collect a debt.

(h) *Debt* means an amount owed to the United States from loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, restitution, fines and forfeitures, and all other similar sources. For purposes of this part, a debt owed to the FDIC constitutes a debt owed to the United States.

(i) *Debt collection center* means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

(j) *Director* means the Director of the Division of Finance (DOF), the Director of the Division of Administration (DOA), the Director of the Division of Resolutions and Receiverships (DRR), the Director of the Division of Risk Management Supervision (RMS), the Director of the Division of Depositor and Consumer Protection (DCP), or the Director of the Division of Complex Institution Supervision and Resolution (CISR), as applicable, or the applicable Director's designee.

(k) *Disposable pay* means that part of current adjusted basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to adjusted basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The FDIC shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Federal employment taxes;

(2) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Medicare deductions;

(4) Health insurance premiums;

(5) Normal retirement contributions, including employee contributions to the Thrift Savings Plan or the FDIC 401(k) Plan;

(6) Normal life insurance premiums (*e.g.,* Serviceman's Group Life Insurance and ''Basic Life'' Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage;

(7) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home; and

(8) Fines and forfeiture ordered by a court-martial or by a commanding officer.

(l) *Division of Administration* (DOA) means the Division of Administration of the FDIC, or any successor division of the FDIC.

(m) *Division of Complex Institution Supervision and Resolution* (CISR) means the Division of Complex Institution Supervision and Resolution of the FDIC, or any successor division of the FDIC.

(n) *Division of Depositor and Consumer Protection* (DCP) means the Division of Depositor and Consumer Protection of the FDIC, or any successor division of the FDIC.

(o) *Division of Finance* (DOF) means the Division of Finance of the FDIC, or any successor division of the FDIC.

(p) *Division of Resolutions and Receiverships* (DRR) means the Division of Resolutions and Receiverships of the FDIC, or any successor division of the FDIC.

(q) *Division of Risk Management Supervision* (RMS) means the Division of Risk Management Supervision of the FDIC, or any successor division of the FDIC.

(r) *Federal Claims Collection Standards* (FCCS) means standards published at 31 CFR chapter IX.

(s) *Garnishment* means the process of withholding amounts from the disposable pay of a person employed outside the Federal Government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

(t) *Hearing official* means an administrative law judge or other individual authorized to conduct a hearing and issue a final decision in response to a debtor's request for hearing. A hearing official may not be under the supervision or control of the Chairman or FDIC Board when the FDIC is the creditor agency.

(u) *Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, entity, restitution debtor, or civil money penalty debtor that claims a debt and informs the debtor that the creditor agency intends to collect the debt by administrative offset. The notice also informs the debtor of certain procedural rights with respect to the claimed debt and offset.

(v) *Notice of Salary Offset* means a written notice from a paying agency to its employee informing the employee that salary offset to collect a debt due to the creditor agency will begin at the next officially established pay interval. The paying agency transmits this notice to its employee after receiving a certification from the creditor agency.

(w) *Paying agency* means the agency of the Federal Government that employs the individual who owes a debt to an agency of the Federal Government. The same agency may be both the creditor agency and the paying agency.

(x) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(y) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt allegedly owed by an employee to an agency, as authorized or required by 5 U.S.C. 5584 or any other law.

(z) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of administrative wage garnishment, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 313.4 Delegations of authority.

Authority to conduct the following activities is delegated as follows: Authority to collect debt, other than criminal restitution debt and civil money penalty debt, on behalf of the FDIC in its corporate capacity is delegated to the Director of DOA or Director of DOF, as applicable, or to the applicable Director's designee; and authority to collect criminal restitution debt on behalf of the FDIC in either its receivership or corporate capacity is delegated to the Director of DRR, or to her or his designee. These individuals, under the delegations in this section, may do the following:

(a) Initiate and carry out the debt collection process on behalf of the FDIC, in accordance with the FCCS;

(b) Accept or reject compromise offers and suspend or terminate collection actions to the full extent of the FDIC's legal authority under 12 U.S.C. 1819(a) and 1820(a), 31 U.S.C. 3711(a)(2), and any other applicable statute or regulation, provided, however, that no such claim shall be compromised or collection action terminated, except upon the concurrence of the FDIC General Counsel or his or her designee;

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts, where appropriate;

(d) Use administrative offset procedures, including salary offset, to collect debts; and

(e) Take any other action necessary to promptly and effectively collect debts owed to the United States in accordance with the policies contained herein and as otherwise provided by law.

§§ 313.5 through 313.19 [Reserved]

■ 4. Add subpart H to read as follows:

Subpart H—Civil Money Penalty Debt

Sec.
313.181 Scope.
313.182 Purpose.
313.183 Definitions.
313.184 Collection of civil money penalty debt.
313.185 through 313.190 [Reserved]

Subpart H—Civil Money Penalty Debt

§ 313.181 Scope.

This subpart establishes FDIC procedures for the collection of civil money penalty debt.

§ 313.182 Purpose.

The purpose of this subpart is to implement Federal statutes and regulatory standards authorizing the FDIC to collect delinquent civil money penalties.

§ 313.183 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this subpart, the definitions provided at § 313.3 apply to this subpart.

§ 313.184 Collection of civil money penalty debt.

(a) The FDIC will follow Department of Treasury regulations set forth at 31 CFR part 285, as applicable and consistent with this subpart, for the collection of civil money penalty debt, including centralized offset of Federal payments to collect non-tax debts that may be owed to the FDIC, under 31 CFR 285.5.

(b) Nothing in this subpart shall be construed to require the FDIC to provide duplicate notice or other procedural protections that have already been provided or afforded to a civil money penalty debtor in the course of administrative or judicial litigation or otherwise.

(c) For civil money penalty debtors, and for purposes of 31 U.S.C. 3716(b)(1),

the FDIC adopts without change the regulations on collection by administrative offset set forth at 31 CFR 901.3 and other relevant sections of the Federal Claims Collection Standards applicable to such offset, to the extent those regulations are consistent with this subpart.

(d) Nothing in this subpart precludes the collection of debts through any other available means or precludes the FDIC from engaging in litigation or the compromise of debt as provided under 12 U.S.C. 1818(i) or any other applicable law or regulation.

§§ 313.185 through 313.190 [Reserved]

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–27955 Filed 1–8–21; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Office of the Secretary

14 CFR Part 383

Federal Aviation Administration

14 CFR Part 406

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Maritime Administration

46 CFR Parts 221, 307, 340, and 356

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, and 190

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 272

Federal Motor Carrier Safety Administration

49 CFR Part 386

National Highway Traffic Safety Administration

49 CFR Part 578

RIN 2105–AE90

Revisions to Civil Penalty Amounts

AGENCY: Department of Transportation (DOT or the Department).

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2020 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In additional, this final rule makes conforming revisions to Federal Motor Carrier Safety Administration regulations to reflect inflationary adjustments to the statutorily-mandated civil penalties for violations of Federal law.

DATES: Effective January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Analiese Marchesseault, Attorney-Advisor, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, *analiese.marchesseault@dot.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula. Section 4(b)(2) of the 2015 Act specifically directs that the annual adjustment be accomplished through final rule without notice and comment. This rule is effective immediately.

This rule also implements the authority to assess civil penalties for violations concerning the Drug and Alcohol Clearinghouse, set forth in section 34202 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, 126 Stat. 405, codified at 49 U.S.C. 31306a(k)(1).

The Department's authorities over the specific civil penalty regulations being amended by this rule are provided in the preamble discussion below.

I. Background

On November 2, 2015, the President signed into law the 2015 Act, which amended the FCPIAA, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires Federal agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation.

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the required annual inflation adjustment no later than December 15 of each year.[1] On December 16, 2019, OMB released this required guidance, in OMB Memorandum M–20–05, which provides instructions on how to

[1] 28 U.S.C. 2461 note.

calculate the 2020 annual adjustment. To derive the 2020 adjustment, the Department must multiply the maximum or minimum penalty amount by the percent change between the October 2019 Consumer Price Index for All Urban Consumers (CPI–U) and the October 2018 CPI–U. In this case, as explained in OMB Memorandum M–20–05, the percent change between the October 2019 CPI–U and the October 2018 CPI–U is 1.01764.

II. Dispensing With Notice and Comment

This final rule is being published without notice and comment and with an immediate effective date.

The 2015 Act provides clear direction for how to adjust the civil penalties, and clearly states at section 4(b)(2) that this adjustment shall be made ''notwithstanding section 553 of title 5, United States Code.'' By operation of the 2015 Act, DOT must publish an annual adjustment by January 15 of every year, and the new levels take effect upon publication of the rule. In addition, as noted above, MAP–21 provides explicit authority to assess civil penalties for violations of 49 U.S.C. 31306a. Accordingly, DOT is publishing this final rule without prior notice and comment, and with an immediate effective date.

III. Discussion of the Final Rule

In 2016, OST and DOT's operating administrations with civil monetary penalties promulgated the ''catch up'' IFR required by the 2015 Act. All DOT operating administrations have already finalized their ''catch up'' IFRs and this rule makes the annual inflation adjustment required by the 2015 Act.

The Department emphasizes that this rule adjusts penalties prospectively, and therefore the penalty adjustments made by this rule will apply only to violations that take place after this rule becomes effective. This rule also does not change previously assessed or enforced penalties that DOT is actively collecting or has collected.

A. OST 2020 Adjustments

OST's 2020 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
General civil penalty for violations of certain aviation economic regulations and statutes.	49 U.S.C. 46301(a)(1)	$34,174	$34,777
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern.	49 U.S.C. 46301(a)(1)	1,503	1,530
Civil penalties for individuals or small businesses for violations of most provisions of Chapter 401 of Title 49, including the anti-discrimination provisions of sections 40127 and 41705 and rules and orders issued pursuant to these provisions.	49 U.S.C. 46301(a)(5)(A)	13,669	13,910
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(C)	6,834	6,955
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(D)	3,418	3,478

B. FAA 2020 Adjustments

FAA recently discovered that it had not adjusted the maximum civil penalty for certain laser pointer violations.[2] Consistent with the intent of the law and to ensure uniform year-over-year application of the 2015 Act, the 2020 update is being calculated as if the missed 2018 and 2019 updates had occurred. No violations will be assessed at the 2018 or 2019 amounts. They are included in the chart below to show the FAA's calculations clearly.

Description	Citation	Initial penalty (2016)	Unpromulgated 2018 penalty (initial penalty × 1.02041)[3]	Unpromulgated 2019 penalty (2018 penalty × 1.02522)	New penalty (2019 penalty × 1.01764)
Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	49 U.S.C. 46301 note ..	$25,000	$25,510	$26,153	$26,614

On October 5, 2018, Congress enacted a statutory penalty for operating an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.[4] It was not adjusted in 2019 because, per OMB guidance, new civil monetary penalties are not adjusted for inflation the first year they are in effect.[5] This year is thus its first adjustment.

[2] Public Law 114–190, section 2104(b), 130 Stat. 615, 620 (July 15, 2016) (codified at 49 U.S.C. 46301 note).

[3] Under OMB Memorandum M–16–06, new civil monetary penalties are not adjusted for inflation the first year they are in effect. Because this penalty was enacted on July 15, 2016, it would not have been first adjusted until 2018.

[4] Public Law 115–254, section 363, 132 Stat. 3186, 3308 (Oct. 5, 2018) (codified at 49 U.S.C. 44802 note).

[5] OMB Memorandum M–16–06.

Description	Citation	Initial penalty (2018)	New penalty (initial penalty × 1.01764)
Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	49 U.S.C. 44802 note	$25,000	$25,441

The rest of FAA's 2020 adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(1)	$81,993	$83,439
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	49 U.S.C. 5123(a)(2)	191,316	194,691
Minimum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	493	502
Maximum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	81,993	83,439
Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	49 U.S.C. 46301(a)(1)	34,174	34,777
Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	49 U.S.C. 46301(a)(1)	1,501	1,527
Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	49 U.S.C. 46301(a)(1)	1,501	1,527
Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	49 U.S.C. 46301(a)(5)(A)	13,669	13,910
Violation by an individual or small business concern related to the transportation of hazardous materials.	49 U.S.C. 46301(a)(5)(B)(i)	13,669	13,910
Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	49 U.S.C. 46301(a)(5)(B)(ii)	13,669	13,910
Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	49 U.S.C. 46301(a)(5)(B)(iii)	13,669	13,910
Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	49 U.S.C. 46301(a)(5)(B)(iv)	13,669	13,910
Tampering with a smoke alarm device	49 U.S.C. 46301(b)	4,388	4,465
Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	49 U.S.C. 46302	23,832	24,252
Interference with cabin or flight crew	49 U.S.C. 46318	35,883	36,516
Permanent closure of an airport without providing sufficient notice.	49 U.S.C. 46319	13,669	13,910
Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	49 U.S.C. 46320	20,923	21,292
Violation of 51 U.S.C. 50901–50923, a regulation issued under these statutes, or any term or condition of a license or permit issued or transferred under these statutes..	51 U.S.C. 50917(c)	240,155	244,391

In addition to the civil penalties listed in the above charts, FAA regulations also provide for maximum civil penalties for violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels. Those civil penalties are identical to the civil penalties imposed under 49 U.S.C. 46301(a)(1) and (a)(5), which are detailed in the above chart, and therefore, the noise-level civil penalties will be adjusted in the same manner as the section 46301(a)(1) and (a)(5) civil penalties.

C. NHTSA 2020 Adjustments

NHTSA's 2020 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764
Maximum penalty amount for each violation of the Safety Act	49 U.S.C. 30165(a)(1), 30165(a)(3)	$22,329	$22,723
Maximum penalty amount for a related series of violations of the Safety Act.	49 U.S.C. 30165(a)(1), 30165(a)(3)	111,642,265	113,611,635

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764
Maximum penalty per school bus related violation of the Safety Act.	49 U.S.C. 30165(a)(2)(A)	12,695	12,919
Maximum penalty amount for a series of school bus related violations of the Safety Act.	49 U.S.C. 30165(a)(2)(B)	19,042,502	19,378,412
Maximum penalty per violation for filing false or misleading reports.	49 U.S.C. 30165(a)(4)	5,466	5,562
Maximum penalty amount for a series of violations related to filing false or misleading reports.	49 U.S.C. 30165(a)(4)	1,093,233	1,112,518
Maximum penalty amount for each violation of the reporting requirements related to maintaining the National Motor Vehicle Title Information System.	49 U.S.C. 30505	1,783	1,814
Maximum penalty amount for each violation of a bumper standard under the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, 86 Stat. 953, (1972)).	49 U.S.C. 32507(a)	2,924	2,976
Maximum penalty amount for a series of violations of a bumper standard under the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513, 86 Stat. 953, (1972)).	49 U.S.C. 32507(a)	3,256,233	3,313,763
Maximum penalty amount for each violation of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	2,924	2,976
Maximum penalty amount for a series of violations of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	1,594,890	1,623,024
Maximum penalty for each violation related to the tire fuel efficiency information program.	49 U.S.C. 32308(c)	60,518	61,586
Maximum civil penalty for willfully failing to affix, or failing to maintain, the label requirement in the American Automobile Labeling Act (Pub. L. 102–388, 106 Stat. 1556 (1992)).	49 U.S.C. 32309	1,783	1,814
Maximum penalty amount per violation related to odometer tampering and disclosure.	49 U.S.C. 32709	10,932	11,125
Maximum penalty amount for a related series of violations related to odometer tampering and disclosure.	49 U.S.C. 32709	1,093,233	1,112,518
Maximum penalty amount per violation related to odometer tampering and disclosure with intent to defraud.	49 U.S.C. 32710	10,932	11,125
Maximum penalty amount for each violation of the Motor Vehicle Theft Law Enforcement Act of 1984 (Vehicle Theft Act), sec. 608, Pub. L. 98–547, 98 Stat. 2762 (1984).	49 U.S.C. 33115(a)	2,402	2,444
Maximum penalty amount for a related series of violations of the Motor Vehicle Theft Law Enforcement Act of 1984 (Vehicle Theft Act), sec. 608, Pub. L. 98–547, 98 Stat. 2762 (1984).	49 U.S.C. 33115(a)	600,388	610,979
Maximum civil penalty for violations of the Anti-Car Theft Act (Pub. L. 102–519, 106 Stat. 3393 (1992)) related to operation of a chop shop.	49 U.S.C. 33115(b)	178,338	181,484
Maximum civil penalty for violations under 49 U.S.C. 32911(a) related to automobile fuel economy.	49 U.S.C 32912(a)	42,530	43,280
Maximum civil penalty for a violation under the medium- and heavy-duty vehicle fuel efficiency program.	49 U.S.C. 32902	41,882	42,621

D. FMCSA 2020 Adjustments and Revisions

FMCSA's civil penalties affected by this rule are all located in appendices A and B to 49 CFR part 386. Section 31306a(k) of title 49 requires FMCSA to assess civil penalties under 49 U.S.C. 521(b)(2)(C) for violations concerning the Drug and Alcohol Clearinghouse. To comply with this mandate, FMCSA revises appendix B to include civil penalties for an employer, employee, medical review officer, or service agent who violates the regulations implementing the Drug and Alcohol Clearinghouse at 49 CFR part 382, subpart G. FMCSA also makes conforming changes to 49 CFR part 386, appendix B (a)(1)–(4). The 2020 adjustments to these civil penalties are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Appendix A II Subpoena	49 U.S.C. 525	$1,093	$1,112
Appendix A II Subpoena	49 U.S.C. 525	10,932	11,125
Appendix A IV (a) Out-of-service order (operation of CMV by driver).	49 U.S.C. 521(b)(7)	1,895	1,928

[6] Section (g)(5) is revised to reflect the termination of the North American Free Trade Agreement and the adoption of the United States Mexico Canada Agreement (USMCA), which came into effect July 1, 2020. FMCSA is examining its regulations and considering what additional revisions, if any, are needed in light of USMCA.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver).	49 U.S.C. 521(b)(7))	18,943	19,277
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	1,895	1,928
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	18,943	19,277
Appendix A IV (e) Out-of-service order (failure to return written certification of correction).	49 U.S.C. 521(b)(2)(B)	947	964
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered).	49 U.S.C. 521(b)(2)(F)	27,331	27,813
Appendix A IV (h) Out-of-service order (operating in violation of order).	49 U.S.C. 521(b)(7)	24,017	24,441
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties).	49 U.S.C. 521(b)(2)(A) and (b)(7))	15,419	15,691
Appendix A IV (j) (conducting operations during suspension or revocation).	49 U.S.C. 521(b)(7)	24,017	24,441
Appendix B (a)(1) Recordkeeping—maximum penalty per day	49 U.S.C. 521(b)(2)(B)(i)	1,270	1,292
Appendix B (a)(1) Recordkeeping—maximum total penalty	49 U.S.C. 521(b)(2)(B)(i)	12,695	12,919
Appendix B (a)(2) Knowing falsification of records	49 U.S.C. 521(b)(2)(B)(ii)	12,695	12,919
Appendix B (a)(3) Non-recordkeeping violations	49 U.S.C. 521(b)(2)(A)	15,419	15,691
Appendix B (a)(4) Non-recordkeeping violations by drivers	49 U.S.C. 521(b)(2)(A)	3,855	3,923
Appendix B (a)(5) Violation of 49 CFR 392.5 (first conviction)	49 U.S.C. 31310(i)(2)(A)	3,174	3,230
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	6,348	6,460
Appendix B (b) Commercial driver's license (CDL) violations	49 U.S.C. 521(b)(2)(C)	5,732	5,833
Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction).	49 U.S.C. 31310(i)(2)(A)	3,174	3,230
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	6,348	6,460
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty).	49 U.S.C. 521(b)(2)(C)	5,732	5,833
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty).	49 U.S.C. 31310(i)(2)(C)	31,737	32,297
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations.	49 U.S.C. 31310(j)(2)(B)	16,453	16,743
Appendix B (d) Financial responsibility violations	49 U.S.C. 31138(d)(1), 31139(g)(1)	16,915	17,213
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials).	49 U.S.C. 5123(a)(1)	81,993	83,439
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	49 U.S.C. 5123(a)(3)	493	502
Appendix B (e)(2): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	49 U.S.C. 5123(a)(1)	81,993	83,439
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	49 U.S.C. 5123(a)(1)	81,993	83,439
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	49 U.S.C. 5123(a)(1)	81,993	83,439
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	49 U.S.C. 5123(a)(2)	191,316	194,691
Appendix B (f)(1) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (generally).	49 U.S.C. 521(b)(2)(F)	27,331	27,813
Appendix B (f)(2) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty.	49 U.S.C. 5123(a)(1)	81,993	83,439
Appendix B (f)(2): Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)—maximum penalty if death, serious illness, severe injury to persons; destruction of property.	49 U.S.C. 5123(a)(2)	191,316	194,691
Appendix B (g)(1): Violations of the commercial regulations (CR) (property carriers).	49 U.S.C. 14901(a)	10,932	11,125
Appendix B (g)(2) Violations of the CRs (brokers)	49 U.S.C. 14916(c)	10,932	11,125
Appendix B (g)(3) Violations of the CRs (passenger carriers)	49 U.S.C. 14901(a)	27,331	27,813
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	49 U.S.C. 14901(a)	10,932	11,125

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for intentional violation [6]	49 U.S.C. 14901 note	15,034	15,299
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for a pattern of intentional violations.	49 U.S.C. 14901 note	37,587	38,250
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	49 U.S.C. 14901(b)	21,865	22,251
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	49 U.S.C. 14901(b)	43,730	44,501
Appendix B (g)(7): Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee).	I49 U.S.C. 14901(d)(1)	1,644	1,673
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	49 U.S.C. 14901(e)	3,291	3,349
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—subsequent violation.	49 U.S.C. 14901(e)	8,227	8,372
Appendix B (g)(10) Tariff violations	49 U.S.C. 13702, 14903	164,531	167,433
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	49 U.S.C. 14904(a)	328	334
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	49 U.S.C. 14904(a)	411	418
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for first violation.	49 U.S.C. 14904(b)(1)	823	838
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	49 U.S.C. 14904(b)(1)	3,291	3,349
Appendix B (g)(13): service from freight forwarder at less than rate in effect—maximum penalty for first violation.	49 U.S.C. 14904(b)(2)	823	838
Appendix B (g)(13): service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	49 U.S.C. 14904(b)(2)	3,291	3,349
Appendix B (g)(14): Violations related to loading and unloading motor vehicles.	49 U.S.C. 14905	16,453	16,743
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))—minimum penalty.	49 U.S.C. 14901	1,093	1,112
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	49 U.S.C. 14907	8,227	8,372
Appendix B (g)(17): Unauthorized disclosure of information	49 U.S.C. 14908	3,291	3,349
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	49 U.S.C. 14910	823	838
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination.	49 U.S.C. 14915	16,453	16,743
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier.	49 U.S.C. 14901(d)(2)	12,695	12,919
Appendix B (g)(23): HHG transportation or broker services—registration requirement.	49 U.S.C. 14901 (d)(3)	31,737	32,297
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	49 U.S.C. 521(b)(2)(E)	1,270	1,292
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum total penalty.	49 U.S.C. 521(b)(2)(E)	12,695	12,919
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for first violation.	49 U.S.C. 524	2,187	2,226
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for first violation.	49 U.S.C. 524	5,466	5,562
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for subsequent violation(s).	49 U.S.C. 524	2,732	2,780
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for subsequent violation(s).	49 U.S.C. 524	8,199	8,344
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	49 U.S.C. 14906	2,187	2,226
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	49 U.S.C. 14906	5,466	5,562

E. FRA 2020 Adjustments

FRA's 2020 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Minimum rail safety penalty	49 U.S.C. ch. 213	$892	$908
Ordinary maximum rail safety penalty	49 U.S.C. ch. 213	29,192	29,707
Maximum penalty for an aggravated rail safety violation	49 U.S.C. ch. 213	116,766	118,826
Minimum penalty for hazardous materials training violations	49 U.S.C. 5123	493	502
Maximum penalty for ordinary hazardous materials violations	49 U.S.C. 5123	81,993	83,439
Maximum penalty for aggravated hazardous materials violations	49 U.S.C. 5123	191,316	194,691

F. PHMSA 2020 Adjustments

PHMSA's civil penalties affected by this rule for hazardous materials violations are located in 49 CFR 107.329, appendix A to subpart D of 49 CFR part 107, and § 171.1. The civil penalties affected by this rule for pipeline safety violations are located in § 190.223. PHMSA's 2020 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Maximum penalty for hazardous materials violation	49 U.S.C. 5123	$81,993	$83,439
Maximum penalty for hazardous materials violation that results in death, serious illness, or severe injury to any person or substantial destruction of property.	49 U.S.C. 5123	191,316	194,691
Minimum penalty for hazardous materials training violations	49 U.S.C. 5123	493	502
Maximum penalty for each pipeline safety violation	49 U.S.C. 60122(a)(1)	218,647	222,504
Maximum penalty for a related series of pipeline safety violations.	49 U.S.C. 60122(a)(1)	2,186,465	2,225,034
Maximum additional penalty for each liquefied natural gas pipeline facility violation.	49 U.S.C. 60122(a)(2)	79,875	81,284
Maximum penalty for discrimination against employees providing pipeline safety information.	49 U.S.C. 60122(a)(3)	1,270	1,292

G. MARAD 2019 Adjustments

MARAD's 2019 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Maximum civil penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except for violations of 46 U.S.C. 31329.	46 U.S.C. 31309	$21,038	$21,409
Maximum civil penalty for a single violation of 46 U.S.C. 31329 as it relates to the court sales of documented vessels.	46 U.S.C. 31330	52,596	53,524
Maximum civil penalty for a single violation of 46 U.S.C. 56101 as it relates to approvals required to transfer a vessel to a noncitizen.	46 U.S.C. 56101(e)	21,134	21,507
Maximum civil penalty for failure to file an AMVER report	46 U.S.C. 50113(b)	133	135
Maximum civil penalty for violating procedures for the use and allocation of shipping services, port facilities and services for national security and national defense operations.	50 U.S.C. 4513	26,582	27,051
Maximum civil penalty for violations in applying for or renewing a vessel's fishery endorsement.	46 U.S.C. 12151	154,197	156,917

H. SLSDC 2020 Adjustments

SLSDC's 2020 civil penalty adjustment is as follows:

Description	Citation	Existing penalty	New penalty (existing penalty × 1.01764)
Maximum civil penalty for each violation of the Seaway Rules and Regulations at 33 CFR part 401.	33 U.S.C. 1232	$94,219	$95,881

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Orders 12866 or DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Analysis

The Department has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when ''an agency is required . . . to publish general notice of proposed rulemaking.'' 5 U.S.C. 604(a).[7] The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2012), explains that:

> If, under the [Administrative Procedure Act (APA)] or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If an NPRM is not required, the RFA does not apply.

As stated above, DOT has determined that good cause exists to publish this final rule without notice and comment procedures under the APA. Therefore, the RFA does not apply.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This regulation has no substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments. It does not contain any new provision that preempts State law, because States are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Because none of the measures in the rule have tribal implications or impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning, each proposed collection of information. This final rule imposes no new information reporting or record keeping necessitating clearance by OMB.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979 as amended July 13, 1982 and July 30, 1985). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4(c)(5) of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action qualifies for a categorical exclusion in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, (80 FR 44208, July 24, 2015), paragraph 5–6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this final rule.

G. Unfunded Mandates Reform Act

The Department analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995. The Department considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The Department has determined that this final rule will not result in such expenditures. Accordingly, this final rule is not subject to the Unfunded Mandates Reform Act.

H. Executive Order 13771

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply to this action because it is nonsignificant; therefore, it is not subject to the ''2 for 1'' and budgeting requirements.

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 383

Administrative practice and procedure, Penalties.

14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio,

[7] Under 5 U.S.C. 603(a), the Regulatory Flexibility Act also applies when an agency ''publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States.'' However, this rule does not involve the internal revenue laws of the United States.

Reporting and recordkeeping requirements, Vessels, Waterways.

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 340

Harbors, Maritime carriers, National defense, Packaging and containers.

46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Definitions, General information, Regulations.

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 216, 217, 221, 224, 229, 230, 232, 233, and 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 222, 235, 240, 242, 243, and 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

Accordingly, the Department of Transportation amends 14 CFR chapters I, II, and III, 33 CFR chapter IV, 46 CFR chapter II, and 49 CFR chapters I, II, III, and V as follows:

Title 14—Aeronautics and Space

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 44725, 44802 (note), 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318–46320, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Amend § 13.301 by revising paragraphs (b) and (c) to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

* * * * *

(b) Each adjustment to a maximum civil monetary penalty or to minimum and maximum civil monetary penalties that establish a civil monetary penalty range applies to actions initiated under this part for violations occurring on or after January 11, 2021, notwithstanding references to specific civil penalty amounts elsewhere in this part.

(c) Minimum and maximum civil monetary penalties are as follows:

TABLE 1 TO § 13.301—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS

United States Code citation	Civil monetary penalty description	2019 minimum penalty amount	New minimum penalty amount for violations occurring on or after January 11, 2021, adjusted for inflation	2019 maximum penalty amount	New maximum penalty amount for violations occurring on or after January 11, 2021, adjusted for inflation
49 U.S.C. 5123(a)(1)	Violation of hazardous materials transportation law.	N/A	N/A	$81,993	$83,439.
49 U.S.C. 5123(a)(2)	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	N/A	N/A	$191,316	$194,691.
49 U.S.C. 5123(a)(3)	Violation of hazardous materials transportation law relating to training.	$493	$502	$81,993	$83,439.
49 U.S.C. 44802 note	Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	N/A	N/A	$25,000	$25,441.
49 U.S.C. 46301(a)(1)	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	$34,174	$34,777.
49 U.S.C. 46301(a)(1)	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	$1,501	$1,527.
49 U.S.C. 46301(a)(1)	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	$1,501	$1,527.
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A)	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46301(a)(5)(B)(i)	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46301(a)(5)(B)(ii)	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46301(a)(5)(B)(iii)	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46301(a)(5)(B)(iv)	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46301 note	Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	N/A	N/A	$25,000	$26,614.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	N/A	$4,388	$4,465.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	$23,832	$24,252.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	$35,883	$36,516.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	$13,669	$13,910.
49 U.S.C. 46320	Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	N/A	N/A	$20,923	$21,292.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(5), above.	See 49 U.S.C. 46301(a)(1) and (a)(5), above.

PART 383—CIVIL PENALTIES

■ 3. The authority citation for part 383 continues to read as follows:

Authority: Sec. 701, Pub. L. 114–74, 129 Stat. 584; Sec. 503, Pub. L. 108–176, 117 Stat. 2490; Pub. L. 101–410, 104 Stat. 890; Sec. 31001, Pub. L. 104–134.

■ 4. Section 383.2 is revised to read as follows:

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than $34,777 (or $1,530 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general $1,466 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of $13,910 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued pursuant to those provisions (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of $6,955 applies for violations of section 41719 and rules and orders issued pursuant to that provision (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of $3,478 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 5. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $244,391 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

Title 33—Navigation and Navigable Waters

PART 401—SEAWAY REGULATIONS AND RULES

Subpart B—Penalties—Violations of Seaway Regulations

■ 7. The authority citation for subpart B of part 401 is revised to read as follows:

Authority: 33 U.S.C. 981–990, 1231 and 1232, 49 CFR 1.52, unless otherwise noted.

■ 8. Amend § 401.102 by revising paragraph (a) to read as follows:

§ 401.102 Civil penalty.

(a) A person, as described in § 401.101(b) who violates a regulation in this chapter is liable to a civil penalty of not more than $95,881.

* * * * *

Title 46—Shipping

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

■ 9. The authority citation for part 221 continues to read as follows:

Authority: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114–74; 49 CFR 1.93.

■ 10. Section 221.61(b) is revised to read as follows:

§ 221.61 Compliance.

* * * * *

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than $21,409 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and pursuant to the regulations in this part a person violating 46 U.S.C. 31329 is liable for a civil penalty of not more than $53,524 for each violation. A person who charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than $21,507 for each violation.

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

■ 11. The authority citation for part 307 continues to read as follows:

Authority: Pub. L. 109–304; 46 U.S.C. 50113; Pub. L. 114–74; 49 CFR 1.93.

■ 12. Section 307.19 is revised to read as follows:

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of $135.00 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

■ 13. The authority citation for part 340 continues to read as follows:

Authority: 50 U.S.C. 4501 *et seq.* (''The Defense Production Act''); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114–74; 49 CFR 1.45; 49 CFR 1.93(l).

■ 14. Section 340.9 is revised to read as follows:

§ 340.9 Compliance.

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this part shall, upon conviction, be fined not more than $27,051 or imprisoned for not more than one year, or both.

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

■ 15. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; Pub. L. 114–74; 49 CFR 1.93.

■ 16. Amend § 356.49 by revising paragraph (b) to read as follows:

§ 356.49 Penalties.

* * * * *

(b) A fine of up to $156,917 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

* * * * *

Title 49—Transportation

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 17. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 18. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $83,439 for each violation, except the maximum civil penalty is $194,691 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $502 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $83,439 for each violation, except the maximum civil penalty is $194,691 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $502 for violations relating to training.

Appendix A to Subpart D of Part 107 [Amended]

■ 19. In appendix A to subpart D of part 107, remove ''$81,993 or $191,316'' and ''July 31, 2019'' and add in their places ''$83,439 or $194,691'' and ''January 11, 2021,'' respectively.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 20. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 21. Amend § 171.1 by revising paragraph (g) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than $83,439 for each violation, except the maximum civil penalty is $194,691 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $502 for a violation relating to training.

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 22. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*

■ 23. Amend § 190.223 by revising paragraphs (a), (c), and (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101, *et seq.,* or any regulation in 49 CFR parts 190 through 199, or order issued pursuant to 49 U.S.C. 60101, *et seq.* or 49 CFR part 190, is subject to an administrative civil penalty not to exceed $222,504 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed $2,225,034 for any related series of violations.

* * * * *

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed $81,284, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed $1,292, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

■ 24. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 25. Amend § 209.103 by revising paragraphs (a) and (c) to read as follows:

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous materials transportation laws, an order issued thereunder, subchapter A or C of chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil penalty of not more than $83,439 for each violation, except that—

(1) The maximum civil penalty for a violation is $194,691 if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property; and

(2) A minimum $502 civil penalty applies to a violation related to training.

* * * * *

(c) The maximum and minimum civil penalties described in paragraph (a) of this section apply to violations occurring on or after January 11, 2021.

■ 26. Amend § 209.105 by revising the last sentence of paragraph (c) to read as follows:

§ 209.105 Notice of probable violation.

* * * * *

(c) * * * In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of $83,439 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of $194,691.

§ 209.409 [Amended]

■ 27. Amend § 209.409 as follows:

■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

■ 28. In appendix A to part 209, amend the section ''Penalty Schedules; Assessment of Maximum Penalties'' by:
■ a. Adding a sentence to the end of the sixth paragraph;
■ b. Revising the fourth sentence of the seventh paragraph; and
■ c. Revising the first sentence of the tenth paragraph.

The addition and revisions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

* * * Effective January 11, 2021, the minimum civil monetary penalty was raised from $892 to $908, the ordinary maximum civil monetary penalty was raised from $29,192 to $29,707, and the aggravated maximum civil monetary penalty was raised from $116,766 to $118,826.

* * * For each regulation in this part or order, the schedule shows two amounts within the $908 to $29,707 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). * * *

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $118,826 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. * * *

* * * * *

Appendix B to Part 209 [Amended]

■ 29. Amend appendix B to part 209 as follows:
■ a. Remove the dollar amount ''$81,993'' everywhere it appears and add in its place ''$83,439'';
■ b. Remove the dollar amount ''$191,316'' everywhere it appears and add in its place ''$194,691''; and
■ c. Remove the dollar amount ''$493'' and add in its place ''$502''.

PART 213—TRACK SAFETY STANDARDS

■ 30. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 213.15 [Amended]

■ 31. In § 213.15, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 214—RAILROAD WORKPLACE SAFETY

■ 32. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 214.5 [Amended]

■ 33. Amend § 214.5 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

■ 34. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 215.7 [Amended]

■ 35. Amend § 215.7 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

■ 36. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 216.7 [Amended]

■ 37. Amend § 216.7 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 217—RAILROAD OPERATING RULES

■ 38. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 217.5 [Amended]

■ 39. Amend § 217.5 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 218—RAILROAD OPERATING PRACTICES

■ 40. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 218.9 [Amended]

■ 41. Amend § 218.9 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 42. 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.

§ 219.10 [Amended]

■ 43. Amend § 219.10 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 220—RAILROAD COMMUNICATIONS

■ 44. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 220.7 [Amended]

■ 45. Amend § 220.7 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

■ 46. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 221.7 [Amended]

■ 47. Amend § 221.7 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY–RAIL GRADE CROSSINGS

■ 48. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 222.11 [Amended]

■ 49. Amend § 222.11 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 223—SAFETY GLAZING STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOOSES

■ 50. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 223.7 [Amended]

■ 51. Amend § 223.7 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

■ 52. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 224.11 [Amended]

■ 53. In § 224.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 225.29 [Amended]

■ 55. Amend § 225.29 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 227—OCCUPATIONAL NOISE EXPOSURE

■ 56. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 227.9 [Amended]

■ 57. In § 227.9, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

■ 58. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 228.6 [Amended]

■ 59. In § 228.6, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

■ 60. In appendix A to part 228, under the heading ''General Provisions,'' amend the ''Penalty'' paragraph by adding a sentence at the end of the first paragraph to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective January 11, 2021, the minimum civil monetary penalty was raised from $892 to $908, the ordinary maximum civil monetary penalty was raised from $29,192 to $29,707, and the aggravated maximum civil monetary penalty was raised from $116,766 to $118,826.

* * * * *

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 61. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 229.7 [Amended]

■ 62. In § 229.7, amend paragraph (b) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and

■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

■ 63. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 230.4 [Amended]

■ 64. In § 230.4, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

■ 65. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 231.0 [Amended]

■ 66. In § 231.0, amend paragraph (f) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 232— BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT AND OTHER NON–PASSENGER TRAINS AND EQUIPMENT; END–OF–TRAIN DEVICES

■ 67. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 232.11 [Amended]

■ 68. In § 232.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 233—SIGNAL SYSTEMS REPORTING REQUIREMENTS

■ 69. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501–20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.11 [Amended]

■ 70. Amend § 233.11 as follows:

■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';

■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and

■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 234—GRADE CROSSING SAFETY

■ 71. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 234.6 [Amended]

■ 72. In § 234.6, amend paragraph (a) as follows:

■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';

■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and

■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 235—INSTRUCTIONS GOVERNING APPLICATIONS FOR APPROVAL OF A DISCONTINUANCE OR MATERIAL MODIFICATION OF A SIGNAL SYSTEM OR RELIEF FROM THE REQUIREMENTS OF PART 236

■ 73. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 235.9 [Amended]

■ 74. Amend § 235.9 as follows:

■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';

■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and

■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

■ 75. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 236.0 [Amended]

■ 76. In § 236.0, amend paragraph (f) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 237—BRIDGE SAFETY STANDARDS

■ 77. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102–20114; Public Law 110–432, Div. A, Sec. 417; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 237.7 [Amended]

■ 78. In § 237.7, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

■ 79. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 238.11 [Amended]

■ 80. In § 238.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

■ 81. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 239.11 [Amended]

■ 82. Amend § 239.11 as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

■ 83. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 240.11 [Amended]

■ 84. In § 240.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

■ 85. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.89.

§ 241.15 [Amended]

■ 86. In § 241.15, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

■ 87. 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.

§ 242.11 [Amended]

■ 88. In § 242.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY–RELATED RAILROAD EMPLOYEES

■ 89. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 243.7 [Amended]

■ 90. In § 243.7, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

■ 91. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 244.5 [Amended]

■ 92. In § 244.5, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 272—CRITICAL INCIDENT STRESS PLANS

■ 93. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

§ 272.11 [Amended]

■ 94. In § 272.11, amend paragraph (a) as follows:
■ a. Remove the dollar amount ''$892'' and add in its place ''$908'';
■ b. Remove the dollar amount ''$29,192'' and add in its place ''$29,707''; and
■ c. Remove the dollar amount ''$116,766'' and add in its place ''$118,826''.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 95. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 113; chapters 5, 51, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 32402, Pub. L. 112–141, 126 Stat. 405, 795 (49 U.S.C. 31306a); Sec. 701 Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.87.

■ 96. Amend appendix A to part 386 by revising the introductory text and sections II and IV.a. through e. and g. through j. to read as follows:

Appendix A to Part 386—Penalty Schedule: Violations of Notices and Orders

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of $1,112 but not more than $11,125 per violation.

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $1,928 per violation.

(For purposes of this violation, the term ''driver'' means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $19,277 per violation.

(This violation applies to motor carriers including an independent contractor who is not a ''driver,'' as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—$1,928 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to $19,277 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a ''driver,'' as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $964 per violation.

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations or to cease part of an intermodal equipment provider's operations, *i.e.,* failure to cease operations as ordered.

Penalty—Up to $27,813 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to $24,441 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to $15,691 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under § 385.911, § 385.913, § 385.1009, or § 385.1011 of this subchapter.

Penalty—Up to $24,441 for each day that operations are conducted during the suspension or revocation period.

■ 97. Amend appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (d) through (f), (g)(1) through (8), (10) through (14), and (16) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Pub. L. 114–74, sec. 701, 129 Stat. 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) * * *

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by part 40 of this title and parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $1,292 for each day the violation continues, up to $12,919.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of $12,919 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates part 382, subpart A, B, C, D, E, or F, part 385, or parts 390 through 399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed $15,691 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed $3,923.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed $3,230 for a first conviction and not less than $6,460 for a second or subsequent conviction.

* * * * *

(b) *Commercial driver's license (CDL) violations.* Any employer, employee, medical review officer, or service agent who violates any provision of 49 CFR part 382, subpart G, or any person who violates 49 CFR part 383, subpart B, C, E, F, G, or H, is subject to a civil penalty not to exceed $5,833; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $3,230 for a first conviction and not less than $6,460 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than $5,833 or more than $32,297; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than $16,743.

* * * * *

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of part 387, subparts A and B, is subject to a maximum penalty of $17,213. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs) and safety permitting regulations found in subpart E of part 385 of this subchapter.* This paragraph (e) applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than $83,439 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not less than $502 and not more than $83,439 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than $83,439 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than $83,439.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $194,691 for each offense.

(f) *Operating after being declared unfit by assignment of a final ''unsatisfactory'' safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C.

chapter 51) is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not more than $27,813 (49 CFR 385.13). Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final ''unsatisfactory'' safety rating, to a civil penalty of not more than $83,439 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $194,691 for each offense. Each day the transportation continues in violation of a final ''unsatisfactory'' safety rating constitutes a separate offense.

(g) * * *

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $11,125 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C 13904 or financial security requirements of 49 U.S.C 13906 is liable for a penalty not to exceed $11,125 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of $27,813 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of $11,125 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, outside the boundaries of a commercial zone along the United States-Mexico border, is liable for a maximum penalty of $15,299 for an intentional violation and a maximum penalty of $38,250 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of $22,251 and a maximum penalty of $44,501 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of $1,673 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment; or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of $3,349 for the first violation and $8,372 for each subsequent violation.

* * * * *

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of $167,433 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts or omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is $334 for the first violation and $418 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $838 for the first violation and up to $3,349 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to $838 for the first violation and up to $3,349 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than $16,743 per violation.

* * * * *

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of $1,112 and for a maximum penalty of $8,372 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of $3,349.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of $838 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * * *

(21) * * *

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G, of this subchapter, is liable for a civil penalty of not less than $16,743 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than $12,919 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than $32,297 for each violation.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than $1,292 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $12,919.

(i) *Evasion.* A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or

a regulation in subtitle B, chapter I, subchapter C of this title, or this subchapter, issued under any of those provisions, shall be fined at least $2,226 but not more than $5,562 for the first violation and at least $2,780 but not more than $8,344 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least $2,226 for the first violation or at least $5,562 for a subsequent violation.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 98. The authority citation for part 578 is revised to read as follows:

Authority: Pub. L. 92–513, Pub. L. 94–163, Pub. L. 98–547, Pub. L. 101–410, Pub. L. 102–388, Pub. L. 102–519, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 110–140, Pub. L. 112–141, Pub. L. 114–74, Pub. L. 114–94 (49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, 33114, and 33115); delegation of authority at 49 CFR 1.81, 1.95.

■ 99. In § 578.6, paragraphs (a)(1), (a)(2)(i)(B), (a)(3) and (4), (b) through (g), (h)(1), and (i) are revised to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation in this chapter prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than $22,723 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph (a)(1) for a related series of violations is $113,611,635.

(2) * * *

(i) * * *

(B) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than $12,919 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph (a)(2)(i)(B) for a related series of violations is $19,378,412.

(3) *Section 30166.* A person who violates Section 30166 of Title 49 of the United States Code or a regulation in this chapter prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph (a)(3) is $22,723 per violation per day. The maximum penalty under this paragraph (a)(3) for a related series of daily violations is $113,611,635.

(4) *False and misleading reports.* A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same information as accurate under the certification process established pursuant to Section 30166(o) of Title 49 of the United States Code, shall be subject to a civil penalty of not more than $5,562 per day. The maximum penalty under this paragraph (a)(4) for a related series of daily violations is $1,112,518.

(b) *National Automobile Title Information System.* An individual or entity violating 49 U.S.C. Chapter 305 is liable to the United States Government for a civil penalty of not more than $1,814 for each violation.

(c) *Bumper standards.* (1) A person that violates 49 U.S.C. 32506(a) is liable to the United States Government for a civil penalty of not more than $2,976 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of 49 U.S.C. 32506(a)(1) or (4)—

(i) That does not comply with a standard prescribed under 49 U.S.C. 32502; or

(ii) For which a certificate is not provided, or for which a false or misleading certificate is provided, under 49 U.S.C. 32504.

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $3,313,763.

(d) *Consumer information*—(1) *Crash-worthiness and damage susceptibility.* A person who violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than $2,976 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph (d)(1) for a related series of violations is $1,623,024.

(2) *Consumer tire information.* Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the United States Government for a civil penalty of not more than $61,586 for each violation.

(e) *Country of origin content labeling.* A manufacturer of a passenger motor vehicle distributed in commerce for sale in the United States that willfully fails to attach the label required under 49 U.S.C. 32304 to a new passenger motor vehicle that the manufacturer manufactures or imports, or a dealer that fails to maintain that label as required under 49 U.S.C. 32304, is liable to the United States Government for a civil penalty of not more than $1,814 for each violation. Each failure to attach or maintain that label for each vehicle is a separate violation.

(f) *Odometer tampering and disclosure.* (1) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than $11,125 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph (f)(1) for a related series of violations is $1,112,518.

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or $11,125, whichever is greater.

(g) *Vehicle theft protection.* (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than $2,444 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under this paragraph (g)(1) for a related series of violations is $610,979.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than $181,484 a day for each violation.

(h) * * *

(1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than $43,280 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

(i) *Medium- and heavy-duty vehicle fuel efficiency.* The maximum civil penalty for a violation of the fuel consumption standards of 49 CFR part 535 is not more than $42,621 per vehicle or engine. The maximum civil penalty for a related series of violations shall be determined by multiplying $42,621 times the vehicle or engine production volume for the model year

in question within the regulatory averaging set.

Issued in Washington, DC, on November 10, 2020.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2020–25236 Filed 1–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 201209–0333]

RIN 0605–AA58

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Department of Commerce's 2021 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2021 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2021.

FOR FURTHER INFORMATION CONTACT: Stephen M. Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's website at the following address: *http://www.osec.doc.gov/ofm/OFM_Publications.html.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment (1) required agencies to adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking to take effect no later than August 1, 2016; and (2) requires agencies to make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15. The Department of Commerce's 2020 adjustments for inflation to CMPs were published in the **Federal Register** on January 3, 2020, and the new CMP levels became effective January 15, 2020.

The Department of Commerce's 2021 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2021 adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section website at: *http://www.gc.noaa.gov/enforce-office.html.*

The Department of Commerce's 2021 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term ''cost-of-living adjustment'' is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2021 adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2020 exceeds the Consumer Price Index for the month of October 2019.

Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodology used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amounts of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised

recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Civil monetary penalties, Law enforcement.

Dated: December 28, 2020.

Stephen M. Kunze,

Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

■ For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.
6.1 Definitions.
6.2 Purpose and scope.
6.3 Adjustments for inflation to civil monetary penalties.
6.4 Effective date of adjustments for inflation to civil monetary penalties.
6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil monetary penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

§ 6.3 Adjustments for inflation to civil monetary penalties.

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in 2020 in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amounts of such civil monetary penalties that were in effect as of January 15, 2020, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $11,665 to $11,803.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $11,665 to $11,803.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from $11,665 to $11,803; maximum from $23,331 to $23,607.

(b) *Bureau of Economic Analysis.* 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from $4,819 to $4,876; maximum from $48,192 to $48,762.

(c) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from $48,192 to $48,762.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $39,229 to $39,693.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $7,846 to $7,939.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from $307,922 to $311,562.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from $31,881 to $32,258.

(6) 50 U.S.C. 4819, Export Control Reform Act of 2018 (2018), violation, maximum from $305,292 to $308,901.

(d) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum per violation, from $1,419 to $1,436; maximum per violation, from $14,194 to $14,362.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from $14,194 to $14,362.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from $2,976 to $3,011.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada Free Trade Agreement Protective Order (1988), violation, maximum from $214,097 to $216,628.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $11,766 to $11,905.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $11,766 to $11,905.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from $246,339 to $249,251.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from $1,759 to $1,780.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from $87,913 to $88,952.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from $189,352 to $191,590.

(iii) Violation of 16 U.S.C. 957(b), maximum from $2,976 to $3,011.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from $17,583 to $17,791.

(v) Violation of 16 U.S.C. 957(c), maximum from $378,706 to $383,182.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,[1] violation, maximum from $192,768 to $195,047.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950,[2] violation, maximum from $192,768 to $195,047.

[1] This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (paragraph (f)(15) of this section).

[2] See footnote 1.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,[3] violation, maximum from $192,768 to $195,047.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from $535,243 to $541,570.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from $25,479 to $25,780.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from $29,755 to $30,107.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,[4] violation, maximum from $192,768 to $195,047.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from $181,484 to $183,629.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from $53,524 to $54,157.

(ii) Violation as specified (1988), maximum from $25,691 to $25,995.

(iii) Otherwise violation (1978), maximum from $1,759 to $1,780.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from $192,768 to $195,047.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,[5] violation, maximum from $192,768 to $195,047.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,[6] violation, maximum from $192,768 to $195,047.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from $27,553 to $27,879.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from $689 to $697.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,[7] violation, maximum from $192,768 to $194,047.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,[8] violation, maximum from $192,768 to $195,047.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from $1,166 to $1,180; maximum from $11,665 to $11,803.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,[9] violation, maximum from $192,768 to $195,047.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,[10] violation, maximum from $192,768 to $195,047.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,[11] violation, maximum from $192,768 to $195,047.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from $167,433 to $169,412.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,[12] violation, maximum from $192,768 to $195,047.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,[13] violation, maximum from $192,768 to $195,047.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,[14] violation, maximum from $192,768 to $195,047.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from $29,755 to $30,107.

(ii) Subsequent violation, maximum from $87,913 to $88,952.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from $75,867 to $76,764.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from $75,867 to $76,764.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,[15] violation, maximum from $192,768 to $195,047.

(33) 16 U.S.C. 7407(b), Port State Measures Agreement Act of 2015,[16] violation, maximum from $192,768 to $195,047.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,[17] violation, maximum from $192,768 to $195,047.

(35) 16 U.S.C. 7705, Ensuring Access to Pacific Fisheries Act,[18] violation, maximum from $192,768 to $195,047.

(36) 16 U.S.C. 7805, Ensuring Access to Pacific Fisheries Act,[19] violation, maximum from $192,768 to $195,047.

(g) *National Technical Information Service.* 42 U.S.C. 1306c(c), Bipartisan Budget Act of 2013 (2013), violation, minimum from $1,000 to $1,012; maximum total penalty on any person for any calendar year, excluding willful or intentional violations from $250,000 to $252,955.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2021 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2021, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2021 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2020–29024 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–DP–P

[3] See footnote 1.
[4] See footnote 1.
[5] See footnote 1.
[6] See footnote 1.
[7] See footnote 1.
[8] See footnote 1.
[9] See footnote 1.
[10] See footnote 1.
[11] See footnote 1.
[12] See footnote 1.
[13] See footnote 1.
[14] See footnote 1.
[15] See footnote 1.
[16] See footnote 1.
[17] See footnote 1.
[18] See footnote 1.
[19] See footnote 1.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 201214–0340]

RIN 0694–AI39

Revisions to the Unverified List (UVL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing three (3) persons from the Unverified List (UVL). The three persons are removed from the UVL on the basis that BIS was able to verify their *bona fides* (*i.e.,* legitimacy and reliability relating to the end use and end user of items subject to the EAR) through successful end-use checks.

DATES: This rule is effective January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Kevin Kurland, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–4255 or by email at *UVLRequest@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Unverified List (UVL), found in Supplement No. 6 to part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) (EAR), contains the names and addresses of foreign persons who are or have been parties to a transaction, as such parties are described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose *bona fides* the Bureau of Industry and Security (BIS) has been unable to verify through an end-use check. BIS may add persons to the UVL when BIS or federal officials acting on BIS's behalf have been unable to verify a foreign person's *bona fides* because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government's control.

There are a number of reasons why end-use checks cannot be completed. These include but are not limited to reasons unrelated to the cooperation of the foreign party subject to the end-use check. For example, BIS sometimes initiates end-use checks and cannot find a foreign party at the address indicated on export documents and cannot locate the party by telephone or email. Additionally, BIS sometimes is unable to conduct end-use checks when host government agencies do not respond to requests to conduct end-use checks, prevent the scheduling of such checks, or refuse to schedule them in a timely manner. Under these circumstances, although BIS has an interest in informing the public of its inability to verify the foreign party's *bona fides,* there may not be sufficient information to add the foreign person at issue to the Entity List (Supplement No. 4 to part 744 of the EAR) under § 744.11 of the EAR (see paragraph (b), Criteria for revising the Entity List), or under another provision of the EAR. In such circumstances, BIS may add the foreign person to the UVL.

Furthermore, BIS sometimes is able to conduct end-use checks but cannot verify the *bona fides* of a foreign party. For example, BIS may be unable to verify *bona fides* if, during the conduct of an end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items. The inability of foreign persons subject to end-use checks to demonstrate their *bona fides* raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR and indicates a risk that such items may be diverted to prohibited end uses and/or end users. However, in such circumstances, BIS may not have sufficient information to establish that such persons are involved in activities described in parts 744 or 746 of the EAR, therefore preventing the placement of the persons on the Entity List. In such circumstances, the foreign persons may be added to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, reexporters, and transferors to obtain (and keep a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement.

Requests for removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL listings will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of its *bona fides.*

Changes to the EAR

Supplement No. 6 to Part 744 (''the Unverified List'' or ''UVL'')

This rule removes three persons from the UVL. BIS is removing these persons pursuant to § 744.15(c)(2) of the EAR based on the successful completion of end-use checks that resulted in the verification of their *bona fides.* This final rule implements the decision of the Acting Deputy Assistant Secretary for Export Enforcement to remove the following three persons located in Germany and Mexico from the UVL:

Germany:

- DMA Logistics GmbH, Max Planck-Strasse 1, Unna, Germany; *and*
- Halm Elektronik GmbH, Burgstrasse 106, Frankfurt am Main, Germany

Mexico:

- Integrated Production and Test Engineering, a.k.a. IPTE, Calle Alambiques 975—9, Parque Industrial el Álamo, Guadalajara, Jalisco 44490, Mexico

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801 through 4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''not significant'' for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the

following control numbers: 0694–0088 (Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application), 0694–0122 (Licensing Responsibilities and Enforcement), and 0694–0137 (License Exceptions and Exclusions). Collection 0694–0088 includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours.

This rule will not change public burden in a collection of information approved by OMB under control number 0694–0088. The restoration of license exceptions for listed persons on the Unverified List will result in decreased license applications being submitted to BIS by exporters. The removal of license exceptions for listed persons on the Unverified List will potentially result in increased license applications being submitted to BIS by exporters. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected not to change, as the restoration of some license exceptions and the restriction of other license exceptions will only affect transactions involving persons removed from or added to the Unverified List and not all export transactions. Because license exception eligibility is restored for these entities removed from the UVL, this rule increases public burden in a collection of information approved by OMB under control number 0694–0137 minimally, as this will only affect specifically listed individual persons. The decreased burden under 0694–0088 is reciprocal to the increased burden under 0694–0137, and results in little or no change of burden to the public. This rule also decreases public burden in a collection of information under OMB control number 0694–0122, as a result of the exchange of UVL statements between private parties. The total change in burden hours associated with both of these collections is expected to be minimal, as it involves a limited number of persons listed on the UVL.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—CONTROL POLICY: END–USER AND END–USE BASED

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

Supplement No. 6 to Part 744 [Amended]

■ 2. Supplement No. 6 to part 744 is amended in the table by:

■ a. Removing the entries for ''DMA Logistics GmbH'' and ''Halm Elektronik GmbH'' under ''Germany''; and

■ b. Removing the entry for ''Mexico''.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2020–27931 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

20 CFR Part 501

RIN 1290–AA37

Rules of Practice and Procedure

AGENCY: Employees' Compensation Appeals Board, Department of Labor.

ACTION: Direct Final Rule.

SUMMARY: The Department of Labor (DOL or Department) is issuing this Direct Final Rule (DFR) to seek public comments on a proposal to require electronic filing (e-filing) and electronic service (e-service) for attorneys and lay representatives representing parties in proceedings before the Employees' Compensation Appeals Board (the Board). These regulations establish e-filing and e-service rules of practice and procedure for the Board that would apply where a governing statute, regulation, or executive order does not establish contrary rules of practice or procedure. The rule mandates e-filing, makes e-service automatic of documents for parties represented by attorneys and duly authorized lay representatives unless good cause is shown justifying a different form of filing, and provides an option for pro se/self-represented parties to utilize these capabilities. It also allows the Board, in its discretion, to hold oral arguments by videoconference.

DATES: This direct final rule will become effective February 25, 2021 without further action unless the Department receives significant adverse comment to this rule by 11:59 p.m. Eastern Standard Time on February 10, 2021. If the Department receives significant adverse comment, it will publish a timely withdrawal of the final rule in the **Federal Register**.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA37, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the direct final rule, use docket number DOL–2020–0017 or key words such as ''Administrative practice and procedure'' or ''Workers' compensation.'' Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. *Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *https://www.regulations.gov,* including any personal information provided. If you need assistance to review the comments or the direct final rule, the Department will consider providing the comments and the direct final rule in other formats upon request. For assistance to review the comments or obtain the direct final rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *ECAB-Inquiries@dol.gov.*

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I explains the process of issuing a proposed rule concurrently with a companion direct final rule; Section II provides general background information on the development of the rulemaking; Section III is a section-by-section summary and discussion of the regulatory text; and Section IV covers the administrative requirements for this rulemaking.

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial. The Department has determined that this rule is suitable for direct final rulemaking. The revisions to the Board's procedural regulations would require represented parties, unless exempted by the Board for good cause shown, to file documents via the Board's new electronic case management system, which will also automatically serve these documents on registered system users. Some parties are already e-filing documents with the Board on a voluntary basis. Moreover, this new system is similar to those used by courts and other administrative agencies and will thus be familiar to the representatives. The rule also gives self-represented (pro se) parties the option to file and serve documents through the electronic case management system or via conventional methods. It also allows the Board to hear oral argument by videoconference under the same discretionary criteria outlined in its 2008 proposal. These changes to the Board's procedures and practices should not be controversial and are consistent with its statements in its 2008 proposal. 73 FR 35103 (''[T]he Board has anticipated that technological advances may, in the future, allow the filing, notice, service and presentation of documents and argument by electronic means.''). The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The Department is publishing concurrently with this direct final rule an identical notice of proposed rulemaking elsewhere in this issue of the **Federal Register**. The companion proposed rule provides the procedural framework to finalize the rule in the event that any significant adverse comment is received. The comment period for this direct final rule runs concurrently with the comment period for the proposed rule. Any comments received in response to this direct final rule will also be considered as comments regarding the companion proposed rule. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

If the Department receives any significant adverse comments during the comment period, the Department will withdraw the direct final rule and proceed in developing a final rule using the usual notice-and-comment procedure. If the Department receives no significant adverse comments, the Department will publish a document withdrawing the proposed rule. The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

This rule is not an E.O. 13771 regulatory action because this rule has been determined by the Office of Information and Regulatory Affairs as not significant under E.O. 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule,' as defined by 5 U.S.C. 804(3).

II. Background of This Rulemaking

The Board is promulgating a rule that would make e-filing mandatory and e-service automatic for parties represented by attorneys and lay representatives. The Board's long-term goal is to have entirely electronic case files (e-case files), which would significantly benefit both the Board and the participants in Board appeals. All parties and representatives, as well as appropriate Board employees, would have access to all of the Board's case-related documents through the Board's case management system at any time and place, as long as they have access to the internet. In addition, digitally filed and served documents would allow the Board to leverage its case management system to more efficiently process incoming documents and reduce the time it takes to adjudicate appeals.

The Board's case management system is a consolidated web-based case tracking system that was deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the Department's three Adjudicatory Boards: The Administrative Review Board (created in 1996) is the adjudicatory Board that issues final agency decisions for the Secretary of Labor in cases arising under a variety of worker protection laws; the Benefits Review Board (created in 1972) reviews appeals of administrative law judges' decisions arising primarily under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and its extensions; and the Employees' Compensation Appeals Board (ECAB) (created in 1946) hears appeals taken from determinations and awards under the Federal Employees' Compensation Act by the Department's Office of Workers' Compensation Programs (OWCP) (whose predecessor agency was the Bureau of Federal Employees' Compensation as described in 20 CFR 1.6) with respect to claims of Federal employees injured in performance of duty.

The case management system has provided a broad range of capabilities to the staff of the Boards for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since the initial implementation. In FY2013, the system was enhanced to provide access to the general public. Specifically, users have the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. Currently, over 1,400 individuals are registered users of the system.

At present, there are two methods for placing the parties' pleadings into an electronic format for inclusion on the Board's case management system: Pleadings can be filed in an electronic format; or pleadings can be digitally imaged after they have been filed in paper form. If e-filing and e-service remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, all pleadings submitted by attorneys and lay representatives are e-filed, imaging the remaining paper pleadings from self-represented parties (pro se parties) would be more manageable and allow greater efficiencies in the processing of appeals. In addition, utilization of e-filing and e-service will reduce case processing times by eliminating, in most cases, the timeframes required to allow for the delivery of traditional mailings. These

time savings will allow the Board to more efficiently process appeals without any sacrifice of the quality of work and will reduce mailing costs for the Board and private parties.

Although the law requires Federal agencies to provide information and services via the internet, it also mandates that agencies consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. 44 U.S.C. 3501. Accordingly, the Board will make e-filing and e-service optional for self-represented parties. There is no known legal restriction to a requirement that attorneys and lay representatives use e-filing and make e-service automatic, nor are there undue costs or difficulties imposed, particularly because a party may obtain an exemption for good cause shown. The Board notes that in this regard, e-filing is generally mandatory for attorneys in the Federal court system. *See* 76 FR 56107 (Sept. 12, 2011) (Social Security Administration final rule announcing that it will require claimant representatives to use SSA's electronic services as they become available on matters for which the representatives request direct fee payment); 76 FR 63537 (Oct. 13, 2011) (U.S. Merit Systems Protection Board pilot program requiring agencies and attorneys representing appellants to file pleadings electronically for appeals in the Washington Regional Office and Denver Field Office); 84 FR 14554 (Apr. 10, 2019) (Occupational Safety and Health Review Commission final rule adopting mandatory electronic filing and service); 84 FR 37081 (July 31, 2019) (U.S. Patent and Trademark Office final rule amending its Rules of Practice in Trademark Cases and Rules of Practice in Filings to mandate electronic filing of trademark applications and submissions associated with trademark applications and registrations). Individuals who are e-filing appeals to the Board need access to a computer with internet connectivity and an email account.

III. Section-by Section Analysis of Rule

Section 501.3 Notice of Appeal

Current § 501.3(a) defines who may ''file for review'' from a final decision of the Director. Revised § 501.3(a) changes the phrase ''file for review'' to ''file an appeal'' to reflect the terminology contained in this section.

Current § 501.3(b) defines the ''place of filing'' as with the Clerk of the Appellate Boards at a specific mailing address. Revised § 501.3(b) defines ''how to file'' appeals and all post-appeal pleadings and motions, requiring e-filing by attorneys and lay representatives beginning 45 days after the effective date of the rule and allowing for e-filing by self-represented appellants. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows those who were previously filing and serving documents by mail to adjust to electronic filing.

Current § 501.3(c)(2) contains requirements for the content of an appeal to the Board regarding the name and contact information for an appellant or a deceased employee who is the subject of an appeal. In addition it requires a signed authorization identifying the name and contact information of his or her representative, if applicable. Revised § 501.3(c)(2) requires the identifying contact information to include an email address.

Current § 501.3(c)(6) requires an appellant to sign the notice of appeal. Revised § 501.3(c)(6) allows for the use of an electronic signature when an appeal is electronically filed by a registered user.

Current § 501.3(f) sets forth how the date of filing an appeal is determined by the Board for purposes of timeliness of an appeal. Revised § 501.3(f) changes the word ''Clerk'' to ''Clerk of the Appellate Boards'' to reflect the terminology contained in this section.

Current § 501.3(f)(1) sets forth how timeliness of an appeal is determined and provides that a notice of appeal is deemed to be ''received when received by the Clerk.'' Revised § 501.3(f)(1) includes a provision for the timeliness of an appeal when e-filed. It also contains technical amendments to change the terminology ''United States Mail'' to ''United States Postal Service''; ''Clerk'' to ''Clerk of the Appellate Boards''; and ''received when received'' to ''filed when received.'' Paragraph (f)(2) is renumbered to (f)(3), and new paragraph (f)(2) clarifies that e-filed documents are deemed filed as of the date and time the Board's electronic case management system records its receipt and must be filed by 11:59:59 p.m. Eastern Time on the due date.

Current § 501.3(h) describes when a notice of appeal will be considered incomplete. Revised § 501.3(h) changes the terminology from ''Clerk'' to ''Clerk of the Appellate Boards.''

Section 501.4 Case record; inspection; submission of pleadings and motions.

Current § 501.4(e) requires all filings with the Board to include an original and two copies. This rule removes that paragraph because paper copies are not necessary when e-filing, and the Board no longer needs multiple paper copies from self-represented parties or those who are granted an exemption from e-filing.

Section 501.5 Oral Argument

Current § 501.5 provides that oral argument is held only in Washington, DC. The revised section allows the Board, in its discretion, to hold oral argument by videoconference. It also provides that the notice to the parties will specify whether the oral argument is to be held in person or by videoconference. This provides the Board with greater flexibility and efficiency. Oral arguments (including those conducted by videoconference) will not be recorded because ECAB decisions are not subject to further review by OWCP or the courts.

IV. Administrative Requirements of the Rulemaking

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector,

the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The rule does not ''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.''

Executive Order 13211, Energy Supply, Distribution, or Use

The Department has reviewed this rule and has determined that the provisions of Executive Order 13211 are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

List of Subjects in 20 CFR Part 501

Administrative practice and procedure; Claims; Government employees; Worker's compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 501, as follows:

PART 501 [AMENDED]

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: Federal Employees' Compensation Act, 5 U.S.C. 8101, *et seq.*

■ 2. Amend § 501.3 by revising paragraphs (a), (b), (c)(2) and (6), (f), and (h) to read as follows:

§ 501.3 Notice of Appeal.

(a) *Who may file.* Any person adversely affected by a final decision of the Director, or his or her authorized Representative, may file an appeal of such decision to the Board.

(b) *How to file.* (1) Beginning on April 12, 2021, attorneys and lay representatives must file appeals with the Board electronically through the Board's case management system, along with all post-appeal pleadings and motions as set forth in paragraphs (d) and (h) of this section and §§ 501.4(b) through (d), 501.5(b) and (g); 501.7 (a), (e), and (f), and 501.9(b), (c), and (e).

(2) Attorneys and lay representatives may request an exemption (pursuant to § 501.4(d)) for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) Self-represented parties may either file appeals electronically through the Board's case management system or file appeals by mail or other method of delivery to the Clerk of the Appellate Boards at 200 Constitution Avenue NW, Washington, DC 20210.

(c) * * *

(2) Full name, address, email address, and telephone number of the Appellant and the full name of any deceased employee on whose behalf an appeal is taken. In addition, the Appellant must provide a signed authorization identifying the full name, address, email address, and telephone number of his or her representative, if applicable.

* * * * *

(6) Signature: An Appellant must sign the notice of appeal. A filing made electronically through the Board's case management system by a registered user containing the Appellant's name in an appropriate signature block constitutes the Appellant's signature.

* * * * *

(f) *Date of filing.* A notice of appeal complying with this paragraph (c) is considered to have been filed only if received by the Clerk of the Appellate Boards within the period specified under paragraph (e) of this section, except as otherwise provided in this subsection:

(1) If the notice of appeal is sent via the U.S. Postal Service or commercial carrier and use of the date of delivery as the date of filing would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the postmark or other carriers' date markings. The date appearing on the U.S. Postal Service postmark or other carriers' date markings (when available and legible) shall be prima facie evidence of the date of mailing. If there is no such postmark or date marking, or it is illegible, then other evidence including, but not limited to, certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date. If a notice of appeal is delivered or sent by means other than the U.S. Postal Service or commercial carrier, including e-filing, personal delivery, or fax, the notice is deemed to be filed when received by the Clerk of the Appellate Boards.

(2) For electronic filings made through the Board's case management system, a document is deemed filed as of the date and time the Board's electronic case management system records its receipt, even if transmitted after the close of business. To be considered timely, an e-filed document or pleading must be filed by 11:59:59 p.m. Eastern Time on the due date.

(3) In computing the date of filing, the 180-day time period for filing an appeal begins to run on the day following the date of the OWCP decision. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period runs to the close of the next business day.

* * * * *

(h) *Incomplete notice of appeal.* Any timely notice of appeal that does not contain the information specified in paragraph (c) of this section will be considered incomplete. On receipt by the Board, the Clerk of the Appellate Boards will inform Appellant of the deficiencies in the notice of appeal and specify a reasonable time to submit the requisite information. Such appeal will be dismissed unless Appellant provides the requisite information in the specified time.

§ 501.4 [Amended]

■ 3. Amend § 501.4 by removing paragraph (e).

■ 4. Amend § 501.5 by revising paragraphs (c) and (f) to read as follows:

§ 501.5 Oral argument.

* * * * *

(c) *Notice of argument.* If a request for oral argument is granted, the Clerk will notify the Appellant and the Director at least 30 days prior to the date set for argument. The notice of oral argument will state the issues that the Board has determined will be heard and whether the oral argument will take place in person in Washington, DC or by videoconference.

* * * * *

(f) *Location.* Oral argument in person is heard before the Board only in Washington, DC. The Board may, in its discretion, hear oral argument by videoconference. The Board does not reimburse costs associated with an oral argument.

* * * * *

Signed on this 14th day of December 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28059 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 658, 667 and 683

Office of Workers' Compensation Programs

20 CFR Part 726

Office of the Secretary of Labor

29 CFR Parts 7, 8, 22, 24, 26, 29, 37, 38 and 96

Office of Labor-Management Standards

29 CFR Parts 417 and 458

Wage and Hour Division

29 CFR Parts 500, 525, 530 and 580

Occupational Safety and Health Administration

29 CFR Parts 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988

Office of Federal Contract Compliance Programs

41 CFR Part 60–30

RIN 1290–AA28

Rules of Practice and Procedure Concerning Filing and Service and Amended Rules Concerning Filing and Service

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Office of Labor-Management Standards, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs.

ACTION: Direct final rule.

SUMMARY: The Department of Labor (Department or DOL) is issuing this Direct Final Rule to require electronic filing (e-filing) and make acceptance of electronic service (e-service) automatic for attorneys and non-attorney representatives representing parties in proceedings before the Administrative Review Board (Board), unless the Board authorizes non-electronic filing and service for good cause. Self-represented persons will have the option of e-filing or of filing papers by conventional means. This rule establishes a new part containing rules of practice and procedure for the Board and amends existing regulations concerning filing and service that apply where a governing statute or executive order does not establish contrary rules of filing and service. It also makes other minor corrections to update existing regulations.

DATES: This direct final rule is effective on February 25, 2021, unless the Department receives a significant adverse comment to this direct final rule or the companion proposed rule by February 10, 2021 that explains why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or why the rule will be ineffective or unacceptable without a change. If a timely, significant adverse comment is received, the Department will publish a notification of withdrawal of the direct final rule in the **Federal Register** before the effective date. This notification may withdraw the direct final rule in whole or in part.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA28, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use key words such as ''Administrative Review Board'' to search documents accepting comments. Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

Instructions: All submissions received must include the agency name and docket number (DOL–2020–0011) or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *https://www.regulations.gov,* including any personal information provided. If you need assistance to review the comments or the direct final rule, the Department will consider providing the comments and direct final rule in other formats upon request. For assistance to review the comments or obtain the direct final rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov.*

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the rulemaking; Section III is a discussion of the changes to the regulatory text; and Section IV covers the administrative requirements for this rulemaking.

I. Direct Final Rule Published Concurrently With Companion Proposed Rule

The Department is simultaneously publishing with this direct final rule an identical proposed rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The enactment of the Board's procedural regulations and revisions to existing program regulations would require parties to use the Board's electronic system for filing and serving documents unless exempted by the Board, as well as make technical corrections to addresses, add cross-references to rules of practice and procedure, and specify where the Secretary has delegated authority under a program to the ARB. Some parties are already filing documents through the Board's existing electronic system on a voluntary basis. Moreover, this system is similar to those used by courts and other administrative agencies and will thus be familiar to some representatives. The rule would also give self-represented (pro se) parties the option to file and serve documents through the electronic system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements

under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this direct final rule runs concurrently with the comment period for the proposed rule. Any comments received in response to this direct final rule will also be considered as comments regarding the proposed rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will also consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

II. Background of This Rulemaking

The Department is promulgating a rule that makes e-filing mandatory and acceptance of e-service automatic for represented parties before the Administrative Review Board represented by attorneys and non-attorney representatives. It does this by enacting its own rules of practice and procedure and amending existing program regulations. Currently, e-filing is optional and e-service is not available through the Board's existing electronic system: *DOL Appeals.* As a result, the Board receives filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-case files), which would significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents, reducing the time it takes to adjudicate claims. Requiring attorneys and non-attorney representatives to use e-filing and e-service will help the Board move toward this goal.

The Board currently uses *DOL Appeals,* a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: the Board, the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB). The Board has been delegated authority by the Secretary of Labor to issue decisions on appeal in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H–1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. The BRB reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and its extensions. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system has provided a broad range of capabilities to the Boards' staff for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to the general public. Currently, over 1,400 individuals are registered users of the *DOL Appeals* system. Users have the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. However, users who e-file documents must still serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* does not have an automatic e-service function like that of the Federal courts' electronic filing and service systems. Moreover, because e-filing is optional, the Board continues to receive many paper filings, including from attorneys and non-attorney representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, parties are required to e-file all documents through the Department's electronic case management system, imaging the remaining paper pleadings from authorized parties would be more manageable for the Board. In addition, greater utilization of e-filing and e-service will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Additionally, in an effort to improve e-filing and e-service Department-wide, the rule amends provisions regarding filing and service with the Office of Administrative Law Judges (OALJ) for consistency with proposed amendments to the OALJ rules of practice and procedure in 29 CFR part 18.

III. Discussion of Changes

A. Administrative Review Board Rules of Practice and Procedure

The Department is adding a new section to the Code of Federal Regulations at 29 CFR part 26 in order to establish rules of practice and procedure for the Board regarding filing and service and to address some general procedural matters.

§ 26.1 Purpose and Scope

This section is a new provision addressing the purpose of part 26 and the scope of the Board's authority. Paragraph (a) provides that part 26 contains the rules of practice of the Board and that these rules shall govern all appeals and proceedings before the Board, except where inconsistent with a governing statute, regulation, or executive order. Paragraph (b) provides that the Board has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations, as provided in Secretary's Order 01–2020. The Board shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020 (or any successor to that order).

§ 26.2 General Procedural Matters

This section is a new provision containing procedural provisions. Paragraph (a) supplies definitions. Paragraph (a)(1) defines the *ARB* to mean the Administrative Review Board. Paragraph (a)(2) defines *Electronic case management system* to mean the Department of Labor's electronic filing and electronic service system for adjudications.

Paragraph (b) addresses computation of time. Paragraph (b)(1) provides that

when computing a time period stated in days, the day of the event that triggers the period should be excluded; every day, including intermediate Saturdays, Sundays, and legal holidays, should be counted; and the last day of the period should be included, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday. Paragraph (b)(2) addresses when the ''last day'' ends. Paragraph (b)(2)(i) provides that for electronic filing via the Department's electronic case management system or via other electronic means, the ''last day'' goes until 11:59:59 p.m. Eastern Time on the due date. The Board chose this time zone because Washington, DC is located within it. Paragraph (b)(2)(ii) provides that for non-electronic filing, the ''last day'' ends at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, DC on the due date. These rules are generally consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 6(a), and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 26(a)(4). This provides a default where the applicable statute, regulation, executive order, or judge's order is silent. Paragraph (c) provides the Board's mailing address.

§ 26.3 Filing

This section is a new provision containing all filing requirements. Paragraph (a) governs e-filing through the Department's electronic case management system. Paragraph (a)(1) requires attorneys and lay representatives to file all petitions, pleadings, exhibits, and other documents with the Board via the Department's electronic case management system, and notes that paper copies are not required unless requested by the Board. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing is mandatory, parties will have received a notice of appeal rights with updated information. It also allows parties who were previously filing and serving documents by mail to adjust to electronic filing.

Although Federal agencies are required by law to provide information and services via the internet, agencies must also consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. *See* 44 U.S.C. 3501. Accordingly, the Department proposes to authorize non-electronic filing and service for good cause and will make e-filing and e-service optional for self-represented parties. The Board notes in this regard that e-filing is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals, unless an exemption for good cause is granted; only self-represented parties have the option of filing pleadings in paper form. Accordingly, paragraph (a)(2) provides that attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

Paragraph (a)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or non-electronic format. Providing this flexibility will allow these parties to easily participate in their cases.

Paragraph (a)(4) provides that documents filed via the Department's electronic case management system are filed when received, and are received as of the date and time recorded by the system. Paragraph (a)(5) allows for electronic signatures when a filing is made through a registered user's account and authorized by that person, along with the person's name. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(3) and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(2)(B)(iii). Many program regulations require filed documents to be signed, and this provision allows filers to comply while filing via the Department's electronic case management system.

Paragraph (a)(6) provides that a person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board. The Board encourages filers to retain documentation of the failure in these instances. Additionally, if technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

Paragraph (b) addresses alternate methods of filing for persons who are excepted from e-filing or who have opted not to use e-filing and provides that documents filed using methods other than the Department's electronic case management system (*e.g.,* by email or mail) are considered filed when received by the Clerk of the Appellate Boards. This similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(2), and provides a default for when laws governing a particular program do not specify the date of filing.

§ 26.4 Service

This section contains all service requirements. Paragraph (a) addresses electronic service. Paragraph (a)(1) provides that electronic service may be completed by email if consented to in writing by the party being served. Paragraph (a)(2) deems service completed by sending the document to a user registered with the Department's electronic case management system by filing via this system. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2)(E), and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(c)(2), and provides a default for when laws governing a particular program do not specify the date of service. Paragraph (a)(2) further provides that registering to use the Department's electronic case management system constitutes consent to service through the system. The Board would also issue decisions and orders electronically to registered users who are parties to a case.

Paragraph (b) addresses non-electronic service and allows for service to be completed by personal delivery, mail, or delivery via commercial carrier.

Paragraph (c) provides the effective date of each form of service. Paragraph (c)(1) provides that service by personal delivery is effected on the date the document is delivered to the person being served. Paragraph (c)(2) provides that service by mail or commercial carrier is effected on the date the document is mailed or delivered to the commercial carrier. Paragraph (c)(3) provides that service by electronic means, including via the Department's electronic case management system and via email, is effective on sending. This is similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2), and provides a default for when laws governing a particular program do not specify the date of service.

B. Additional Changes

The Department proposes to revise several parts of the Code of Federal Regulations: 20 CFR parts 641, 655, 658, 667, 683, and 726; 29 CFR parts 7, 8, 22, 24, 29, 37, 38, 96, 417, 458, 500, 525, 530, 580, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988; and 41 CFR part 60–30 to harmonize the filing provisions with 29 CFR part 26 and improve e-filing and e-service Department-wide.

1. Changes to Requirements for Filing and Service by Mail or Personal Delivery

Many regulations require parties to file and serve documents by mail or by personal delivery in cases pending before the Board. To ensure that the regulations allow for e-filing and e-service through the Department's electronic case management system, and via email when permissible, the Department proposes to remove requirements for filing and service by mail and personal delivery to allow for e-filing and e-service, except where required by statute. Using the general terms ''filing'' and ''service'' will allow for all forms of filing and service permitted by 29 CFR part 26. The Department also proposes to cross-reference the Board's rules of practice and procedure at 29 CFR part 26 and the OALJ's rules of practice and procedure at 29 CFR part 18 where necessary to clarify the application of those parts.

Further, in 29 CFR parts 24 and 1978–88, where the Occupational Safety and Health Administration (OSHA) is required to deliver its findings and orders by certified mail, the Department proposes to allow OSHA to deliver such findings and orders by means that allow it to confirm delivery to all parties of record and each party's legal counsel. This would provide flexibility to the agency and allow for electronic delivery when appropriate.

2. Changes to Requirements To Send Copies of Documents

Many regulations require parties to send additional paper copies of all documents to the Board. To allow for better transition to full electronic case management and to simplify the filing process for parties, the Department proposes to remove requirements to send copies of all documents to the Board. Paper copies are not necessary when e-filing, and the Board no longer needs multiple paper copies from self-represented parties or those who are granted an exemption from e-filing.

3. Nomenclature and Other Technical Changes

To update the regulations for clarity, accuracy, and to comply with 29 CFR part 26, the Department proposes to make several technical changes to the regulations. Specifically, the Department proposes to remove outdated mailing addresses for both the Board and the Office of Administrative Law Judges. The Department also proposes to update the regulations that require documents to be filed with the Executive Director of the Board to require that documents be filed the Clerk of the Appellate Boards. The Department also proposes to update the authorities section in 29 CFR parts 7, 8, and 458 to include the applicable Secretary's Order, Secretary's Order 01–2020. Finally, the Department proposes to update the pronouns in 29 CFR 417.15 to account for a previous change from ''Secretary'' to ''Board.''

4. Changes to References to the Secretary

The Department proposes to revise references to the ''Secretary'' or the ''authority head'' to the ''Administrative Review Board,'' ''Board,'' or ''ARB'' to clarify the authority and responsibilities of the Board. Many regulations, particularly older ones, contain references to the ''Secretary'' or ''authority head'' for responsibilities that have been delegated to the Board by the Secretary. Where necessary, these changes are accompanied by a provision allowing for discretionary review by the Secretary, in accordance with Secretary's Order 01–2020 (or any successor to that order). In such cases, Board decisions would become final in accordance with the finality provisions of Secretary's Order 01–2020, or any successor to that order.

IV. Administrative Requirements of the Rulemaking

Executive Orders 12866, Regulatory Planning and Review; 13563, Improving Regulation and Regulatory Review; and 13777, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The rule does not ''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.''

Executive Order 13211, Energy Supply, Distribution, or Use

The Department has reviewed this rule and has determined that the provisions of Executive Order 13211 are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

List of Subjects

20 CFR Part 641

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

20 CFR Part 655

Administrative practice and procedure, Labor certification process for temporary employment.

20 CFR Part 658

Administrative practice and procedure, Complaint system, Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

20 CFR Part 667

Adjudication and Judicial Review, Administrative practice and procedure, Oversight and monitoring, Grievance procedures, complaints, and State appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping requirements, Resolution of findings, Workforce Investment Act.

20 CFR Part 683

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance procedures, complaints, and State appeal processes, Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Authorization of self-insurers, Civil money penalties.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 22

Administrative practice and procedure, Appeal to the Administrative Review Board.

29 CFR Part 24

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Environmental protection, Energy Reorganization Act of 1974, as amended.

29 CFR Part 26

Administrative practice and procedure.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

29 CFR Part 37

Administrative practice and procedure, Workforce Investment Act of 1998, Obligations of recipients and governors, Compliance procedures.

29 CFR Part 38

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

29 CFR Part 96

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

29 CFR Part 417

Administrative practice and procedure, Labor management standards, Procedures for removal of local labor organization officers.

29 CFR Part 458

Administrative practice and procedure, Standards of conduct, Labor-Management Reporting and Disclosure Act of 1959.

29 CFR Part 500

Administrative practice and procedure, Migrant and seasonal agricultural worker protection, Enforcement, Worker protections, Registration, Motor vehicles, Housing.

29 CFR Part 525

Administrative practice and procedure, Workers with disabilities, Wage rates, Special certificates.

29 CFR Part 530

Administrative practice and procedure, Homeworkers, Employer Certificates, Denial/revocation of certificates, Civil money penalties.

29 CFR Part 580

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

29 CFR Part 1978

Administrative practice and procedure, Employee protection, Findings, Investigations Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982.

29 CFR Part 1979

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H Ford Aviation Investment and Reform Act for the 21st Century.

29 CFR Part 1980

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

29 CFR Part 1981

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

29 CFR Part 1982

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, National Transit Systems Security Act, Federal Railroad Safety Act, Retaliation complaints.

29 CFR Part 1983

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1984

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1985

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1986

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman's Protection Act.

29 CFR Part 1987

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1988

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

41 CFR Part 60–30

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

For the reasons discussed in the preamble, the Department amends Titles 20, 29, and 41 of the Code of Federal Regulations as set forth below:

DEPARTMENT OF LABOR

Title 20: Employees' Benefits

Employment and Training Administration

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

■ 1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 *et seq.;* Pub. L. 114–144, 130 Stat. 334 (Apr. 19, 2016).

■ 2. In § 641.900, revise paragraphs (d) and (e) to read as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

* * * * *

■ 3. In § 641.920, revise paragraphs (d)(1) and (5) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(1) Within 21 days of receipt of the Department's final determination, the grantee may file a request for a hearing with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, with a copy to the Department official who signed the final determination.

* * * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C.

1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

* * * * *

■ 5. In § 655.182, revise paragraphs (f)(3) and (f)(5)(i) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(3) *Hearing.* The recipient of a Notice of Debarment may request a debarment hearing within 30 calendar days of the date of a Notice of Debarment or the date of a final determination of the OFLC Administrator after review of rebuttal evidence submitted pursuant to § 655.182(f)(2). To obtain a debarment hearing, the debarred party must, within 30 days of the date of the Notice or the final determination, file a written request with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, and simultaneously serve a copy to the OFLC Administrator. The debarment will take effect 30 days from the date the Notice of Debarment or final determination is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment or final determination. The timely filing of a request for a hearing stays the debarment pending the outcome of the hearing. Within 10 days of receipt of the request for a hearing, the OFLC Administrator will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

* * * * *

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ will be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

* * * * *

■ 6. In § 655.473, revise paragraphs (f)(3)(i) and (f)(5)(i) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(3) *Request for review.* (i) The recipient of a Notice of Debarment or Final Determination seeking to challenge the debarment must request review of the debarment within 30 calendar days of the date of the Notice of Debarment or the date of the Final Determination by the OFLC Administrator after review of rebuttal evidence submitted under paragraph (f)(2) of this section. A request for review of debarment must be filed in writing with the Chief ALJ, United States Department of Labor, in accordance with 29 CFR part 18, with a simultaneous copy served on the OFLC Administrator; the request must clearly identify the particular debarment determination for which review is sought; and must set forth the particular grounds for the request. If no timely request for review is filed, the debarment will take effect on the date specified in the Notice of Debarment or Final Determination, or if no date is specified, 30 calendar days from the date the Notice of Debarment or Final Determination is issued.

* * * * *

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 calendar days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 calendar days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 calendar days after the receipt of a timely filing of the petition, the decision of the ALJ is the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

* * * * *

■ 7. In § 655.845, revise paragraph (f) to read as follows:

§ 655.845 What rules apply to appeal of the decision of the administrative law judge?

* * * * *

(f) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, shall be received by the Board either on or before the due date.

* * * * *

■ 8. In § 655.1245, revise paragraph (f) to read as follows:

§ 655.1245 Who can appeal the ALJ's decision and what is the process?

* * * * *

(f) All documents submitted to the Board must be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER–PEYSER ACT EMPLOYMENT SERVICE

■ 9. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 10. In § 658.710, revise paragraph (d) to read as follows:

§ 658.710 Decision of the Administrative Law Judge.

* * * * *

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by filing an appeal with the Administrative Review Board in accordance with 29 CFR part 26.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 11. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 12. In § 667.800, revise paragraph (d) to read as follows:

§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

* * * * *

■ 13. In § 667.830, revise paragraph (b) to read as follows:

§ 667.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 14. The authority citation for part 683 is revised to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 186, 189, 195, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 15. In § 683.800, revise paragraph (d) to read as follows:

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

* * * * *

■ 16. In § 683.830, revise paragraph (b) to read as follows:

§ 683.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 17. The authority citation for part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.,* 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015)); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 18. In § 726.308, revise paragraphs (a) and (b) to read as follows:

§ 726.308 Service and computation of time.

(a) Service of documents under this subpart while the matter is before OWCP shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's, or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) Service made after a complaint is filed under § 726.309 must be made in accordance with 29 CFR part 18, as appropriate. When proceedings are initiated for review by the Administrative Review Board under § 726.314, service must be made in accordance with 29 CFR part 26, as appropriate.

* * * * *

■ 19. In § 726.314, revise the section heading and paragraph (a) to read as follows:

§ 726.314 Review by the Administrative Review Board.

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Administrative Review Board (Board) for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

* * * * *

■ 20. Revise § 726.316 to read as follows:

§ 726.316 Filing and service.

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery by mail.* Documents are not deemed filed with the Board until actually received by the Board either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(c) *Manner and proof of service.* A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26.

■ 21. Revise § 726.317 to read as follows:

§ 726.317 Discretionary review.

(a) Following receipt of a timely petition for review, the Administrative

Review Board (Board) shall determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Board declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Board's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Board.

(b) The Board's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Board deems appropriate.

(c) Upon receipt of the Board notice, the Director shall forward the record to the Board.

■ 22. Revise § 726.318 to read as follows:

§ 726.318 Decision of the Administrative Review Board.

The Administrative Review Board's (Board) review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Board's review of conclusions of law shall be de novo. Upon review of the decision, the Board may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Board's decision shall be served upon all parties and the Chief Administrative Law Judge in accordance with 29 CFR part 26.

Title 29: Labor

Office of the Secretary of Labor

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

■ 23. The authority citation for part 7 is revised to read as follows:

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 24. Revise § 7.3 to read as follows:

§ 7.3 Where to file.

The petition accompanied by a statement of service shall be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. In addition, copies of the petition shall be served upon each of the following:

(a) The Federal, State, or local agency, or agencies involved;

(b) The officer issuing the wage determination; and

(c) Any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

■ 25. Revise § 7.7 to read as follows:

§ 7.7 Presentations of other interested persons.

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter should be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. Copies of any such matter shall be served on the petitioner and other interested persons.

■ 26. In § 7.9, revise paragraph (a) to read as follows:

§ 7.9 Review of decisions in other proceedings.

(a) Any party or aggrieved person shall have a right to file a petition for review with the Board within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.

* * * * *

■ 27. Revise § 7.12 to read as follows:

§ 7.12 Intervention; other participation.

(a) For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

(1) The petitioner's relationship to the matters involved in the proceedings; and

(2) The nature of the presentation which he would make.

(b) Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

■ 28. Amend § 7.16 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and

■ d. Revising newly redesignated paragraph (b).

The revisions read as follows:

§ 7.16 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be by the filing party or interested person and in accordance with 29 CFR part 26. Service by mail is complete on mailing.

* * * * *

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

■ 29. The authority citation for part 8 is revised to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 30. Amend § 8.10 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d); and

■ d. Revising newly redesignated paragraph (b).

The revisions read as follows:

§ 8.10 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be in accordance with 29 CFR part 26. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

* * * * *

■ 31. In § 8.12, by revise the introductory text to read as follows:

§ 8.12 Intervention; other participation.

For good cause shown, the Board may permit any interested party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

* * * * *

PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 32. The authority citation for part 22 continues to read as follows:

Authority: Pub. L. 99–509, § 6101–6104, 100 Stat. 1874, 31 U.S.C. 3801–3812.

■ 33. In § 22.2:

■ a. Redesignate paragraphs (b) through (r) as paragraphs (c) through (s); and

■ b. Add new paragraph (b).

The addition reads as follows:

§ 22.2 Definitions

* * * * *

(b) *ARB* means the Administrative Review Board delegated to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01–2020 (or any successor to that order).

* * * * *

■ 34. In § 22.10, remove the words ''authority head'' and add in their place the word ''ARB'' wherever they occur in paragraphs (h) through (k) and revise paragraph (l).

The revision reads as follows:

§ 22.10 Default upon failure to file an answer.

* * * * *

(l) If the ARB decides that the defendant's failure to file a timely answer is not excused, the ARB shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the ARB issues such decision and it becomes final in accordance with Secretary's Order 01–2020 (or any successor to that order).

■ 35. In § 22.12, revise paragraph (a) to read as follows:

§ 22.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by 29 CFR part 18. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

* * * * *

■ 36. In § 22.14, revise paragraph (a)(2) to read as follows:

§ 22.14 Separation of functions.

(a) * * *

(2) Participate or advise in the initial decision or the review of the initial decision by the ARB, except as a witness or a representative in public proceedings; or

* * * * *

■ 37. In § 22.16, revise paragraph (f)(3) to read as follows:

§ 22.16 Disqualification of reviewing official or ALJ.

* * * * *

(f) * * *

(3) If the ALJ denies a motion to disqualify, the ARB may determine the matter only as part of its review of the initial decision upon appeal, if any.

■ 38. In § 22.26, revise paragraphs (b) and (c) to read as follows:

§ 22.26 Form, filing and service of papers.

* * * * *

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 22.8 shall be made in accordance with 29 CFR part 18. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document, setting forth the manner of service, shall be proof of service.

§ 22.31 [Amended]

■ 39. In § 22.31, remove the words ''authority head'' and add in their place the word ''ARB'' in paragraphs (a), (b) introductory text, and (c).

■ 40. In § 22.35, revise paragraph (b) to read as follows:

§ 22.35 The record.

* * * * *

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ, the ARB, and the authority head.

* * * * *

■ 41. In § 22.37, revise paragraphs (c) and (d) to read as follows:

§ 22.37 Initial decision.

* * * * *

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the ARB. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the ARB, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

■ 42. In § 22.38, revise paragraphs (f) and (g) to read as follows:

§ 22.38 Reconsideration of initial decision.

* * * * *

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the ARB in accordance with § 22.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the ARB in accordance with § 22.39.

■ 43. In § 22.39, revise paragraphs (a), (b)(3), (c), (f), and (h) through (l) to read as follows:

§ 22.39 Appeal to ARB.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the ARB by filing a notice of appeal with the ARB in accordance with this section and with 29 CFR part 26.

(b) * * *

(3) The ARB may extend the initial 30-day period for an additional 30 days if the defendant files with the ARB a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the ARB, and the time for filing motions for reconsideration under § 22.38 has expired, the ALJ shall forward the record of the proceeding to the ARB.

* * * * *

(f) There is no right to appear personally before the ARB.

* * * * *

(h) In reviewing the initial decision, the ARB shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the ARB that additional evidence not presented at such hearing is material and that there were

reasonable grounds for the failure to present such evidence at such hearing, the ARB shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The ARB may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision. The ARB's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

(k) The ARB shall promptly serve each party to the appeal with a copy of the decision of the ARB and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 22.3 is final and is not subject to judicial review.

■ 44. In § 22.41, revise paragraph (a) to read as follows:

§ 22.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the ARB.

* * * * *

PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

■ 45. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j-9(i)BVG, 5851, 6971, 7622, 9610; Secretary of Labor's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 46. In § 24.105, revise paragraph (b) to read as follows:

§ 24.105 Issuance of findings and orders.

* * * * *

(b) The findings and order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and order will inform the parties of their right to file objections and to request a hearing and provide the address of the Chief Administrative Law Judge. The Assistant Secretary will file a copy of the original complaint and a copy of the findings and order with the Chief Administrative Law Judge, U.S. Department of Labor.

* * * * *

■ 47. In § 24.106, revise paragraph (a) to read as follows:

§ 24.106 Objections to the findings and order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and order pursuant to § 24.105(b). The objection and/or request for a hearing must be in writing and state whether the objection is to the findings and/or the order. The date of the postmark, facsimile transmittal, email communication, or electronic submission will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 48. In § 24.107, revise paragraph (b) to read as follows:

§ 24.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties. Hearings will be conducted de novo, on the record.

* * * * *

■ 49. In § 24.110, revise paragraphs (a) and (c) to read as follows:

§ 24.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, in accordance with 29 CFR part 26. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, email communication, or electronic submission will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The final decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

■ 50. Add part 26 to read as follows:

PART 26—ADMINISTRATIVE REVIEW BOARD RULES OF PRACTICE AND PROCEDURE

Sec.

26.1 Purpose and scope.
26.2 General procedural matters.
26.3 Filing.
26.4 Service.

Authority: Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

§ 26.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board (ARB) when it is exercising its authority as described in paragraph (b) of this section. These rules shall govern all appeals and proceedings before the ARB except when inconsistent with a governing statute, regulation, or executive order, in which event the latter shall control.

(b) The ARB has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and

recommendations as provided in Secretary's Order 01–2020 (or any successor to that order). The ARB shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020 (or any successor to that order).

§ 26.2 General procedural matters.

(a) *Definitions.* (1) *ARB* means the Administrative Review Board.

(2) *Electronic case management system* means the Department of Labor's electronic filing and electronic service system for adjudications.

(b) *Computing time.* (1) Unless a different time is set by statute, regulation, executive order, or judge's order, when computing a time period stated in days,

(i) Exclude the day of the event that triggers the period;

(ii) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

(2) Unless a different time is set by statute, regulation, executive order, or judge's order, the ''last day'' ends:

(i) For electronic filing via the Department's electronic case management system or via other electronic means, at 11:59:59 Eastern Time on the due date.

(ii) For non-electronic filing, at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, DC on the due date.

(c) *Mailing address.* The mailing address for the ARB is: Administrative Review Board, Clerk of the Appellate Boards, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210.

§ 26.3 Filing.

(a) *Filing by electronic submission (e-filing) via the Department's electronic case management system*—(1) *Attorneys and lay representatives.* Except as otherwise provided in this section, beginning on April 12, 2021, attorneys and lay representatives must file all petitions, pleadings, exhibits, and other documents with the ARB via the Department's electronic case management system. Paper copies are not required unless requested by the ARB.

(2) *Good cause exception.* Attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) *Self-represented persons.* Self-represented persons may use but are not required to use the Department's electronic case management system to file documents.

(4) *Filing—date of receipt.* Unless a different time is set by statute, regulation, executive order, or judge's order, a document is considered filed when received by the Clerk of the Appellate Boards. Documents filed through the Department's electronic case management system are considered received by the Clerk of the Appellate Boards as of the date and time recorded by the Department's electronic case management system.

(5) *Signing.* A filing made through a registered user's account on the Department's electronic case management system and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(6) *Relief for Technical Failures.* A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the ARB. If a technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the ARB by special order may provide appropriate relief pending restoration of electronic access.

(b) *Alternate methods of filing.* Unless a different time is set by statute, regulation, executive order, or judge's order, a document filed using a method other than the Department's electronic case management system is considered filed when received by the Clerk of the Appellate Boards.

§ 26.4 Service.

(a) *Electronic service.* Electronic service may be completed by

(1) Electronic mail, if consented to in writing by the person served; or

(2) Sending it to a user registered with the Department's electronic case management system by filing via this system. A person who registers to use the Department's case management system is deemed to have consented to accept service through the system.

(b) *Non-electronic service.* Unless otherwise provided by statute, regulation, executive order, or judge's order, non-electronic service may be completed by:

(1) Personal delivery;

(2) Mail; or

(3) Commercial delivery.

(c) *When service is effected.* Unless otherwise provided by statute, regulation, executive order, or judge's order,

(1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

■ 51. The authority citation for part 29 is revised to read as follows:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 3145; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

■ 52. In § 29.10, revise paragraphs (a) introductory text and (c) to read as follows:

§ 29.10 Hearings for deregistration.

(a) Within 10 days of receipt of a request for a hearing, the Administrator of the Office of Apprenticeship must contact the Department's Office of Administrative Law Judges to request the designation of an Administrative Law Judge to preside over the hearing. The Administrative Law Judge shall give reasonable notice of such hearing to the appropriate sponsor. Such notice will include:

* * * * *

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board in accordance with 29 CFR part 26, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be served on the opposing party at the same time in accordance with 29 CFR part 26. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

■ 53. In § 29.13, revise paragraph (g) introductory text and paragraph (g)(3) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

* * * * *

(g) *Denial of State apprenticeship agency recognition.* A denial by the Office of Apprenticeship of a State Apprenticeship Agency's application for new or continued recognition must be in writing and must set forth the reasons for denial. The notice must be sent by certified mail, return receipt requested. In addition to the reasons stated for the denial, the notice must specify the remedies which must be undertaken prior to consideration of a resubmitted request, and must state that a request for administrative review of a denial of recognition may be made within 30 calendar days of receipt of the notice of denial from the Department. Such request must be filed with the Chief Administrative Law Judge for the Department in accordance with 29 CFR part 18. Within 30 calendar days of the filing of the request for review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

* * * * *

(3) Within 20 days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae in accordance with 29 CFR part 26.

* * * * *

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

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

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.;* Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.;* Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; Title IX of the Education Amendments of 1972, as amended, 29 U.S.C. 1681; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; and Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 55. In § 37.111, revise paragraph (b)(2) introductory text to read as follows:

§ 37.111 What hearing procedures does the Department follow?

* * * * *

(b) * * *

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

* * * * *

■ 56. Revise § 37.112 to read as follows:

§ 37.112 What procedures for initial and final decisions does the Department follow?

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties in accordance with 29 CFR part 18.

(b) *Exceptions; final decision*—(1) *Final decision after a hearing.* The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Administrative Review Board (Board) serves notice that it will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Board within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Board no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Board may, within 30 days of the expiration of the time for filing exceptions, on its own motion serve notice on the parties that it will review the decision.

(vii) Final decision and order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board has served notice on the parties that it will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) In any case reviewed by the Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Board fails to issue a Decision and Order within the 180–day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) *Final Decision where a hearing is waived.* (i) If, after issuance of a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 57. The authority citation for part 38 continues to read as follows:

Authority: 29 U.S.C. 3101 *et seq.;* 42 U.S.C. 2000d *et seq.;* 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.;* and 20 U.S.C. 1681 *et seq.*

■ 58. In § 38.111, revise paragraph (b)(2) introductory text to read as follows:

§ 38.111 Hearing procedures.

* * * * *

(b) * * *

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

* * * * *

■ 59. In § 38.112, revise paragraphs (a) and (b)(1)(i) and (iv) to read as follows:

§ 38.112 Initial and final decision procedures.

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties.

(b) * * *

(1) * * *

(i) *Exceptions.* A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Administrative Review Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

* * * * *

(iv) *Reply.* Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding in accordance with 29 CFR part 26.

* * * * *

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

■ 60. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, as amended.

■ 61. In § 96.63, revise paragraphs (b)(1)(i) and (b)(4) to read as follows:

§ 96.63 Federal financial assistance.

* * * * *

(b) * * *

(1) * * *

(i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may file a request for hearing with the Chief Administrative Law Judge, United States Department of Labor, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

* * * * *

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board (the Board), specifically identifying the procedure or finding of fact, law, or policy with which exception is taken, in accordance with 29 CFR part 26. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Board, within 30 days of such filing, has notified the parties that the case has been accepted for review.

* * * * *

Office of Labor-Management Standards

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

■ 62. The authority for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 63. In § 417.14, revise paragraph (a) to read as follows:

§ 417.14 Form and time for filing of appeal with the Administrative Review Board.

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Administrative Review Board within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Administrative Review Board may allow), together with supporting reasons for such exceptions, in accordance with 29 CFR part 26. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Administrative Review Board, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

* * * * *

■ 64. Revise § 417.15 to read as follows:

§ 417.15 Decision of the Administrative Review Board.

Upon appeal filed with the Administrative Review Board pursuant to § 417.14, or within its discretion upon its own motion, the complete record of the proceedings shall be certified to it; it shall notify all interested persons who participated in the proceedings; and it shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as it deems appropriate. Its decision shall become a part of the record and shall include a statement of its findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

PART 458—STANDARDS OF CONDUCT

■ 65. The authority for part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 66. In § 458.88, revise paragraph (c) to read as follows:

§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Administrative Review Board; exceptions.

* * * * *

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Administrative Review Board within fifteen (15) days after service of the recommended decision and order, in accordance with 29 CFR part 26. The Administrative Review Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Administrative Review Board.

■ 67. In § 458.90, revise paragraph (a) introductory text to read as follows:

§ 458.90 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall be filed in accordance with 29 CFR

part 26, contain only matters included within the scope of the exceptions, and contain, in the order indicated, the following:

* * * * *

Wage and Hour Division

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 68. The authority for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

■ 69. In § 500.20, revise paragraph (b) to read as follows:

§ 500.20 Definitions.

* * * * *

(b) *Administrative Law Judge* means a person appointed as provided in title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 557. Chief Administrative Law Judge means the Chief Administrative Law Judge, United States Department of Labor.

* * * * *

■ 70. In § 500.263, revise the section heading and introductory text to read as follows:

§ 500.263 Authority of the Administrative Review Board.

The Administrative Review Board may modify or vacate the Decision and Order of the Administrative Law Judge whenever it concludes that the Decision and Order:

* * * * *

■ 71. In § 500.264, revise paragraph (a) to read as follows:

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Administrative Review Board (Board) a petition for issuance of a Notice of Intent as described under § 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

* * * * *

■ 72. Revise 500.265 to read as follows:

§ 500.265 Implementation by the Administrative Review Board.

(a) Whenever, on the Administrative Review Board's (Board) own motion or upon acceptance of a party's petition, the Board believes that a Decision and Order may warrant modifying or vacating, the Board shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (*i.e.,* briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Board shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

■ 73. Revise § 500.266 to read as follows:

§ 500.266 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Administrative Review Board's (Board) Notice of Intent to Modify or Vacate a Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify, and forward a copy of the complete hearing record to the Board.

■ 74. Revise § 500.267 to read as follows:

§ 500.267 Filing and service.

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery.* Documents are not deemed filed with the Board until actually received by that office. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

(c) *Manner and proof of service.* A copy of all documents filed with the Board shall be served upon all other parties involved in the proceeding. Service under this section shall be in accordance with 29 CFR part 26.

■ 75. Revise § 500.268 to read as follows:

§ 500.268 Decision of the Administrative Review Board.

(a) The Administrative Review Board's (Board) Decision and Order shall be issued within 120 days from the notice of intent granting the petition, except that in cases involving the review of an Administrative Law Judge decision in a certificate action as described in § 500.224(b), the Board's decision shall be issued within ninety (90) days from the date such notice. The Board's Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

(b) Upon receipt of an Order of the Board modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

(c) The Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

PART 525 EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

■ 76. The authority citation for part 525 continues to read as follows:

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–486, 100 Stat. 1229 (29 U.S.C. 214).

■ 77. In § 525.22, revise paragraphs (e) through (h) to read as follows:

§ 525.22 Employee's right to petition.

* * * * *

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties in accordance with 29 CFR part 18. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Administrative Review Board (Board). The request must be filed in accordance with 29 CFR part 26 and must include a copy of the ALJ's

decision. Any other interested party may file a reply thereto with the Board and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by a method guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Board grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Board shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Board, shall be deemed to be a final agency action, unless the Secretary exercises discretionary review over the decision and exceptions as provided in Secretary's Order 01–2020 (or any successor to that order).

(h) Within 30 days of issuance of the decision of the ALJ, ARB, or Secretary becoming a final action, any person adversely affected or aggrieved by such action may seek judicial review pursuant to chapter 7 of title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Board to the appropriate court pursuant to the rules of such court.

PART 530 EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 78. The authority citation for part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 79. In § 530.403, revise paragraph (c) to read as follows:

§ 530.403 Request for hearing.

* * * * *

(c) In the case of an emergency revocation, a request for an administrative hearing shall be filed with the Chief Administrative Law Judge in accordance with 29 CFR part 18, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

■ 80. In § 530.406, revise paragraph (c) to read as follows:

§ 530.406 Decision and order of Administrative Law Judge.

* * * * *

(c) The decision shall be served on all parties and the Secretary. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Administrative Review Board, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 [Amended]

■ 81. In § 530.407, remove the word ''Secretary'' wherever it occurs and add in its place the words ''Administrative Review Board''.

§ 530.408 [Amended]

■ 82. In § 530.408, remove the word ''Secretary'' wherever it occurs and add in its place the words ''Administrative Review Board''.

■ 83. Revise § 530.409 to read as follows:

§ 530.409 Decision of the Secretary.

The Administrative Review Board's decision shall be served upon all parties and the Administrative Law Judge. The Administrative Review Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

■ 84. In § 530.411, revise paragraphs (c), (d), and (f) to read as follows:

§ 530.411 Emergency certificate revocation procedures.

* * * * *

(c) The Office of Administrative Law Judges shall notify the parties, electronically or at their last known address, of the date, time, and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days' notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Administrative Review Board (''Board'') and shall constitute the final order of the Department of Labor unless the Board determines to review the decision.

* * * * *

(f) The Board's decision shall be issued within 60 days of the notice by the Board accepting the submission, and shall be served upon all parties and the Administrative Law Judge. The Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

PART 580 CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 85. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 86. In § 580.8, revise paragraphs (a) and (c) to read as follows:

§ 580.8 Service and computation of time.

(a) Service of documents under this subpart shall be made to the individual, an officer of a corporation, or attorney of record in accordance with 29 CFR part 18.

* * * * *

(c) Time will be computed in accordance with part 18.

■ 87. In § 580.13, revise paragraphs (b) and (d) to read as follows:

§ 580.13 Procedures for appeals to the Administrative Review Board.

* * * * *

(b) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26.

* * * * *

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26. Service by mail is deemed effected at the time of mailing to the last known address of the party.

■ 88. Revise § 580.16 to read as follows:

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge.

Occupational Safety and Health Administration

PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED

■ 89. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 90. In § 1978.105, revise paragraph (b) to read as follows:

§ 1978.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 91. In § 1978.106, revise paragraph (a) to read as follows:

§ 1978.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1978.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record and the OSHA official who issued the findings.

* * * * *

■ 92. In § 1978.107, revise paragraph (b) to read as follows:

§ 1978.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 93. In § 1978.110, revise paragraph (c) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S, Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

■ 94. The authority citation for part 1979 is revised to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 95. In § 1979.105, revise paragraph (b) to read as follows:

§ 1979.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

* * * * *

■ 96. In § 1979.106, revise paragraph (a) to read as follows:

§ 1979.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1979.105(b). The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 97. In § 1979.107, revise paragraph (b) to read as follows:

§ 1979.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties.

Hearings will be conducted as hearings de novo, on the record. Administrative law judges shall have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 98. In § 1979.110, revise paragraphs (a) and (c) to read as follows:

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor,, even if the Assistant Secretary is not a party.

* * * * *

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES–OXLEY ACT OF 2002, AS AMENDED

■ 99. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary of Labor's Order No. 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 100. In § 1980.105, revise paragraph (b) to read as follows:

§ 1980.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings, and where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings, and where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 101. In § 1980.106, revise paragraph (a) to read as follows:

§ 1980.106 Objections to the findings and the preliminary order and request for a heading.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under the Act, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1980.105(b). The objections and/or request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 102. In § 1980.107, revise paragraph (b) to read as follows:

§ 1980.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 103. In § 1980.110, revise paragraph (c) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

* * * * *

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

■ 104. The authority citation for Part 1981 is revised to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 105. In § 1981.105, revise paragraph (b) to read as follows:

§ 1981.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

* * * * *

■ 106. In § 1981.106, revise paragraph (a) to read as follows:

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 60 days of receipt of the findings and preliminary order pursuant to § 1981.105(b). The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 107. In § 1981.107, revise paragraph (b) to read as follows:

§ 1981.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 108. In § 1981.110, revise paragraph (c) to read as follows:

§ 1981.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1982—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND THE FEDERAL RAILROAD SAFETY ACT

■ 109. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary of Labor's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 110. In § 1982.105, revise paragraph (b) to read as follows:

§ 1982.105 Decision and orders of the Administrative Review Board. Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent under NTSSA to request award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 111. In § 1982.106, revise paragraph (a) to read as follows:

§ 1982.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under NTSSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1982.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the

objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 112. In § 1982.107, revise paragraph (b) to read as follows:

§ 1982.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. Administrative Law Judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 113. In § 1982.110, revise paragraph (c) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

■ 114. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 115. In § 1983.105, revise paragraph (b) to read as follows:

§ 1983.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 116. In § 1983.106, revise paragraph (a) to read as follows:

§ 1983.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under CPSIA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1983.105. The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 117. In § 1983.107, revise paragraph (b) to read as follows:

§ 1983.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 118. In § 1983.110, revise paragraph (c) to read as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

■ 119. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 120. In § 1984.105, revise paragraph (b) as follows:

§ 1984.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if respondent alleges that the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 121. In § 1984.106, revise paragraph (a) to read as follows:

§ 1984.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under section 18C of the FLSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1984.105(b). The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 122. In § 1984.107, revise paragraph (b) to read as follows:

§ 1984.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 123. In § 1984.110, revise paragraph (c) to read as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER FINANCIAL PROTECTION ACT OF 2010

■ 124. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 125. In § 1985.105, revise paragraph (b) to read as follows:

§ 1985.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 126. In § 1985.106, revise paragraph (a) to read as follows:

§ 1985.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under CFPA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1985.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair

Labor Standards, U.S. Department of Labor.

* * * * *

■ 127. In § 1985.107, revise paragraph (b) to read as follows:

§ 1985.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 128. In § 1985.110, revise paragraph (c) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED

■ 129. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 130. In § 1986.105, revise paragraph (b) to read as follows:

§ 1986.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 131. In § 1986.106, revise paragraph (a) to read as follows:

§ 1986.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1986.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, and the OSHA official who issued the findings.

* * * * *

■ 132. In § 1986.107, revise paragraph (b) to read as follows:

§ 1986.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 133. In § 1986.110, revise paragraph (c) to read as follows:

§ 1986.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT

■ 134. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 135. In § 1987.105, revise paragraph (b) to read as follows:

§ 1987.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate

information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 136. In § 1987.106, revise paragraph (a) to read as follows:

§ 1987.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under FSMA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1987.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 137. In § 1987.107, revise paragraph (b) to read as follows:

§ 1987.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 138. In § 1987.110, revise paragraph (c) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP–21)

■ 139. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 140. In § 1988.105, revise paragraph (b) to read as follows:

§ 1988.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 141. In § 1988.106, revise paragraph (a) to read as follows:

§ 1988.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under MAP–21, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1988.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 142. In § 1988.107, revise paragraph (b) to read as follows:

§ 1988.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 143. In § 1988.110, revise paragraph (c) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

Title 41: Public Contracts and Property Management

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 144. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 145. In § 60–30.4, revise paragraphs (b) and (c) to read as follows:

§ 60–30.4 Form, filing, service of pleadings and papers.

* * * * *

(b) *Service.* Service upon any party shall be made by the party filing the pleading or document in accordance with 29 CFR part 26. When a party is represented by an attorney, the service shall be upon the attorney.

(c) *Proof of service.* A certificate of the person serving the pleading or other document, setting forth the manner of service, shall be proof of the service.

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28055 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–HW–P

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Part 802

RIN 1290–AA35

Rules of Practice and Procedure

AGENCY: Benefits Review Board, Department of Labor.

ACTION: Direct final rule.

SUMMARY: The Department of Labor takes this action to require electronic filing (e-filing) and make acceptance of electronic service (e-service) automatic by attorneys and lay representatives representing parties in proceedings before the Benefits Review Board (Board), and to provide an option for self-represented parties to utilize these electronic capabilities.

DATES: This direct final rule is effective on February 25, 2021, unless the Department receives a significant adverse comment to this direct final rule or the companion proposed rule by February 10, 2021 that explains why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or why the rule will be ineffective or unacceptable without a change. If a timely, significant adverse comment is received, the Department will publish a notification of withdrawal of the direct final rule in the **Federal Register** before the effective date. This notification may withdraw the direct final rule in whole or in part.

ADDRESSES: You may submit comments, identified by Regulatory Identification Number (RIN) 1290–AA35, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the direct final rule, use docket number DOL–2020–0013 or key words such as ''Administrative practice and procedure,'' ''Black lung benefits,'' ''Longshore and harbor workers,'' or ''Workers' compensation.'' Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

Instructions: All comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, or email addresses in comments. It is the responsibility of the commenter to safeguard personal information.

If you need assistance to review the comments or the direct final rule, the Department will consider providing the comments and the direct final rule in other formats upon request. For assistance to review the comments or obtain the direct final rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319 or *Shepherd.Thomas@dol.gov.* Individuals with hearing or speech impairments may access this telephone number by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the rulemaking; Section III is a section-by-section summary and discussion of the regulatory text; and Section IV covers the administrative requirements for this rulemaking.

I. Direct Final Rule Published Concurrently With Companion Proposed Rule

The Department is simultaneously publishing with this direct final rule an identical ''proposed'' rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The revisions to the Board's procedural regulations would require represented parties, unless exempted by the Board for good cause shown, to file documents via the Board's new electronic case management system, which will also automatically serve

these documents on registered system users. Some parties are already e-filing documents with the Board on a voluntary basis. Moreover, this new system is similar to those used by courts and other administrative agencies and will thus be familiar to the representatives. The rule also would give self-represented (*pro se*) parties the option to file and serve documents through the electronic case management system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this direct final rule runs concurrently with the comment period for the proposed rule. Any comments received in response to this direct final rule also will be considered as comments regarding the proposed rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

This rule is not an E.O. 13771 regulatory action because the Office of Information and Regulatory Affairs has determined it is not significant under E.O. 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(3).

II. Background of This Rulemaking

The Department promulgates this rule under the authority of 5 U.S.C. 301, as well as the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*

The Board is promulgating a rule that would make e-filing mandatory and acceptance of e-service automatic for parties represented by attorneys and lay representatives. E-filing has been optional and e-service was not available through the Board's prior electronic system. As a result, the Board would receive filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-case files), which the Board believes will significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents and to reduce the time it takes to adjudicate claims. Requiring attorneys and lay representatives to use e-filing and automatically receive service of e-filed documents through the Department's electronic case management system will help the Board move toward this goal.

The Board previously used *DOL Appeals,* a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: the Board, the Administrative Review Board (ARB), and the Employees' Compensation Appeals Board (ECAB). The Board reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, and the Longshore and Harbor Workers' Compensation Act and its extensions. The ARB issues decisions in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H–1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system provided a broad range of capabilities to the Adjudicatory Boards' staff for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to parties. More than 1,400 individuals were registered users of the *DOL Appeals* system. Users had the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. However, users who e-filed documents still had to serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* did not have an automatic e-service function like that of the Federal courts' electronic filing system. Moreover, because e-filing has been optional, the Board received, and still receives, many paper filings, including from attorneys and lay representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, attorneys and lay representatives are required to e-file all documents through the Board's new case management system, imaging the remaining paper pleadings from self-represented parties would be manageable for the Board. In addition, greater utilization of e-filing and e-service through the new case management system will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Although Federal agencies are required by law to provide information and services via the internet, agencies must also consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. 44 U.S.C. 3501 note. Accordingly, the Board will make e-filing and acceptance of e-service optional for self-represented parties. The Board sees no legal restriction to making e-filing mandatory and acceptance of e-service automatic for attorneys and lay representatives, and does not believe it would impose undue costs or difficulties for them, particularly since a party may obtain an exemption for good cause shown. The Board notes in this regard that e-filing

is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals; unless an exemption is granted, only self-represented parties have the option of filing pleadings in paper form. The Board also notes that, consistent with the Federal courts, the Department's electronic case management system requires the filer to convert other electronic formats to Portable Document File (PDF) before filing. Parties filing via the electronic case management system need a computer, access to email and the internet, and the ability to convert documents to a PDF format. The rule also provides that registered electronic case management system users are deemed to accept service of all documents through the system. The Board will issue decisions and orders electronically to registered users who are parties to a case.

III. Section-by-Section Analysis of Direct Final Rule

The Board removes and reserves the following sections: § 802.204, Place for filing notice of appeal and correspondence; § 802.207, When a notice of appeal is considered to have been filed in the office of the Clerk of the Board; and § 802.216, Service and form of papers. The Board is making this change to clarify and consolidate its rules governing computation of time in current § 802.221, filing of documents in new § 802.222, and service of documents in new § 802.223.

In general, the provisions in §§ 802.204, 802.207, and 802.216 are moved into these three consolidated regulations and revised to accommodate mandatory e-filing and automatic acceptance of e-service for represented parties. The Board is removing from its regulations the requirement in § 802.204 that a party who files a notice of appeal must serve a copy of it on the ''deputy commissioner'' (an official who is now called ''district director,'' 20 CFR 701.301(a)(7), 725.101(a)(16)). This non-statutory procedure is no longer required because the Board routinely provides the district director with notice of each appeal filed.

Sec. 802.219 Motions to the Board; Orders

The Board amends § 802.219(d) to replace the current cross-reference to § 802.216, a regulation the Board removes, with cross-references to new §§ 802.222 and 802.223. The new regulations will govern filing and service of motions made to the Board.

Sec. 802.221 Computation of Time

The Board amends § 802.221 in several ways. Paragraph (a) retains the same general time computation rule as in current paragraph (a) but substitutes the word ''must'' for ''shall'' wherever it occurs. This substitution is consistent with Executive Order 13563, which states that regulations must be ''written in plain language[.]'' 76 FR 3821 (Jan. 18, 2011). No alteration in meaning is intended by this change.

Paragraph (b) is limited to computing time for nonelectronic documents. Paragraph (b)(1) retains the current provision that, when sent by mail, the time period calculated under paragraph (a) is satisfied if the document is mailed within that time period, as demonstrated by postmark or other evidence. Paragraph (b)(2) adds a new provision to address the widespread use of commercial carriers (*e.g.,* FedEx, UPS) for delivering documents. The rule provides that the time period calculated under paragraph (a) is satisfied if delivered to the carrier within that time period, as evidenced by the carrier's receipt or tracking information.

Paragraph (c) is a new provision that addresses electronic filings made through the case management system. The time period calculated under paragraph (a) is deemed met if the pleading is filed by 11:59:59 p.m. Eastern Time on the due date. The Board chose the Eastern Time zone based on the fact that Washington, DC is located within it. This mirrors the approach of Federal courts. *See, e.g.,* Fed. R. App. P. 26(a)(4); Fed. R. Civ. P. 6(a)(4). Finally, paragraph (d), which notes that waivers of filing time limits may be requested by motion (except for notices of appeal), is identical to current paragraph (c).

Sec. 802.222 Filing Notice of Appeal, Pleadings, and Other Correspondence

Section 802.222 is a new rule containing all filing requirements. The rule incorporates many of the general provisions in current § 802.216 and adds additional provisions for electronic filings. The rule also includes the special provisions for determining when a notice of appeal is filed that currently appear in § 802.207. Placing all of this information in one section will clarify the parties' obligations when filing any pleading, exhibit, or other document with the Board.

Paragraph (a) contains the general requirements that apply to all pleadings, including captions, certificates of service, signatures, and formatting. Because documents in a case may need to be served by more than one method, paragraph (a)(2) requires the parties to include detailed service information on the certificate of service. To simplify signatures on electronic filings, paragraph (a)(3) provides that pleadings filed via the case management system will be deemed signed by the filing person.

Paragraph (b) is a new provision requiring filing parties to redact certain personally identifiable and sensitive information from all documents filed with the Board. The rule is intended to protect the interests of the parties, minors who may be involved in a case, and the public generally. The language of this rule is based on similar rules in the Federal courts. *See, e.g.,* Fed. R. Civ. P. 5.2(a); *see also* Fed. R. App. P. 25(a)(5).

Paragraph (c) governs nonelectronic filings. It retains the current requirements for submitting paper documents (*e.g.,* parties must file an original and two copies of each pleading) and includes the Board's address, which is currently located in § 802.204.

Paragraph (d) is an entirely new provision addressing electronic filings. Paragraph (d)(1) requires attorneys and lay representatives to register for the electronic case management system and file all documents through it. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing with the Board is mandatory, parties will have received a notice of appeal rights with updated information. It also allows parties who were previously filing and serving documents by mail to adjust to electronic filing. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. The regulation requires that e-filed documents be in PDF format and expresses a preference for text-searchable PDF format. To simplify the filing process, the regulation also informs filers that no paper copies need be filed unless requested by the Board; electronic submission alone is sufficient. Paragraph (d)(2) permits attorneys and lay representatives to request, by motion, an exemption from mandatory e-filing or acceptance of automatic e-service for good cause shown.

Paragraph (d)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or nonelectronic format. Providing this flexibility will allow these parties to easily participate in their cases. To remove any confusion about whether an electronically filed document is a ''paper,'' paragraph (d)(4) specifically provides that such documents are written papers for purposes of all of the Board's procedural rules. Paragraph (d)(5) addresses technical failures in two ways. First, any person encountering technical difficulties in filing or receiving electronic documents through the case management system may file a motion with the Board requesting relief appropriate to the particular incident. The Board encourages filers to retain documentation of the failure in these instances. Second, paragraph (d)(5) provides that the Board may issue a special order providing relief (*e.g.,* allowing nonelectronic filings) when the case management system is not operational.

Paragraph (e) contains special rules on filing notices of appeal. Paragraph (e)(1) incorporates the general rule contained in current § 802.207(a)(1) on the filing date of a notice of appeal. Paragraph (e)(2) generally incorporates the provision in current § 802.207(a)(2) that the Board may consider an appeal submitted to another governmental unit to have been filed with the Clerk of the Board as of the date it was received by the other governmental unit. Paragraph (e)(2) does not specifically require that the other governmental unit promptly forward the notice of appeal to the office of the Clerk of the Board because the Board does not have such authority. Paragraph (e)(3) incorporates the provisions in current § 802.207(b) that permit the Board to use the date of mailing as the filing date for the notice of appeal if appeal rights would otherwise be lost. Paragraph (e)(3) extends this same protection to notices of appeal sent by commercial carrier (*e.g.,* FedEx, UPS) and provides that the filing date in these instances is the date of delivery to the commercial carrier. Given the widespread use of commercial carriers, this additional provision will help ensure that parties' appeal rights are not lost. Finally, paragraph (e)(4) clarifies that electronic notices of appeal filed through the case management system are considered received, and thus filed, as of the date and time recorded by the system.

Sec. 802.223 Service Requirements

Section § 802.223 is a new rule containing all service requirements. Paragraph (a) requires, akin to current § 802.216(c), parties to serve every party in the case and the Solicitor of Labor with a copy of all documents filed with the Board. Paragraph (b) identifies the types of nonelectronic service (personal delivery; mail or commercial delivery) and electronic service (electronic mail, if consented to in writing by the person served, and electronic service to a registered user through the case management system) permitted. Significantly, paragraph (b)(2)(B) provides that a registered electronic case management system user ''is deemed to have consented to accept service through the system.'' Thus, automatic service through the electronic case management system is effective with respect to registered system users without any additional form of service. Paragraph (c) describes when service is effected for different delivery methods, which could become important to a cross-appeal filing under § 802.205(b).

Finally, paragraph (d) governs the date of receipt for electronic documents served by the case management system or electronic mail. The receipt date is particularly important to determining deadlines for response briefs, responses to motions, and requests for oral argument. *See* §§ 802.212, 802.219, 802.305. Under paragraph (d)(1), electronic case management system-served documents are considered received by the system's registered users in the case on the date the document is sent by the system. Similarly, under paragraph (d)(2) documents served via electronic mail are considered received when sent. In both instances, the recipients of service will have rapid access to the filed pleading, exhibit, or other document.

IV. Administrative Requirements of the Rulemaking

Executive Orders 12866, Regulatory Planning and Review; and 13563, Improving Regulation and Regulatory Review

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

This direct final rule has been drafted and reviewed in accordance with Executive Order 12866. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) determined that this direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act

The Department has determined that this direct final rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this rule in accordance with Executive Order 13175 and has determined that it does

not have ''tribal implications.'' The direct final rule does not ''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.''

List of Subjects in 20 CFR Part 802

Administrative practice and procedure, Black lung benefits, Longshore and harbor workers, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 802 as follows:

PART 802—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 802 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.;* 33 U.S.C. 901 *et seq.;* Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 03–2006, 71 FR 4219, January 25, 2006.

§ 802.204 [Removed and Reserved]

■ 2. Remove and reserve § 802.204.

§ 802.207 [Removed and Reserved]

■ 3. Remove and reserve § 802.207.

§ 802.216 [Removed and Reserved]

■ 4. Remove and reserve § 802.216.

■ 5. In § 802.219, revise paragraph (d) to read as follows:

§ 802.219 Motions to the Board; orders.

* * * * *

(d) The rules governing the filing and service of documents in §§ 802.222 and 802.223 apply to all motions.

* * * * *

■ 6. Revise § 802.221 to read as follows:

§ 802.221 Computation of time.

(a) In computing any period of time prescribed or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run must not be included. The last day of the period so computed must be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) For nonelectronic documents, the time period computed under paragraph (a) of this section will be deemed complied with if—

(1) When sent by mail, the envelope containing the document is postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(2) When sent by commercial carrier, the receipt or tracking information demonstrates that the paper was delivered to the carrier within the time period allowed.

(c) For electronic filings made through the Board's case management system, paragraph (a) of this section will be deemed to be met if the document is electronically filed within the time period allowed. A document is deemed filed as of the date and time the Board's electronic case management system records its receipt, even if transmitted outside of the Board's business hours set forth in § 801.304 of this chapter. To be considered timely, an e-filed pleading must be filed by 11:59:59 p.m. Eastern Time on the due date.

(d) A waiver of the time limitations for filing a paper, other than a notice of appeal, may be requested by proper motion filed in accordance with §§ 802.217 and 802.219.

■ 7. Add § 802.222 to subpart B to read as follows:

§ 802.222 Filing notice of appeal, pleadings, and other correspondence.

This section prescribes rules and procedures by which parties and representatives to proceedings before the Board file pleadings (including notices of appeal, petitions for review and briefs, response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence.

(a) *Requirements for all pleadings.* All pleadings filed with the Board must—

(1) Include a caption and title.

(2) Include a certificate of service containing—

(i) The date and manner of service;

(ii) The names of persons served; and

(iii) Their mail or electronic mail addresses or the addresses of the places of delivery, as appropriate for the manner of service.

(3) Include a signature of the party (or his or her attorney or lay representative) and date of signature. Pleadings filed by an attorney, lay representative or self-represented party via the Board's case management system will be deemed to be signed by that person.

(4) Conform to standard letter dimensions (8.5 × 11 inches).

(b) *Redacted filings and exhibits.* Any person who files a pleading, exhibit, or other document that contains an individual's social security number, taxpayer-identification number, or birth date; the name of an individual known to be a minor; or a financial-account number, must redact all such information, except the last four digits of the social security number and taxpayer-identification number; the year of the individual's birth; the minor's initials; and the last four digits of the financial-account number.

(c) *Nonelectronic filings.* All nonelectronic pleadings filed with the Board must be secured at the top. For each pleading filed with the Board, the original and two legible copies must be submitted. Nonelectronic filings must be sent to the U.S. Department of Labor, Benefits Review Board, ATTN: Office of the Clerk of the Appellate Boards (OCAB), 200 Constitution Ave. NW, Washington, DC 20210–0001, or otherwise presented to the Clerk.

(d) *Electronic filings.* (1) Except as provided in paragraph (d)(2) of this section, beginning on April 12, 2021, attorneys and lay representatives must register for the Board's electronic case management system and file all pleadings, exhibits, and other documents with the Board through this system (e-file). All e-filed documents must be in Portable Document Format (PDF). The Board prefers that pleadings be filed in text-searchable PDF format. Paper copies are not required unless requested by the Board.

(2) Attorneys and lay representatives may request an exemption (pursuant to § 802.219) for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) Self-represented parties may file pleadings, exhibits, and other documents in electronic or nonelectronic form in accordance with paragraph (c) or (d) of this section.

(4) A document filed electronically is a written paper for purposes of this Part.

(5) A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board under § 802.219. If a technical malfunction or other issue prevents access to the Board's case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

(e) *Special rules for notices of appeal.* (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received by the office of the Clerk of the Board.

(2) A notice of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any state government,

and subsequently received by the office of the Clerk of the Board, will be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds in its discretion that it is in the interest of justice to do so.

(3) If the notice of appeal is sent by mail or commercial carrier and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing or the date of delivery to the commercial carrier.

(i) For notices sent by mail, the date appearing on the U.S. Postal Service postmark (when available and legible) will be prima facie evidence of the date of mailing. If there is no such postmark or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(ii) For notices sent by commercial carrier, the date of delivery to the carrier may be demonstrated by the carrier's receipt or tracking information.

(4) If the notice of appeal is electronically filed through the Board's case management system, it is considered received by the office of the Clerk of the Board as of the date and time recorded by the system under § 802.221(c).

■ 6. Add § 802.223 to subpart B to read as follows:

§ 802.223 April 11, 2021 Service requirements.

This section prescribes rules and procedures for serving pleadings (including notices of appeal, petitions for review, and response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence on other parties and representatives.

(a) A copy of any document filed with the Board must be served on each party and the Solicitor of Labor by the party filing the document.

(b) *Manner of service.* (1) Nonelectronic service may be completed by:

(i) Personal delivery;

(ii) Mail; or

(iii) Commercial delivery.

(2) Electronic service may be completed by:

(i) Electronic mail, if consented to in writing by the person served; or

(ii) Sending it to a user registered with the Board's electronic case management system by filing via this system. A person who registers to use the Board's case management system is deemed to have consented to accept service through the system.

(c) *When service is effected.* (1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

(d) *Date of receipt for electronic documents.* Unless the party making service is notified that the document was not received by the party served—

(1) A document filed via the Board's case management system is considered received by registered users on the date it is sent by the system; and

(2) A document served via electronic mail is considered received by the recipient on the date it is sent.

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28057 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–HT–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

RIN 1290–AA36

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Direct final rule; request for comments

SUMMARY: The Department of Labor (DOL or Department) is revising the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ rules of practice and procedure) to provide for electronic filing (e-filing) and electronic service (e-service) of papers. In addition to technical amendments, the revised regulations provide that e-filing will be required for persons represented by attorneys or non-attorney representatives unless good cause is shown justifying a different form of filing. Self-represented persons will have the option of e-filing or of filing by conventional means. Finally, the Department is revising the OALJ rules of practice and procedure to require advance notice to the parties of the manner of a hearing or prehearing conference, whether in person in the same physical location, by telephone, by videoconference, or by other means.

DATES: This direct final rule is effective on February 25, 2021 without further action unless the Department receives significant adverse comment to this rule by midnight Eastern Standard Time on February 10, 2021. If the Department receives significant adverse comment, it will publish a timely withdrawal of the final rule in the **Federal Register**.

ADDRESSES: You may read background documents, submit comments, and read comments received through the Federal eRulemaking Portal at *http://www.regulations.gov.* To locate this direct final rule, identified by Regulatory Identification Number (RIN) 1290–AA36, search for docket number DOL–2020–0015 or key words such as ''Office of Administrative Law Judges'' or ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.'' Instructions for submitting comments are found on the *www.regulations.gov* website. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, and email addresses in comments. It is the responsibility of the commenters to safeguard their information. If you need assistance to review the comments or the direct final rule, the Department will consider providing the comments and the direct final rule in other formats upon request. For assistance to review the comments or obtain the direct final rule in an alternate format, contact Mr. Todd Smyth, General Counsel, at (513) 684–3252.

FOR FURTHER INFORMATION CONTACT: Todd Smyth, General Counsel, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street NW, Washington, DC 20001–8002; telephone (513) 684–3252. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This preamble has four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides background; Section III provides a section-by-section analysis of the regulatory text; and Section IV

addresses the administrative requirements for this rulemaking.

I. Direct Final Rule Published Concurrently With Companion Proposed Rule

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the direct final rule, the agency publishes a **Federal Register** notice withdrawing the proposed rule, and the final rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule, which revises the OALJ rules of practice and procedure to accommodate electronic filing by persons appearing before OALJ and electronic service of ALJ-issued documents, is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Regardless, the agency has decided to allow for public input, so this rule is suitable for direct final rulemaking. The rule makes technical changes to OALJ's procedural rules, and—consistent with similar court and agency e-filing systems—provides that persons represented by attorney and non-attorney representatives will be required to e-file unless good cause is shown to be exempted, and that self-represented persons will have the option of e-filing or using conventional filing methods. Thus, the Department does not expect to receive significant adverse comment on this rule.

The Department is also publishing a companion notice of proposed rulemaking in the ''Proposed Rules'' section of today's **Federal Register** to expedite notice-and-comment rulemaking in the event the Department receives significant adverse comment and withdraws this direct final rule. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. The Department will treat comments received on the companion proposed rule as comments regarding the direct final rule and vice versa. Thus, if the Department receives significant adverse comment on either this direct final rule or the companion proposed rule, the Department will publish a **Federal Register** notice withdrawing this direct final rule and will proceed with the proposed rule. If no significant adverse comment is received, this direct final rule will become effective.

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

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

II. Background

On May 19, 2015, the regulations governing practice and procedure for proceedings before the United States Department of Labor, Office of Administrative Law Judges (OALJ) were significantly revised. 80 FR 28768 (May 19, 2015). At the time, the Department acknowledged that implementation of a dedicated electronic filing system and electronic service system for OALJ adjudications would be beneficial, but stated that because the OALJ did not have a dedicated electronic filing and service system, the rules of practice and procedure necessarily focused on traditional filing and service. 80 FR at 28772, 28775. The Department now has an electronic filing and service system (eFile/eServe system) for its adjudicatory agencies. This revision to part 18 makes regulatory changes to implement this new system.

When the Department revised the OALJ rules of practice and procedure in 2015, it modeled those rules on the Federal Rules of Civil Procedure (FRCP). The Department noted that ''[u]sing language similar or identical to the applicable FRCP gains the advantage of the broad experience of the Federal courts and the well-developed precedent they have created to guide litigants, judges, and reviewing authorities within the Department on procedure. Parties and judges obtain the additional advantage of focusing primarily on the substance of the administrative disputes, spending less time on the distraction of litigating about procedure.'' 77 FR 72142, 72144 (Dec. 4, 2012) (proposed rule). Accordingly, the Department revises part 18 to accommodate electronic filing with a view toward aligning part 18, to the extent practicable, with the equivalent federal rules.

The current OALJ rule at 29 CFR 18.30 governs serving and filing of pleadings and other papers, and was modeled on FRCP 5. As noted above, § 18.30 did not address in detail electronic filing or service because OALJ did not have a dedicated e-filing system in 2015. In 2018, FRCP 5 was amended to revise the provisions for electronic service based on the federal judiciary's experience with its electronic filing system, namely the Case Management/Electronic Case Files (CM/ECF) system. In brief, the changes to FRCP 5 deleted the requirement of consent in writing to electronic service where service is made on a registered user through the court's electronic filing system; ended the practice of leaving it to local rules to require or allow electronic filing, and instead established a uniform national rule that makes electronic filing mandatory for parties represented by counsel (providing, however, for certain exceptions); required that any local rule requiring electronic filing by self-represented parties must allow reasonable exceptions; established a uniform national signature provision; and provided that no certificate of service is required when a paper is served by filing it with the court's electronic filing system.

Most of the Rule 5 revisions make sense in regard to DOL OALJ adjudications but with some modifications to reflect administrative practice and functional differences between CM/ECF and the Department's eFile/eServe system. As explained in more detail below, the regulatory amendments address the following:

- Require persons represented by attorney and non-attorney representatives to use the Department's system to file all papers electronically and to receive electronic service of documents unless another form of filing or service is allowed by the presiding judge for good cause or is required by standing order;

• give self-represented persons the option to use conventional means of filing, or to use the Department's system to file all papers electronically and to receive electronic service of documents;

• provide that a filing made through a person's eFile/eServe system account and authorized by that person, together with that person's name on a signature block, constitutes that person's signature.

FRCP 5(d)(1)(B) was revised in 2018 to provide that ''[n]o certificate of service is required when a paper is served by filing it with the court's electronic-filing system.'' The Department, however, has determined that a certificate of service will continue to be required for all filings with OALJ given that (1) OALJ proceedings have a significant number of self-represented parties as participants, and (2) especially early in OALJ proceedings, the identification of parties and their representatives—and accurate contact information for such persons and entities—is often fluid and uncertain. *Compare* ''Notice for Comment on Proposed Amendments to the Local Civil and Criminal Rules for the Middle District of Louisiana'' (Apr. 12, 2019) (proposing to revise court's local rule to provide that a certificate of service is required for an initial complaint filed with the court's electronic filing system, and the case involves a party who is not an electronic filer); General Order 2019–06 (M.D. La. Nov. 12, 2019) (adopting amendment to Local Civil Rule 5(e)(1) to provide that ''[w]hen a document filed after the initial complaint is served by filing it with the Court's electronic filing system, no certificate of service is required when all parties are electronic filers.'').

The Department notes that, as with all OALJ rules of practice and procedure, the e-filing provisions will not apply if they are ''inconsistent with a governing statute, regulation, or executive order. . . . If a specific Department of Labor regulation governs a proceeding, the provisions of that regulation apply[.]'' 20 CFR 18.10(a). For instance, OALJ will continue to serve decisions via certified mail where required by the governing statute or regulation, including on persons participating in the Department's eFile/eServe system.

Finally, as a consequence of the COVID–19 national emergency in 2020, courts and administrative adjudicators across the Nation have dramatically increased the use of telephonic and video hearings, including the Department of Labor's OALJ. The Department is revising Part 18 to require the judge to give advance notice of the manner of the hearing—whether in person in the same physical location, by telephone, by videoconference, or by other means—and to provide parties an opportunity to request a different manner of hearing. *See* 5 U.S.C. 554(b)(1) (requiring timely notice of the time, place, and nature of the hearing).

III. Section-by-Section Analysis

General Provisions

Sec. 18.11 Definitions

A definition of ''*eFile/eServe system*'' is added to the definitions section of part 18 to clarify that it means the Department of Labor's electronic filing and electronic service system for adjudications.

A definition of ''*registered user*'' is added to the definitions section of part 18 to clarify that it means any person registered to file papers using the Department's eFile/eServe system.

A definition of ''*standing order*'' is added to the definitions section of part 18. Amendments to § 18.30 follow the language of FRCP 5 to permit exceptions, permissions, or requirements relating to e-filing to be established by ''local rule.'' OALJ is organized differently than the judiciary, and does not use local rules. However, OALJ sometimes issues Administrative Orders addressing court administration applicable to all cases pending before OALJ, or to all cases pending in a district office. For example, in the past when an OALJ district office was closed for an extended period due to severe weather conditions and the aftermath, the Chief Judge or District Chief Judge issued an Administrative Order extending filing dates and permitting alternative forms of filing (such as email) until the office returned to normal operations. Similarly, OALJ may need to issue standing orders to address national or local conditions impacting electronic filing.

Service, Format and Timing of Filings and Other Papers

Sec. 18.30 Service and Filing

The current § 18.30 is modeled on FRCP 5. FRCP 5 was amended in 2018 in regard to electronic filing, and the following revisions to § 18.30 are modeled on the FRCP 5 amendments to the extent practicable.

Paragraph (a)(2)(ii)(E) is revised to permit a registered user of the Department's eFile/eServe system to serve filings on other registered users through the Department's system.

A new paragraph (a)(2)(iii) is added to provide that represented persons required to file electronically using the Department's eFile/eServe system, and self-represented persons who opt to file electronically using that system, are deemed to have consented to electronic service of documents issued by the judge and papers filed by other registered users of the system.

The first sentence of paragraph (b)(1) is revised to harmonize it to the current FRCP 5 in regard to the time period for filing a paper. Specifically, rather than the current requirement to file a paper ''within a reasonable time after service with a certificate of service,'' the amended paragraph requires filing ''no later than a reasonable time after service.'' The FRCP 5 made this change because ''within'' might be read as barring filing before the paper is served. ''No later than'' was substituted in FRCP 5 to ensure that it is proper to file a paper before it is served.

Paragraph (b)(2) is revised to clarify that a paper submitted electronically in the Department's eFile/eServe system is filed when received by that system.

The provisions of § 18.30(b)(3) have been amended and reorganized. New paragraph (b)(3)(i)(A) provides that a person represented by an attorney or non-attorney representative is required to file using the Department's eFile/eServe system following the instructions on the system's website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order. This aligns practice before OALJ with current common practice before state and federal courts and agencies. *See* 76 FR 56107 (Sept. 12, 2011) (Social Security Administration final rule announcing that it will require claimant representatives to use SSA's electronic services as they become available on matters for which the representatives request direct fee payment); 76 FR 63537 (Oct. 13, 2011) (U.S. Merit Systems Protection Board pilot program requiring agencies and attorneys representing appellants to file pleadings electronically for appeals in the Washington Regional Office and Denver Field Office); 84 FR 14554 (Apr. 10, 2019) (Occupational Safety and Health Review Commission final rule adopting mandatory electronic filing and service); 84 FR 37081 (July 31, 2019) (U.S. Patent and Trademark Office final rule amending its Rules of Practice in Trademark Cases and Rules of Practice in Filings to mandate electronic filing of trademark applications and submissions associated with trademark applications and registrations). The Department believes that, rather than imposing undue costs or difficulties on representatives, e-filing will reduce costs and make filing with OALJ more convenient and certain. *See generally*

http://www.azd.uscourts.gov/efiling/advantages (outlining advantages of electronic case filing). At present, a representative filing via the Department's eFile/eServe system would need a computer, access to email and the internet, and a Portable Document Format (PDF) application. Such capacities are common, if not essential, in legal practice today. Moreover, because a representative is allowed to establish good cause for using other forms of filing, the amended rule allows for reasonable exceptions to an e-filing mandate. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Department time to update its communications to parties about how to file and allows parties who were previously filing and serving documents by mail to adjust to electronic filing.

New paragraph (b)(3)(i)(B) provides that a self-represented person may use the Department's eFile/eServe system to file papers. This is a more permissive approach than found in FRCP 5, which allows a self-represented party to file electronically only by court order or a local rule. The Department, by contrast, encourages all persons participating in OALJ hearings to use the Department's eFile/eServe system for filings.

New paragraph (b)(3)(i)(C) provides that a filing made through the Department's eFile/eServe system containing the registered user's name on a signature block constitutes that person's signature. This is consistent with FRCP 5 and provides a simple, practical solution to the signing of papers filed electronically through the Department's system.

New paragraph (b)(3)(i)(D) provides that a paper filed electronically is a written paper for purposes of the part 18 regulations. This provision is consistent with FRCP 5(d)(3)(D).

Current § 18.30(b)(3) has been moved to paragraph (b)(3)(ii), and modified to state the permissible methods of filing for those persons excepted from mandatory use of the Department's eFile/eServe system. Paragraph (b)(3)(ii) is also revised to state the website address at which current OALJ National and District office addresses are listed—specifically: *https://www.dol.gov/agencies/oalj/contacts.*

Current § 18.30(b)(3)(i) requires prior permission from the judge to file by facsimile. With the availability of e-filing, the concerns that prompted that limitation on facsimile filing will be largely mooted. For self-represented persons who do not have ready access to reliable internet services, filing by facsimile may be a viable alternative. Thus, the Department will eliminate the requirement of current § 18.30(b)(3)(i)(A) to receive prior permission to file by facsimile. The Department, however, will retain the current requirements for use of a facsimile cover sheet and retention of the original document and a transmission record. These requirements are consolidated and re-lettered as new paragraphs (b)(3)(ii)(A) and (B).

Current § 18.30(b)(4) is deleted as it has been mooted by the new provisions in paragraph 18.30(b)(3)(i).

Sec. 18.32 Computing and Extending Time

FRCP 6(a) governs the computation of time periods under the FRCP, in any local rule or court order, or in any statute that does not specify a method of computing time. In this regard, FRCP 6(a)(1)(C) provides that the ''last day'' of a time period is included in the calculation, and provides that the ''last day'' ends at midnight in the court's time zone for electronic filing, and when the clerk's office is scheduled to close for filing by other means. FRCP 6(a)(4)(A) and (B).

The current § 18.32 is modeled on FRCP 6, but does not address electronic filing. Thus, the Department revises § 18.32(a)(2)(i) to provide that unless a different time is set by a statute, executive order, regulation, or judge's order, for electronic filing, the ''last day'' goes through 11:59:59 p.m. in the time zone of the presiding judge's office—or, for cases not yet assigned to an OALJ national or district office—in the time zone of the office of the Chief Judge of OALJ. Although standardizing the time for electronic filing at midnight Eastern Time on the last day of the filing period was considered, because the Department's eFile/eServe system is administered in Washington, DC, the Department opted to set the time based on local time at the presiding judge's location in order not to reduce hours available for e-filing for persons outside the Eastern time zone. In regard to filing by means other than electronic filing, the Department revises § 18.32(a)(2)(ii) to follow FRCP 6(a)(4)(B) to state ''when the clerk's office is scheduled to close.'' OALJ clerks' offices close at 4:30 p.m. in the time zone of the presiding judge's office or 4:30 p.m. in the time zone of the office of the Chief Judge of OALJ for cases not yet assigned to an OALJ national or district office.

Sec. 18.34 Format of Papers Filed

The current § 18.34 addresses the format of papers filed in hard copy. New § 18.34 requires that papers filed electronically be in a format that is accepted by the Department's eFile/eServe system.

Prehearing Procedure

Current § 18.40(a) requires that the judge provide at least 14 days' notice of the date, time, and place of the hearing. In view of increased use of telephonic and video hearings, § 18.40(a) is revised to require the judge to also provide 14 days' notice of the manner of hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. Paragraph 18.40(a) is also revised to refer to the provisions of new § 18.30(a) in regard to how the notice of hearing will be sent to the parties. This revision is necessary to harmonize § 18.40(a) with the new eFile/eServe system.

The Department amends § 18.40(b) to require the judge to consider the convenience and necessity of the parties and witnesses in selecting the manner of the hearing.

Current § 18.41 addresses changes to the time, date, and place of the hearing. The Department amends § 18.41(a), (b), and (c) to add the manner of the hearing to the subjects that can be changed by the judge or upon motion of a party.

Current § 18.44(b) provides that prehearing conferences may be conducted in person, by telephone, or other means. New § 18.44(b) explicitly includes videoconferences as a permissible means of conducting prehearing conferences.

Hearing

Sec. 18.82 Exhibits

By 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); Delivering Government Solutions in the 21st Century, at 22, 100–102 (June 21, 2018). Accordingly, the Department must move expeditiously toward conducting administrative adjudications using electronic records to the greatest extent practical. Thus, new § 18.82(a) provides that those who are required or have opted to file using the Department's eFile/eServe system must file electronically any exhibits to be offered into evidence at the hearing, unless the exhibit is not susceptive to electronic filing. An example of an

exhibit not susceptive to electronic filing is a three-dimensional object. Current paragraphs (a) through (g) are re-lettered to paragraphs (b) through (h). Newly lettered paragraph (d) on exchange of exhibits is amended to clarify that if a copy of a written exhibit being offered into evidence was previously filed electronically pursuant to § 18.82(a), a physical copy of the exhibit need not be produced for the judge at the hearing unless the judge directs otherwise.

IV. Administrative Requirements

Executive Orders 12866, Regulatory Planning and Review; and 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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.

This direct final rule has been drafted and reviewed in accordance with Executive Order 12866. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) determined that this direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this direct final rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this direct final rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this direct final rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The direct final rule does not ''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.''

List of Subjects in 29 CFR Part 18

Administrative practice and procedure, Labor.

For the reasons set out in the Preamble, the Department of Labor amends 29 CFR part 18 as set forth below.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

■ 1. The authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

■ 2. Amend § 18.11 by adding definitions in alphabetical order for ''eFile/eServe system'', ''Registered user'', and ''Standing order'' to read as follows:

§ 18.11 Definitions.

* * * * *

eFile/eServe system means the Department of Labor's electronic filing and electronic service system for adjudications.

* * * * *

Registered user means any person registered to file papers using the Department's eFile/eServe system.

* * * * *

Standing order means an order issued by the Chief Judge or District Chief Judge addressing court administration that applies to all cases pending before OALJ or an OALJ district office, and which is in force until changed or withdrawn by a subsequent order.

■ 3. Amend § 18.30 by revising paragraph (a)(2)(ii)(E), adding paragraph (a)(2)(iii), revising the first sentence in paragraph (b)(1) introductory text, revising paragraphs (b)(2) and (3), and removing paragraph (b)(4).

The revisions and addition read as follows:

§ 18.30 Service and filing.

(a) * * *

(2) * * *

(ii) * * *

(E) Sending it to a registered user by filing it with the Department's eFile/eServe system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

* * * * *

(iii) *Consent to electronic service.* Any person required to file electronically pursuant to paragraph (b)(3)(i)(A) of this section and any person who opts to file electronically pursuant to paragraph (b)(3)(i)(B) of this section is deemed to have consented to electronic service of documents issued by the judge and papers filed by a registered user of the Department's eFile/eServe system.

* * * * *

(b) * * *

(1) * * * Any paper that is required to be served must be filed no later than a reasonable time after service with a certificate of service. * * *

(2) *Filing: when made—in general.* A paper submitted electronically in the Department's eFile/eServe system is filed when received by the system. Papers submitted by other means are filed when received by the docket clerk or by the judge during a hearing.

(3) *Filing: how made*—(i) *Electronic filing and signing*—(A) *By a represented*

person—generally required; exceptions. Beginning on April 12, 2021, a person represented by an attorney or non-attorney representative must file using the Department's eFile/eServe system following the instructions on the system's website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order.

(B) *By a self-represented person—when allowed or required.* A person not represented by an attorney or non-attorney representative may file using the Department's eFile/eServe system following the instructions on the system's website.

(C) *Signing.* A filing made through a person's eFile/eServe system account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) *Same as a written paper.* A paper filed electronically is a written paper for purposes of these rules.

(ii) *Other forms of filing.* Persons who are excepted from e-filing under paragraph (b)(3)(i)(A) of this section, or who have opted not to use e-filing as permitted by paragraph (b)(3)(i)(B) of this section, may file papers by mail, courier service, hand delivery, facsimile, or alternative means of electronic delivery. The mailing addresses for OALJ's National and District offices are found at *https://www.dol.gov/agencies/oalj/contacts.*

(A) *Filing by facsimile—cover sheet.* Filings by facsimile must include a cover sheet that identifies the sender, the total number of pages transmitted, and the matter's docket number and the document's title.

(B) *Filing by facsimile—retention of the original document.* The original signed document will not be substituted into the record unless required by law or the judge. Any party filing a facsimile of a document must maintain the original document and transmission record until the case is final. A transmission record is a paper printed by the transmitting facsimile machine that states the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication that no error in transmission occurred. Upon a party's request or judge's order, the filing party must provide for review the original transmitted document from which the facsimile was produced.

■ 4. Amend § 18.32 by revising paragraph (a)(2) to read as follows:

§ 18.32 Computing and extending time.

(a) * * *

(2) ''*Last day*'' *defined.* Unless a different time is set by a statute, regulation, executive order, or judge's order, the ''last day'' ends:

(i) For electronic filing, at 11:59:59 p.m. in the time zone of the presiding judge's office—or, for cases not yet assigned to an OALJ national or district office—at 11:59:59 p.m. in the time zone of the office of the Chief Judge of OALJ; and

(ii) For filing by other means, when the clerk's office is scheduled to close.

* * * * *

■ 5. Amend § 18.34 by revising the introductory text to read as follows:

§ 18.34 Format of papers filed.

Papers submitted electronically in the Department's eFile/eServe system must be in a format accepted by the Department's eFile/eServe system. Papers not filed electronically must be printed in black ink on 8.5 x 11-inch opaque white paper. All papers must be legible, and begin with a caption that includes:

* * * * *

■ 6. Revise § 18.40 to read as follows:

§ 18.40 Notice of hearing.

(a) *In general.* Except when the hearing is scheduled by calendar call, the judge must, at least 14 days before the hearing, notify the parties of the hearing's date, time, and place, and of the manner of the hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. The notice is sent by the means provided for in § 18.30(a), unless the judge determines that circumstances require service by certified mail or other means. The parties may agree to waive the 14-day notice for the hearing.

(b) *Date, time, place, and manner.* The judge must consider the convenience and necessity of the parties and the witnesses in selecting the date, time, place, and manner of the hearing.

■ 7. Amend § 18.41 by revising the section heading and paragraphs (a), (b) introductory text, and (b)(2) to read as follows:

§ 18.41 Continuances and changes in place or manner of hearing.

(a) *By the judge.* Upon reasonable notice to the parties, the judge may change the time, date, place, and manner of the hearing.

(b) *By a party's motion.* A request by a party to continue a hearing or to change the place or manner of the hearing must be made by motion.

* * * * *

(2) *Change in place or manner of hearing.* A motion to change the place or manner of a hearing must be filed promptly.

■ 8. Amend § 18.44 by revising paragraph (b) to read as follows:

§ 18.44 Prehearing conference.

* * * * *

(b) *Scheduling.* Prehearing conferences may be conducted in person in the same physical location, by telephone, by videoconference, or by other means after reasonable notice of time, place, and manner of conference has been given.

* * * * *

■ 9. Revise § 18.82 to read as follows:

§ 18.82 Exhibits.

(a) *Filing of exhibits to be offered into evidence.* Persons who are required to file electronically pursuant to § 18.30(b)(3)(i)(A)—or who have opted to use e-filing as permitted by § 18.30(b)(3)(i)(B)—must electronically file in the Department's eFile/eServe system any exhibits to be offered in evidence at a hearing, unless that exhibit is not susceptive to filing in electronic form.

(b) *Identification.* All exhibits offered in evidence must be marked with a designation identifying the party offering the exhibit and must be numbered and paginated as the judge orders.

(c) *Electronic data.* By order, the judge may prescribe the format for the submission of data that is in electronic form.

(d) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to the judge and to each of the parties. If the exhibit being offered was previously filed with the judge, either electronically pursuant to paragraph (a) of this section or otherwise, and furnished to the other parties prior to hearing, the exhibit need not be produced at the hearing unless the judge directs otherwise. If the exhibit being offered at the hearing was not furnished to each party or filed with the judge prior to the hearing, a paper copy of that exhibit for the judge and each party must be produced at the hearing unless the judge directs otherwise. If the judge does not fix a date for the exchange of exhibits, the parties must exchange copies of exhibits at the earliest practicable time before the hearing begins.

(e) *Authenticity.* The authenticity of a document identified in a pre-hearing exhibit list is admitted unless a party files a written objection to authenticity at least seven days before the hearing. The judge may permit a party to challenge a document's authenticity if

the party establishes good cause for its failure to file a timely written objection.

(f) *Substitution of copies for original exhibits.* The judge may permit a party to withdraw original documents offered in evidence and substitute accurate copies of the originals.

(g) *Designation of parts of documents.* When only a portion of a document contains relevant matter, the offering party must exclude the irrelevant parts to the greatest extent practicable.

(h) *Records in other proceedings.* Portions of the record of other administrative proceedings, civil actions, or criminal prosecutions may be received in evidence, when the offering party shows the copies are accurate.

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28049 Filed 1–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2020–0137]

RIN 1625–AA09

Drawbridge Operation Regulation; Middle River, near Discovery Bay, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. The proposed operating schedule change will require the removable span to open for vessels engaged in emergency levee repairs.

DATES: This rule is effective February 10, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0137 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On September 20, 2017, the U.S. Coast Guard issued San Joaquin County a permit to construct the new removable span Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. Construction was completed on January 23, 2020. The new bridge provides 30 feet of vertical clearance in the closed-to-navigation position, unlimited vertical clearance when the span is removed, and 83 feet of horizontal clearance, dolphin to dolphin, measured normal to the centerline of the channel. The opening requirement for the newly constructed Woodward Island Bridge over Middle River is currently governed by 33 CFR 117.5, which requires prompt and full opening for the passage of vessels when a request or signal to open is given.

A three-year navigational analysis of that portion of Middle River was conducted between 2000 and 2003. The results of the analysis indicated the newly constructed bridge would meet the reasonable needs of recreational vessels that normally use the waterway. Vessels which cannot transit the bridge in the closed position have an alternate route to reach the opposite side of the bridge.

The Woodward Island Bridge was designed with a removable span to allow emergency vessels engaged in levee repair to request an opening when necessary. Since most recreational vessels can transit the new Woodward Island Bridge and there is an alternate route around the bridge, there is no need for an ''open on demand'' regulation as prescribed in 33 CFR 117.5.

On July 23, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Middle River, near Discovery Bay, CA'' (85 FR 44494). Further, on July 27, 2020, Commander (dpw), Eleventh Coast Guard District mailed notification of the NPRM to 48 interested parties that have known to use Middle River and published a notification of the NPRM in the Local Notice to Mariners, No. 30/20. The Coast Guard received one comment which was unrelated to the proposed rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority at 33 U.S.C. 499. The Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA is a removable span bridge which provides 30 feet of vertical clearance in the closed-to-navigation position, unlimited vertical clearance when the span is removed, and 83 feet of horizontal clearance, dolphin to dolphin, measured normal to the centerline of the channel. Most recreational vessels can transit the bridge in the closed-to-navigation position. Vessels that cannot transit the bridge while closed can take an alternate route to reach either side of the bridge.

This final rule will ensure that if emergency levee repairs are needed downstream of the bridge, tug and crane barges will be able to request an opening to allow passage.

IV. Discussion of Comments, Changes and the Final Rule

As noted above, we received one comment on our NPRM published on July 23, 2020 that was unrelated to the proposed rule. With the exception of a non-substantive correction of a typographical error in § 117.171(b), there are no changes in the regulatory text of this rule from the NPRM. The final rule would require the removable span to open for vessels engaged in emergency levee repairs. This final rule would meet the reasonable needs of navigation.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability of the newly constructed bridge to meet the reasonable needs of recreational vessels that normally use the waterway. Vessels which cannot transit the bridge in the closed position have an alternate route to reach the opposite side of the bridge.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.171 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 117.171 Middle River.

* * * * *

(b) The draw of the Burlington Northern Santa Fe railroad bridge, mile 9.8 near Middle River Station, shall open on signal if at least 12 hours notice is given to the Burlington Northern Santa Fe Railway Manager of Structures at San Bernardino.

(c) The removable span of the Woodward Island Bridge, mile 11.8 near Discovery Bay, shall be removed as soon as possible upon notification by the District Commander that an emergency exists which requires its removal.

(d) The California Route 4 Bridge, mile 15.1, between Victoria Island and Drexler Tract need not open for the passage of vessels.

Dated: December 9, 2020.

Brian K. Penoyer,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2020–28041 Filed 1–8–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 223

[COE–2020–0010]

RIN 0710–AA87

Boards, Commissions, and Committees

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled Boards, Commissions, and Committees. This part is redundant of or otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on January 11, 2021.

ADDRESSES: Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW–P (Mr. Paul Clouse), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Clouse at (202) 761–4709 or by email at *Paul.D.Clouse@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This final rule removes from the CFR 33 CFR part 223, Boards, Commissions, and Committees. The rule was initially published in the **Federal Register** on November 9, 1978 (43 FR 52236). This regulation established and prescribed the objectives, composition, responsibilities and authority of the Mississippi River Water Control Management Board which is comprised of only Corps members and only oversees Corps-related functions in the Mississippi River Basin. The objectives of the Board are to provide oversight and guidance during the development of basin-wide management plans for Mississippi River Basin projects for which the Corps has operation/regulation responsibilities, and to serve as a forum for resolution of water control problems among Corps Divisions within the Mississippi River Basin when agreement is otherwise unobtainable. It was published, at that time, in the **Federal Register** to aid public accessibility. The solicitation of public comment for this removal is unnecessary because the rule is redundant and covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, the current guidance governing the Greater Mississippi River Basin Water Management Board may be found in Engineer Regulation 15–2–13, ''Greater Mississippi River Basin Water Management Board'' (available at *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_15-2-13.pdf?ver=2014-01-30-134510-207*). The agency policy is only applicable to Board members and to all field operating activities concerned with water management within the Greater Mississippi River Basin and establishes and prescribes the objectives, composition, responsibilities and authority of the Corps' Greater Mississippi River Basin Water Management Board.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' Greater Mississippi River Basin Water Management Board. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 33 CFR Part 223

Mississippi River, Organization and functions (Government agencies), Water resources.

PART 223—[REMOVED]

■ Accordingly, for the reasons stated in the preamble and under the authority of 5 U.S.C. 301, the Corps removes 33 CFR part 223.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2020–27909 Filed 1–8–21; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 236

[COE–2020–0004]

RIN 0710–AB05

Water Resource Policies and Authorities: Corps of Engineers Participation in Improvements for Environmental Quality

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled Water Resource Policies and Authorities: Corps of Engineers Participation in Improvements for Environmental Quality. Each removed section of this part is out-of-date and redundant of or otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on January 11, 2021.

ADDRESSES: Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW–P (Ms. Amy Frantz), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Frantz at (202) 761–0106 or by email at *Amy.K.Frantz@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This final rule removes from the CFR 33 CFR part 236, Water Resource Policies and Authorities: Corps of Engineers Participation in Improvements for Environmental Quality. The rule was initially published in the **Federal Register** on April 30, 1980 (45 FR 28714). The regulation provided guidance and procedures to Corps field offices regarding the Corps' role in environmental quality improvements as part of a water resource project. The Corps' role in environmental quality broadened over the years and the regulation made clear that balancing economic and environmental interests was a major requirement to be considered in the planning of all Corps projects. It was published, at that time, in the **Federal Register** to aid public accessibility. The solicitation of public comment for this removal is unnecessary because the rule is out-of-date and redundant of or otherwise covers internal agency operations that have no public compliance component

or adverse public impact. For current public accessibility purposes, updated internal agency policy on this topic may be found in the Principles for Water and Related Land Resources Implementation Studies, related to the formulation of recommended plans for water resources development projects, and in Engineer Regulation 1105–2–100, ''Planning Guidance Notebook'' (available at *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1105-2-100.pdf*). Also, environmental evaluation is required under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347) and is implemented by the U.S. Army Corps of Engineers pursuant to 33 CFR part 230, Procedures for Implementing NEPA.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' use of Environmental Quality measures in Corps projects as well as the current policy for environmental evaluation. The Procedures for Implementing NEPA were updated after this regulation and provide the current policy approach for the Corps in their environmental evaluation process. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 33 CFR Part 236

Environmental protection, Water resources.

PART 236—[REMOVED]

■ Accordingly, for the reasons stated in the preamble and under the authority of 5 U.S.C. 301, the Corps removes 33 CFR part 236.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2020–27912 Filed 1–8–21; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 239

[COE–2019–0004]

RIN 0710–AA94

Water Resources Policies and Authorities: Federal Participation in Covered Flood Control Channels

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled Water Resources Policies and Authorities: Federal Participation in Covered Flood Control Channels. Each removed section of this part is outdated in reference to engineering criteria and requirements, and covers internal agency operations that have no public compliance component or adverse public impact. Current policy and procedures on this subject can be found in internal documents. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on January 11, 2021.

ADDRESSES: Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW–P (Ms. Amy Frantz), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Frantz at (202) 761–0106 or by email at *Amy.K.Frantz@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This final rule removes from the CFR 33 CFR part 239, Water Resources Policies and Authorities: Federal Participation in Covered Flood Control Channels. The rule was initially published in the **Federal Register** on October 13, 1978 (43 FR 47470), and amended on June 21, 1979 (44 FR 36175). The regulation established policy for determining Federal participation in covered flood control channels. The regulation made clear that if, during the planning process, it appears that covered flood control channels are desirable, reporting officers may evaluate them and include them when they best serve the public interest. The regulation specified what reports on proposals to provide covered channels should include for engineering considerations. It was published, at that time, in the **Federal Register** to aid public accessibility. The solicitation of public comment for this removal is unnecessary because the rule is outdated in reference to engineering criteria and requirements and covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, the current policy on Federal participation in flood control projects may be found in Engineer Regulation 1165–2–21, ''Flood Damage Reduction Measures in Urban Areas,'' dated October 30, 1980 (available at *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1165-2-21.pdf*); and 33 CFR part 238, Flood Damage Reduction Measures in Urban Areas. The agency policy is only applicable to field operating activities having Civil Works responsibilities and provides guidance specific to the Corps' participation in urban flood damage reduction projects.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs Federal participation in covered flood control channels. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 33 CFR Part 239

Flood control.

PART 239—[REMOVED]

■ Accordingly, for the reasons stated in the preamble and under the authority of 5 U.S.C. 301, the Corps removes 33 CFR part 239.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2020–27911 Filed 1–8–21; 8:45 am]

BILLING CODE 3720–58–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No.: NTSB–2021–0001]

RIN 3147–AA24

Civil Monetary Penalty Annual Inflation Adjustment

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 adjustment to the civil penalties that the agency may assess against a person for violating certain NTSB statutes and regulations.

DATES: This final rule is effective on January 11, 2021.

ADDRESSES: A copy of this final rule, published in the **Federal Register** (FR), is available at *http://www.regulations.gov* (Docket ID Number NTSB–2021–0001).

FOR FURTHER INFORMATION CONTACT: Kathleen Silbaugh, General Counsel, (202) 314–6080 or *rulemaking@ntsb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) requires, in pertinent part, agencies to make an annual adjustment for inflation by January 15th every year. OMB, M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016). The Office of Management and Budget (OMB) annually publishes guidance on the adjustment multiplier to assist agencies in calculating the mandatory annual adjustments for inflation.

The NTSB's most recent adjustment was for fiscal year (FY) 2020, allowing the agency to impose a civil penalty up to $1,722, effective January 15, 2020, on a person who violates 49 U.S.C. 1132 (Civil aircraft accident investigations), 1134(b) (Inspection, testing, preservation, and moving of aircraft and parts), 1134(f)(1) (Autopsies), or 1136(g) (Prohibited actions when providing assistance to families of passengers involved in aircraft accidents). Civil Monetary Penalty Annual Inflation Adjustment, 85 FR 2319 (Jan. 15, 2020).

OMB has since published updated guidance for FY 2021. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). Accordingly, this final rule reflects the NTSB's 2021 annual inflation adjustment and updates the maximum civil penalty from $1,722 to $1,742.

II. The 2021 Annual Adjustment

The 2021 annual adjustment is calculated by multiplying the applicable maximum civil penalty amount by the cost-of-living adjustment multiplier, which is based on the Consumer Price Index and rounding to the nearest dollar. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). For FY 2021, OMB's guidance states that the cost-of-living adjustment multiplier is 1.01182.

Accordingly, multiplying the current penalty of $1,722 by 1.01182 equals $1,742.35, which rounded to the nearest dollar equals $1,742. This updated maximum penalty for the upcoming fiscal year applies only to civil penalties assessed after the effective date of the final rule. The next civil penalty adjustment for inflation will be calculated by January 15, 2022.

III. Regulatory Analysis

The Office of Information and Regulatory Affairs Administrator has determined agency regulations that exclusively implement the annual adjustment are consistent with OMB's annual guidance, and have an annual impact of less than $100 million are generally not significant regulatory actions under Executive Order (E.O.) 12866. OMB, M–21–10, *Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 23, 2020). An assessment of its potential costs and benefits under E.O. 12866, *Regulatory Planning and Review* and E.O. 13563, *Improving Regulation and Regulatory Review* is not required because this final rule is not a ''significant regulatory action.'' Likewise, this rule does not require analyses under the Unfunded Mandates Reform Act of 1995 and E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs* because this final rule is nonsignificant.

The NTSB does not anticipate this rule will have a substantial direct effect on state government or will preempt state law. Accordingly, this rule does not have implications for federalism under E.O. 13132, *Federalism.*

The NTSB also evaluated this rule under E.O. 13175, *Consultation and Coordination with Indian Tribal Governments.* The agency has concluded that this final rule will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Paperwork Reduction Act of 1995 is inapplicable because the final rule imposes no new information reporting or recordkeeping necessitating clearance by OMB.

The Regulatory Flexibility Act of 1980 does not apply because, as a final rule, this action is not subject to prior notice and comment. *See* 5 U.S.C. 604(a).

The NTSB has concluded that this final rule neither violates nor requires further consideration under the aforementioned Executive orders and Acts.

List of Subjects in 49 CFR Part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

Accordingly, for the reasons stated in the preamble, the NTSB amends 49 CFR part 831 as follows:

PART 831—INVESTIGATION PROCEDURES

■ 1. The authority citation for part 831 continues to read as follows:

Authority: 49 U.S.C. 1113(f). Section 831.15 also issued under Pub. L. 101–410, 104 Stat. 890, amended by Pub. L. 114–74, sec. 701, 129 Stat. 584 (28 U.S.C. 2461 note).

§ 831.15 [Amended]

■ 2. Amend § 831.15 by removing the dollar amount ''$1,722'' and adding in its place ''$1,742''.

Robert L. Sumwalt III,

Chairman.

[FR Doc. 2021–00060 Filed 1–8–21; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221228–0362]

RIN 0648–BI80

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 8

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

ACTION: Final rule.

SUMMARY: This rule implements Amendment 8 to the Atlantic Herring Fishery Management Plan. This amendment specifies a long-term acceptable biological catch control rule for herring and addresses localized

depletion and user group conflict. It also establishes an acceptable biological catch control rule that accounts for herring's role in the ecosystem and prohibits midwater trawling in inshore federal waters from the U.S./Canada border to the Rhode Island/Connecticut border. Amendment 8 supports sustainable management of the herring resource and seeks to ensure that herring is available to minimize possible detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

DATES: Effective February 10, 2021.

ADDRESSES: Copies of Amendment 8, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) prepared in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the internet at: *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone: (978) 282–9272 or email: *Carrie.Nordeen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The goal of the Atlantic Herring Fishery Management Plan (FMP) is to manage the herring fishery at long-term sustainable levels, and objectives of the FMP include providing for full utilization of the optimum yield (OY) and, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Consistent with the Magnuson-Stevens Fishery Conservation and Management Act definition of OY, the Herring FMP describes OY as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, taking into account the protection of marine ecosystems, including maintenance of a biomass that supports the ocean ecosystem, predator consumption of herring, and biologically sustainable human harvest. The Magnuson-Stevens Act further provides that OY is the maximum sustainable yield (MSY) from the fishery as reduced by any relevant economic, social, or ecological factor. In the Herring FMP, this includes recognition of the importance of herring as forage for fish, marine mammals, and birds in the Greater Atlantic Region. Consistent with these aims, the goals for Amendment 8 are to: (1) Account for the role of herring within the ecosystem, including its role as forage; (2) stabilize the fishery at a level designed to achieve OY; and (3) address localized depletion in inshore waters.

An acceptable biological catch (ABC) control rule is a formulaic approach for setting a harvest limit that reflects the FMP's harvest policy. For herring and other stocks with a defined overfishing limit (OFL), the ABC is reduced from the OFL to account for an estimate of scientific uncertainty, such as uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, so that the OFL will not be exceeded. The ABC control rule is developed by the Council to reflect its risk tolerance for not exceeding the OFL and provides guidance to the Council's Scientific and Statistical Committee for recommending annual ABCs based on the best available scientific information about stock status. The specific parameters of an ABC control rule are: (1) Upper biomass parameter; (2) maximum allowable fishing mortality rate (F); and (3) lower biomass parameter. The values assigned to each of these parameters dictate the overall ''shape'' or function of the ABC control rule and determine whether F increases or decreases in response to the current estimate of stock biomass.

On August 21, 2015 (80 FR 50825), the Council published a supplemental notice of intent (NOI) announcing it was expanding the scope of Amendment 8 beyond an ABC control rule to consider localized depletion in inshore waters. Public comment during the supplemental scoping made it clear that localized depletion concerns voiced by many stakeholders included the biological impacts of herring removals on the herring stock and on predators of herring. Public comment also indicated that impacts of localized depletion should be measured and evaluated relative to competing uses for the herring resource and potentially negative economic impacts on businesses that rely on predators of herring. Therefore, the Council's consideration of localized depletion in Amendment 8 included user group conflict, both an evaluation of impacts of the user group conflict and consideration of competing interests for how herring should be used.

Amendment 8 was adopted by the Council on September 25, 2018. We published a notice of availability (NOA) for the amendment in the **Federal Register** on August 21, 2019 (84 FR 43573), with a comment period ending October 21, 2019. We published a proposed rule for the amendment in the **Federal Register** on October 9, 2019 (84 FR 54094), with a comment period ending November 25, 2019. After considering public comment, we approved Amendment 8, on behalf of the Secretary of Commerce, on November 19, 2019, and notified the Council of the amendment's approval in a letter dated that same day. This final rule implements Amendment 8 as approved. Because details of the Council's development of the measures in Amendment 8 were described in the NOA and proposed rule, they are not repeated here.

Approved Measures

The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. After reviewing public comment, we approved all the proposed measures in Amendment 8, as recommended by the Council. While the majority of public comment supported the implementation of Amendment 8, we also received public comment urging us to disapprove the amendment. Ultimately, we approved the proposed measures in Amendment 8 because we determined the measures were consistent with the Magnuson-Stevens Act and other applicable law. Comments that opposed the implementation of Amendment 8 did not sufficiently demonstrate that the ABC control rule or inshore midwater trawl restricted area were inconsistent with the Magnuson-Stevens Act or other applicable law.

ABC Control Rule

This rule establishes a long-term ABC control rule for herring. Under the control rule, when biomass (B) is at or above 50 percent of B_{MSY} or its proxy, ABC is the catch associated with an F of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, F declines linearly to 0 at 10 percent of B_{MSY} or its proxy. The control rule sets ABC for a 3-year period, but allows ABC to vary year-to-year in response to projected changes in biomass. This rule specifies that the control rule can be revised via a framework adjustment if a quantitative assessment is not available, if projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program.

The control rule explicitly accounts for herring as forage in the ecosystem by limiting F to 80 percent of F_{MSY} when biomass is high and setting it at zero when biomass is low. It also generates an ABC consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of MSY. This control rule is intended to result in low variation in yield, low probability of a fishery shutdown, and low probability of overfishing. As a result, the Council anticipates that short-term negative economic impacts on participants in the herring or lobster fisheries, resulting from a reduced herring harvest in response to low herring biomass, may become a long-term economic benefit for industry participants. Relative to other control rules considered by the Council in Amendment 8, this control rule is designed to more effectively balance the goal and objectives of the Herring FMP, including managing the fishery at long-term sustainable levels, taking forage for predators into account to support the ocean ecosystem, and providing a biologically sustainable harvest as a source of revenue for fishing communities and bait for the lobster fishery.

Shortly before the Council took final action on Amendment 8, the 2018 stock assessment concluded that herring biomass was low, and the probability of overfishing and the stock becoming overfished was high. While not directly applicable to a long-term harvest policy, the Council noted that under herring's current condition of low biomass, setting catch more conservatively than status quo may increase the likelihood of stock growth and, in turn, have positive impacts on the herring fishery, predators, and predator fisheries.

In August 2020, the report for the 2020 herring stock assessment determined the stock is overfished, but not subject to overfishing. Spawning stock biomass (SSB) is estimated to have declined since 2014, and the 2019 SSB was estimated at 29 percent (77,883 metric tons (mt)) of the SSB necessary to support MSY (269,000 mt) resulting in a determination of overfished. F for herring harvested by mobile gear (*i.e.,* midwater trawl, purse seine, bottom trawl) has declined since 2010, was estimated to be 0.25 in 2019, and is well below the overfishing threshold (0.54) so the stock is not experiencing overfishing. Recruitment continues to be at historic lows, and in 2019 it was estimated at about 20 percent of median recruitment. On October 13, 2020, we notified the Council that the herring stock is overfished and requested it develop rebuilding measures.

Inshore Midwater Trawl Restricted Area

This rule prohibits the use of midwater trawl gear inshore of 12 nautical miles (22 km) from the U.S./Canada border to the Rhode Island/Connecticut border and inshore of 20 nautical miles (37 km) off the east coast of Cape Cod. Specifically, federally permitted vessels are prohibited from using, deploying, or fishing with midwater trawl gear within the inshore midwater trawl restricted area located shoreward of the 12-nautical mile (22-km) territorial sea boundary from Canada to Connecticut and within 30-minute squares 114 and 99 off Cape Cod (Figure 1). Midwater trawl vessels are able to transit the inshore midwater trawl restricted gear area provided gear is stowed and not available for immediate use. This measure is in addition to the existing prohibition on midwater trawling for herring in Area 1A during June 1 through September 30.

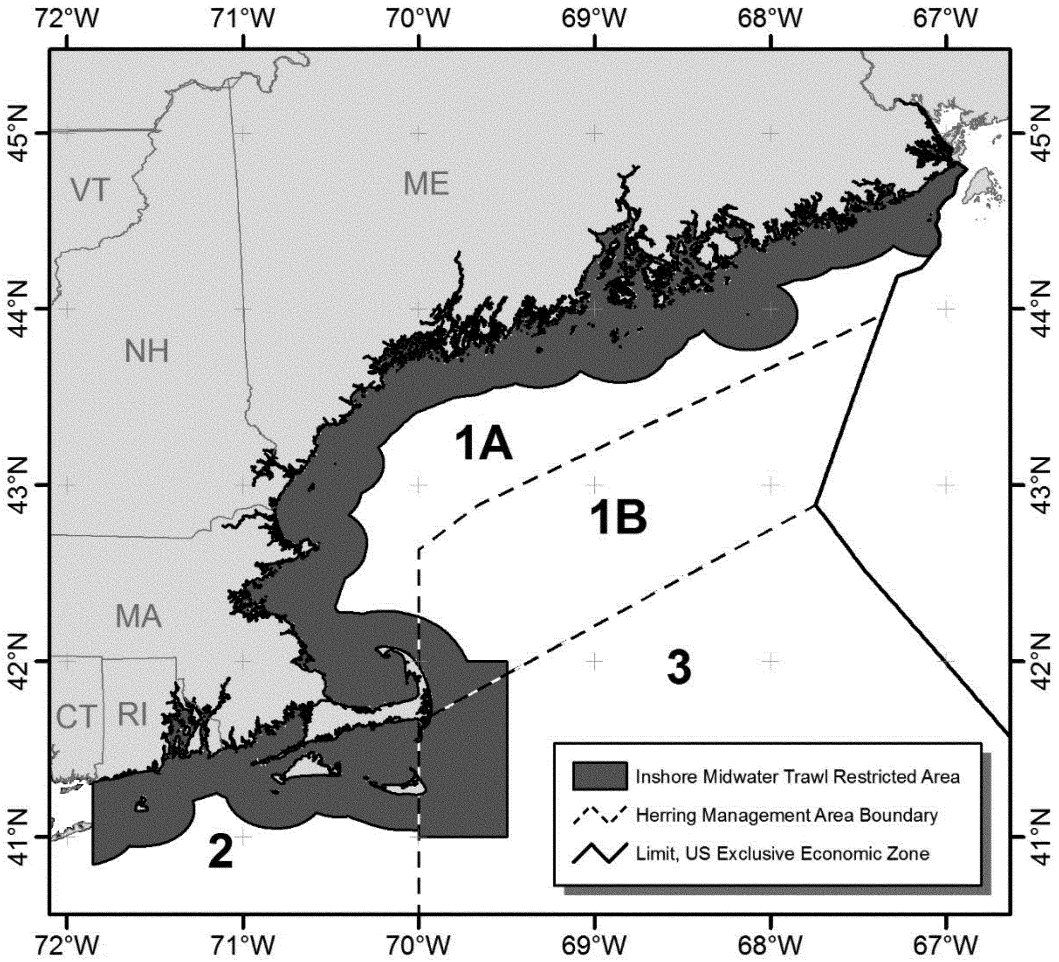

Figure 1 -- Inshore Midwater Trawl Restricted Area

The Council recommended the inshore midwater trawl restricted area to minimize local depletion and its associated user group conflict when midwater trawl vessels harvesting herring overlap with other user groups (*i.e.,* commercial fisheries, recreational fisheries, ecotourism) that rely on herring as forage and provide inshore conservation benefits. The Council focused this measure on vessels using midwater trawl gear to mitigate potential negative socioeconomic impacts on other user groups in response to short-duration, high-volume herring removals by midwater trawl gear and because midwater trawl vessels are relatively more mobile and capable of fishing in offshore areas than vessels using other gear types. Information to quantify the impact of midwater trawling on other user groups is scarce, so the amendment analyzed the degree of overlap between midwater trawl vessels and other user groups. The inshore midwater trawl restricted area incorporates areas with a high degree of overlap between midwater trawl vessels and other user groups throughout the year. Specifically, it incorporates the overlap with predator fisheries in the Gulf of Maine and southern New England throughout the year, as well as the overlap with ecotourism and the tuna fishery in Area 1A during the fall. While overlap with the midwater trawl vessels does not necessarily translate into direct negative biological impacts on predators, less overlap may reduce potential user conflicts, provided midwater trawl effort does not shift into other areas and generate additional overlap.

The Herring FMP specifies that herring research set-aside (RSA) can equal up to 3 percent of the sub-annual catch limit for a herring management area. This rule permits RSA compensation fishing using midwater trawl gear within the inshore midwater trawl restricted area. The Council recommended allowing RSA compensation fishing within the inshore midwater trawl restricted area to help ensure the RSA would be harvested and those funds would be available to support the projects awarded RSA. Vessels engaged in herring RSA compensation fishing typically operate as authorized by an exempted fishing permit (EFP) so they can request exemptions from certain regulations that would otherwise restrict herring harvest. While vessels are permitted to use midwater trawl gear within the inshore midwater trawl restricted area while RSA compensation fishing, it does not mean that compensations trips would be without restrictions. Terms and conditions of the EFP must be consistent with the Magnuson-Stevens Act, other applicable law, and the Herring FMP. Additionally, we would consider whether additional terms and conditions would be required for EFPs

to ensure RSA compensation trips do not exacerbate the overlap between midwater trawl vessels and other user groups, consistent with the Herring FMP.

This rule specifies that the inshore midwater trawl restricted area or new closures to address localized depletion and/or user group conflict may be modified or implemented via framework adjustment. The list of framework provisions at § 648.206 already includes closed areas; this amendment adds the inshore midwater trawl restricted area to that list.

The Council's recommendation to prohibit midwater trawling in inshore areas is an allocation decision intended to balance the needs of user groups and provide conservation benefits. Consistent with objectives in the Herring FMP, the inshore midwater trawl restricted area is intended to facilitate an efficient, fair, and equitable accommodation of relevant social, economic, and ecological factors associated with achieving OY, in part by providing, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because midwater trawl vessels historically harvested a larger percentage of herring than other gear types and are able to fish offshore, the Council recommended prohibiting them from inshore waters to help ensure herring was available inshore for other user groups and predators of herring. The inshore midwater trawl restricted area is designed to be reasonably large enough to address the overlap between midwater trawl vessels and other user groups and, ultimately, user group conflict in inshore waters while still providing midwater trawl vessels access to areas with fishing opportunities. This measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and lower annual catches, but on balance, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to midwater trawl vessels. The measure may also have biological benefits if moving midwater trawl vessels offshore minimizes catch of river herring and shad, reduces fishing pressure on the inshore component of the herring stock, and helps ensure herring are available to predators. Herring is currently assessed as one stock, but it likely has stock components. Reducing fishing pressure inshore would benefit an inshore stock component. Analyses in Amendment 8 estimate that in recent years approximately 30 percent of the midwater trawl fleet's annualized revenue came from within the inshore midwater trawl restricted area. Negative economic impacts on the midwater trawl fleet may be mitigated if the fleet is able to offset lost revenue from inshore areas with increased revenue from offshore areas. Herring catch limits are currently low, so the fishery has the capacity to harvest the OY. Recent midwater trawl landings (2007–2015) offshore of the inshore midwater trawl restricted area (19,302 mt) are higher than the OY for 2020 and 2021 (11,621 mt). In the longer term, the fishery will likely adapt to be able to harvest an increased OY, provided vessels are able to locate herring.

Clarifications

This rule establishes the following revision and clarifications to § 648.202(a) under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to carry out an FMP or the Magnuson-Stevens Act.

First, this rule revises the title from ''Purse Seine/Fixed Gear Only Area'' to ''Midwater Trawl Restricted Area.'' Bottom trawl gear, in addition to purse seine and fixed gear, is permitted in the referenced area; only midwater trawl gear is prohibited in the area. This revision is a more accurate description of the referenced area and is necessary to clarify the intent of the regulation.

Second, this rule clarifies that the regulation applies only to all federally permitted vessels fishing for herring. The regulation currently applies midwater trawl gear restrictions to vessels fishing for herring. This clarification is necessary to specify that restrictions on fishing for herring with midwater trawl gear only apply to federally permitted vessels and do not apply to vessels with only a state herring permit fishing exclusively in state waters.

Third, the rule clarifies the conditions under which midwater trawl vessels may transit the ''Midwater Trawl Restricted Area'' described above. Current regulations specify that midwater trawl vessels with a limited access herring permit may transit Area 1A during June through September with midwater trawl gear on board, provided the gear is stowed and not available for immediate use. This rule clarifies that any federally permitted herring vessel may transit Area 1A during June through September, provided midwater trawl gear is stowed and not available for immediate use. The unnecessary addition of a limited access permit requirement to transit Area 1A was likely a byproduct of the impact analysis identifying the number of limited access vessels that would be affected by the prohibition of midwater trawling in Area 1A implemented in Amendment 1 to the Herring FMP.

This rule also revises § 648.200(b)(3) under the authority of section 305(d) to the Magnuson-Stevens Act. This revision changes the reference from ''at'' § 648.201(a) to ''in'' § 648.201(a) to be consistent with other regulatory references within § 648.200.

Revisions and Additional Clarifications to the Proposed Rule

This rule implements necessary minor administrative changes under section 305(d) to the Magnuson-Stevens Act that were not described in the proposed rule. First, it corrects definitions in § 648.2. The definition for *slippage in the Atlantic herring fishery* was inadvertently removed from the regulations, and this rule restores it. This rule also moves the definition for *observer or monitor* to the correct alphabetic order.

Second, this rule corrects several weblinks in regulations describing monitoring coverage (§ 648.11). The Northeast Fisheries Science Center's Fishery Sampling Branch's website was recently revised and, as a result, several weblinks to monitoring resources specified in the final rule implementing the New England Industry-Funded Monitoring (IFM) Omnibus Amendment (85 FR 7414; February 7, 2020) are now outdated. This rule corrects those outdated weblinks.

Third, this rule corrects minor typographical errors in § 648.11 that were implemented in the final rule for the IFM Amendment.

Comments and Responses

We received 268 comment letters on the NOA and proposed rule: 160 from the general public; 38 from members of the fishing industry; 29 from members of the herring fishery; 19 from members of the recreational and charter party fisheries; 13 from environmental advocacy groups; and 9 from state or town governments. Of the 268 letters, a letter from the Pew Charitable Trusts (Pew) included 8,942 signatures, a letter from the Conservation Law Foundation (CLF) included 553 comments from the public, a letter from the National Audubon Society (NAS) included 3,970 signatures and 201 comments from the public, and a letter from Saving Seafood included 22 comments from members of the fishing industry.

Development of this amendment was contentious because stakeholders are polarized on the inshore midwater trawling prohibition to minimize user

group conflict and, to a lesser extent, on the ABC control rule. Most of the commenters support the implementation of Amendment 8, including all state and town governments, all environmental advocacy groups, most recreational and charter party fisheries members, most of the general public, and some fishing industry members. Those commenters who do not support the implementation of Amendment 8 include most herring industry members, some fishing industry members, and some of the general public.

Comment 1: Some members of the herring industry assert that Amendment 8 is inconsistent with the Magnuson-Stevens Act, its National Standards, and the Herring FMP. They propose that current management measures, such as slippage consequence measures, coverage requirements, the seasonal prohibition on midwater trawling for herring in Area 1A, and catch caps, are more than sufficient to manage catch in the herring fishery. They caution that the cumulative impact of prohibiting midwater trawling inshore, low catch under the new ABC control rule, and existing restrictions was not fully analyzed in the final EIS (FEIS). They believe these cumulative restrictions threaten the loss of a year-round fishery, jeopardize continued participation in the fishery by harvesters and fishing communities, and negatively impact the bait supply for the lobster fishery.

Response: The Herring FMP is intended to provide, in part, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. The inshore midwater trawl restricted area was developed to address issues of localized depletion and its associated user group conflict as described in the amendment's user group conflict problem statement. It is designed to support inshore fishing opportunities for a wide variety of fishing industry participants. The ABC control rule is designed to provide a long-term sustainable herring fishery and, similar to the inshore midwater trawl restricted area, the ABC control rule supports herring as forage for predators and other user groups. While measures such as slippage consequence measures, coverage requirements, and catch caps help manage herring catch, they were not developed explicitly to support opportunities for other user groups.

Herring are an important forage species in the Northeast U.S. shelf ecosystem and they are eaten by a wide variety of fish, marine mammals, and birds. Herring share the role of forage with other prey species (*e.g.,* sandlance, mackerels, squids, and hakes); the relative importance of herring as forage varies by predator and depends on whether other forage is available. Herring are important forage for Atlantic bluefin tuna, spiny dogfish, Atlantic cod, silver hake, and Atlantic striped bass, as well as seabirds (*e.g.,* Atlantic puffins and terns) and marine mammals (*e.g.,* baleen whales, toothed whales, and pinnipeds).

The amendment's FEIS analyzed the ecological and socioeconomic impacts of management measures on the herring fishery, the Atlantic mackerel fishery, and the lobster fishery, as well as predator fisheries and ecotourism. The FEIS also considered the impacts of these measures in concert with past, present, and reasonably foreseeable future actions. The FEIS concludes that short-term negative economic impacts on some fishery participants have the potential to become long-term economic benefits for all user groups. Negative impacts may be minimized for midwater trawl vessels if they are able to harvest herring offshore, other economical sources of bait are available for the lobster fishery, or the ABC control rule helps minimize the risk of the herring stock becoming overfished and subject to overfishing. The Council's consideration included the ecological and socioeconomic impacts of measures in Amendment 8, and recommended these measures to help ensure herring was available for predators and all user groups.

Section 6.1.1 of the FEIS describes how management measures are consistent with the Magnuson-Stevens Act and its National Standards. We determined these measures are consistent with the Magnuson-Stevens Act and its National Standards when we approved the amendment in November 2019. Our consideration of how measures are consistent with specific National Standards is further detailed in our responses to comments below.

Inshore Midwater Trawl Restricted Area

Comment 2: Commenters support implementation of the inshore midwater trawl restricted area because they believe it will:

- Protect Atlantic herring and river herring from localized inshore depletion by industrial-scale fishing;
- Reduce user group conflict and support coastal economies and commercial and recreational business that rely on predators;
- Balance the needs of all stakeholders in inshore waters where stakeholder overlap is the greatest, without setting a precedent for prohibiting other types of trawling;
- Recognize the importance of herring to inshore users, including striped bass, tuna, and cod fisheries, as well as ecotourism by helping maintain a large forage biomass for predators and those predator fisheries (*e.g.,* striped bass, tuna, recreational and charter fisheries);
- Protect inshore waters from the impacts of midwater trawling and provide consistency with other countries that restrict midwater trawling;
- Decrease discarded catch of cod and haddock by midwater trawlers in inshore waters;
- Offer additional ecosystem protection to Stellwagen Bank;
- Protect discreet, localized aggregations of herring, as well as the ecosystem and coastal communities that rely on them; and
- Protect herring spawning areas, including spawning adults and eggs, especially off Cape Cod, to support recruitment.

A joint letter from CLF, NAS, Natural Resources Defense Council (NRDC), Pew, and Wild Oceans supports implementation of the inshore midwater trawl restricted area. The commenters explain the measure would reduce fishing pressure inshore, where predators need herring, and mitigate negative socioeconomic impacts of high-volume herring removals on other user groups. The commenters believe the inshore midwater trawl restricted area will have biological, ecological, and economic benefits and that it is consistent with the Magnuson-Stevens Act and National Standards.

The New England Purse Seiner's Alliance (NEPSA) supports the inshore midwater trawl restricted area because it believes the existing prohibition on midwater trawling in Area 1A during the summer helps protect herring and allows for a robust tuna fishery. NEPSA also asserts the prohibition clearly addresses the goals, objectives, and problem statement for the amendment and is consistent with the Magnuson-Stevens Act.

The Commonwealth of Massachusetts supports the inshore midwater trawl restricted area because it minimizes possible detrimental biological impacts on predators and associated socioeconomic impacts on other user groups that rely on herring as forage. It also supports using the overlap of midwater trawl activity and other user groups as the best available science to support prohibiting inshore midwater trawling.

The Nature Conservancy (TNC) commented that localized depletion, or taking fish faster than they can be replaced in a given area, is a significant

biological concern for the herring resource, the predatory fish and birds that rely on herring as food, and other user groups that depend on the local availability of herring to support their business. TNC recognizes there is limited information linking localized depletion to the midwater trawl fishery, but it supports the Council's precautionary approach to address localized depletion and notes the inshore midwater trawl restricted area encompasses times and areas with a high degree of overlap between the midwater trawl fishery and other user groups.

While Lund's Fisheries generally opposes the inshore midwater trawl restricted area, it supports allowing midwater trawl RSA compensation fishing within the inshore midwater trawl restricted area to support fishery access to herring and mackerel.

Response: We acknowledge the commenters support for the inshore midwater trawl restricted area and concur that the measure is intended to ensure herring is available to minimize detrimental biological impacts on predators of herring and associated socioeconomic impacts on other user groups.

Comment 3: Several commenters support the inshore midwater trawl restricted area, but would prefer that the midwater trawl restricted area extend further offshore, either 25 (46 km) or 50 (93 km) nautical miles offshore, especially on Stellwagen Bank.

Response: We can only approve, disapprove, or partially approve Council-recommended measures; we cannot modify the inshore midwater trawl restricted area to extend further offshore. The Council considered alternatives that would have extended the midwater trawl restricted area further offshore but recommended a smaller inshore midwater trawl restricted area, so that the costs associated with the measure are commensurate with the benefits.

Comment 4: Some members of the herring industry assert the inshore midwater trawl restricted area is not consistent with the Magnuson-Stevens Act and applicable law for the following reasons:

- It will prevent the herring and mackerel fisheries from achieving OY on a short-term and continuing basis and will not result in a net benefit to the Nation (National Standard 1);
- The best available science does not indicate localized depletion, nor does it find a difference in fishery removals by midwater trawl vessels compared to purse seine vessels, and this measure makes no attempt to align the restricted area with associated analyses and is an illegitimate political compromise (National Standard 2);
- The allocation of fishing grounds is not fair or equitable and does not promote conservation (National Standard 4);
- It will impose economic inefficiencies on midwater trawl vessels, including longer, more expensive fishing trips, and no measure may have economic allocation as its sole purpose (National Standard 5);
- The benefits of restricting midwater trawling inshore do not outweigh the costs (National Standard 7);
- Restricting midwater trawling in inshore waters had no conservation benefit and does not minimize economic impacts (National Standard 8);
- Moving midwater trawl vessels offshore makes fishing trips potentially less safe (National Standard 10);
- Prohibiting midwater trawling inshore is arbitrary and capricious; and
- The amendment does not include a fishery impact statement or cumulative effects assessment.

Response: We disagree with these comments. The Council's development of the amendment considered the best available science to determine how best to achieve OY in this fishery, given this fishery's multiple commercial, recreational, and ecological interests. The inshore midwater trawl restricted area fairly and equitably allocates fishing opportunities to a wide variety of fishing industry participants in a manner that reasonably promotes conservation. The Council's consideration included a robust analysis and consideration of economic impacts on fishing communities, including recreational fishing, an efficient use of resources, and attempts to minimize costs and unnecessary duplication. Further, the Council weighed the costs and benefits of this measure on the various user groups and considered the effect of the measure on the safety of the fisheries participants.

The herring fishery is capable of achieving OY, both in the short term and on a continuing basis, with inshore harvest from purse seine and bottom trawl vessels and offshore harvest from midwater trawl vessels, consistent with National Standard 1. In the short term, herring catch limits are expected to remain very low (less than 10,000 mt), as the stock is experiencing historically low recruitment. If herring are available, the fishery has the capacity and opportunity to harvest the entire OY. In the longer term, the fishery will likely adapt to be able to harvest an increased OY, provided vessels are able to locate herring. While recent herring catches have largely come from within the inshore midwater trawl restricted area, midwater trawl vessels have historically caught the majority of their harvest offshore. Any inability to harvest the OY is more likely related to herring's reduced abundance, rather than the lack of inshore midwater trawling curtailing the fishery's capacity to harvest herring. Regarding the mackerel fishery, we do not expect the inshore midwater trawl restricted area to prevent the mackerel fishery from achieving OY because only 14 percent (925 mt) of recent mackerel midwater trawl landings (2007–2015) were harvested from within the restricted area.

The Magnuson-Stevens Act defines OY as the amount of fish that provides the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities. It also prescribes OY on the basis of the fishery's MSY, as reduced by relevant economic, social, or ecological factors. The Herring FMP's OY definition further requires, ''taking into account the protection of marine ecosystems, including maintenance of a biomass that supports the ocean ecosystem, predator consumption of herring, and biologically sustainable human harvest. This includes recognition of the importance of Atlantic herring as one of many forage species of fish, marine mammals, and birds in the Northeast Region.'' Relevant to the economic and social factors that apply to herring management are the impacts on the fisheries for predator fisheries (*e.g.,* groundfish, bluefin tuna, striped bass) and on ecotourism (*e.g.,* whale watching). Consistent with National Standard 1, the inshore midwater trawl restricted area helps limit concentrated removals of herring in inshore areas to acknowledge the importance of herring as forage in the ecosystem, support the businesses that depend on predators of herring, and provide the greatest overall benefit to the Nation.

The inshore midwater trawl restricted area was developed in response to the amendment's problem statement and is designed to help minimize user group conflict between midwater trawl vessels and other user groups. The Council's consideration of localized depletion ultimately included user group conflict to address stakeholders' concerns with localized depletion issues. The Council evaluated the impact of user group conflict and competing interests for how herring should be used. Consistent with National Standards 2 and 4, the inshore midwater trawl restricted area allocates fishing opportunities to a wide variety

of user groups in a manner that promotes the conservation of herring for predators and is based on the best available science. The FEIS summarizes what is known about the role of herring as forage in the ecosystem, includes maps describing the footprint of the herring fishery as well as key predator fisheries, and analyzes the overlap between these fisheries to identify seasons and areas with the potential for user group conflict. The FEIS suggests the greatest amount of overlap between user groups occurs inshore throughout the year. Because midwater trawl vessels are more capable of fishing offshore than other user groups, the Council recommended prohibiting them from inshore waters to help ensure herring are available inshore for other users groups and predators of herring. The inshore midwater trawl restricted area has biological benefits if moving the midwater trawl fleet offshore minimizes catch of river herring and shad, reduces fishing pressure on the inshore component of the herring stock, and helps ensure herring are available to predators. For these reasons, the FEIS describes the inshore midwater trawl restricted area as a fair compromise that balances the competing needs of user groups.

This measure is likely to negatively impact the midwater trawl fleet, with potentially increased trip costs and, if less herring is available offshore, lower annual catches. The FEIS considers that some midwater trawl vessels may purchase new gear (*e.g.,* purse sein or bottom trawl) in order to access inshore areas, while others may opt to fish offshore, with potentially higher operational costs, and/or pursue other fisheries to make up for any lost herring revenue. The FEIS also estimates that this measure has the potential to reduce costs, such as searching and fishing time, for other fisheries and ecotourism companies that rely on herring predators, if it improves the inshore availability of herring. Therefore, consistent with National Standards 5, 7, 8, and 10, the benefits to other user groups, such as potentially reduced trips costs, higher annual catches, and improved safety, outweigh the costs to the midwater trawl vessels. While benefits to other user groups are difficult to specifically quantify until new measures are in place and data on their effects become available, we expect economic benefits would extend to the fishing communities that support these user groups as they will likely benefit from increased access to herring. Further, we expect that negative economic impacts on midwater trawl vessels can be minimized if vessels are able to increase their harvest of herring offshore. The Council considered other alternatives to minimize user group conflict, including prohibiting midwater trawling inshore of 25 nautical miles (46 km) and 50 nautical miles (93 km), but recommended a shallower midwater trawl restricted area instead as a way to more fairly and equitably balance the costs and benefits of the measure. To help mitigate the economic impact of the inshore midwater trawl restricted area and provide access for the mackerel fishery, the Council also recommended that RSA compensation fishing trips be exempt from the inshore prohibition on midwater trawling.

The inshore midwater trawl restricted area is not arbitrary and capricious. It is consistent with the problem statement developed by the Council to describe user group conflict and the objectives of the Herring FMP, including providing for full utilization of the OY and, to the extent practicable, controlled opportunities for participants in other New England and Mid-Atlantic fisheries. Because information to quantify the impact of midwater trawling on other user groups is limited, the FEIS analyzed the degree of overlap between the midwater trawl fleet and other user groups, consistent with National Standard 2. While overlap with the midwater trawl fishery does not necessarily translate into negative biological impacts on predators, less overlap may reduce potential user conflicts, provided midwater trawl effort does not shift into other areas. Additionally, the amendment's FEIS serves as the fishery impact statement, as it analyzes the conservation, economic, and social impacts of the management measures in Sections 4.1–4.8 in the FEIS, and the cumulative effects assessment is included in Section 4.9 of the FEIS.

Comment 5: Some commenters contend that user group conflict was excluded from Amendment 8 scoping and, therefore, it is not acceptable for user group conflict to be the basis for implementing an exclusion zone.

Response: On August 21, 2015 (80 FR 50825), the Council published a supplemental NOI announcing it was expanding the scope of Amendment 8 to consider localized depletion in inshore waters. The supplemental NOI defined localize depletion as harvesting more fish from an area than can be replaced within a given time period. It also explained the Council was seeking input from the interested public as to how to define, measure, and evaluate impacts, and minimize inshore, localized depletion in the herring fishery as part of Amendment 8. Public comment during the supplemental scoping made it clear that localized depletion concerns voiced by many stakeholders were not just related to the biological impacts of herring removals on the herring stock and on predators of herring. Public comment indicated that localized depletion should be defined to also include the user group conflicts that result from localized depletion and that the impacts of localized depletion should be measured and evaluated relative to competing uses for the herring resource and potentially negative economic impacts on businesses that rely on predators of herring. Defining the nature of localized depletion and identifying its impacts so that the Council could best address localized depletion was precisely the type of information sought by the supplemental NOI expanding the scope of Amendment 8.

Comment 6: Commenters oppose the inshore midwater trawl restricted area because of its inherent effect on the allocation of herring between user groups and believe:

- Fisheries regulations should not be popularity contests based on feelings and perceived user conflict instead of evidence and facts;
- Ocean access belongs to all and gear exclusions should not be based on prioritizing some user groups over others;
- Restricting inshore midwater trawling sets a precedent for excluding trawling in other areas, and may lead to exclusion zones in the squid fishery;
- Prohibiting inshore midwater trawling will increase bycatch and impacts to habitat, especially on herring spawning areas, should midwater trawl vessels switch to bottom trawl gear; and
- Removals by purse seine gear are similar in intensity to removals by midwater trawl gear, as both gear types target and harvest large schools of herring.

Response: Many of the Council's actions entail catch allocations between user groups. The National Standard Guidelines recognize that allocations of fishing privileges include assignment of ocean areas to different gear users that must comply with National Standard 4. The Council's prohibition on inshore midwater trawling complies with National Standard 4's requirement to be fair and equitable and reasonably calculated to promote conservation. The decision was based on fishing effort and socioeconomic data. Rather than being the result of its popularity with stakeholders as some claim, it balances the needs of user groups and is expected to also provide conservation benefits for

inshore areas due to herring's important role in the ecosystem as forage. The Council focused on midwater trawl vessels because of their potential for high-volume catches, and they are relatively more mobile and capable of fishing in offshore areas than vessels using other gear types. While purse seine vessels are capable of high-volume catches, midwater trawl vessels have historically harvested more than 65 percent of the annual catch limit. The FEIS concludes that the inshore midwater trawl restricted area is expected to only have a neutral to low negative impact on habitat. Any effort shift from bottom trawl to midwater trawl gear is not expected to significantly impact habitat because of the existing seasonal and area restrictions on using small-mesh bottom trawl gear within the inshore restricted area and the previous determination that the herring fishery has only minimal and temporary impacts on essential fish habitat. We understand the commenters dislike the measure, but their concerns do not demonstrate the measure is inconsistent with applicable law.

Comment 7: Some commenters are concerned about the economic impact of the inshore midwater trawl restricted area on the herring, mackerel, and lobster fisheries, specifically because:

- Herring migrate through inshore waters and the midwater trawl fleet needs flexibility to be able to harvest herring where it is available;
- Losing midwater trawl access to inshore areas will have negative economic impacts on fishing vessels, the businesses and communities that support them, and availability and price of bait for the lobster fishery;
- The restricted area includes mackerel fishing grounds and vessels rely on higher value mackerel to supplement herring revenue;
- Amendment estimates a 30-percent reduction in revenue, but because the majority of herring and mackerel are caught in inshore waters, it would be more like a 70-percent reduction in revenue; and
- Nearly all recent midwater trawl catches have come from the inshore restricted area and vessels will not be able to recoup lost revenue offshore because environmental conditions in Area 3 have not been suitable for catching herring.

Response: The amendment's FEIS includes an economic analysis of the potential impacts of prohibiting inshore midwater trawling. Based on data showing that midwater trawl vessels historically harvested the majority of their catch offshore of the inshore midwater trawl restricted area, the FEIS estimates 30 percent of midwater trawl revenue came from within the inshore restricted area. While economic impacts on the herring, mackerel, and lobster fisheries are expected to be low negative to negative, the impacts on predator fisheries and ecotourism are described as uncertain to low positive. Negative economic impacts may be minimized if midwater trawlers can harvest herring and mackerel offshore and the lobster fishery can use alternatives to herring for bait, such as menhaden, redfish, and skates. In the short term, the availability of herring to the fishery may be affected by the historically low recruitment and overfished stock status. But longer term, as the stock rebuilds, the Council expects midwater trawl vessels may once again be able to harvest the majority of their catch offshore.

Comment 8: Some commenters caution that the inshore midwater trawl restricted area, covering a large area and effective year-round, is inconsistent with the problem identified in the amendment and ignores the user group overlap analysis. They also express concern that the amendment's FEIS does not acknowledge that the measure is a herring allocation among fleets, incorrectly identifies the inshore midwater trawl restricted area as a compromise between competing interests, and does not reasonably consider the impacts of an effort shift if midwater trawl vessels begin using bottom trawl gear.

Response: We disagree. As previously described, the inshore midwater trawl restricted area allocates fishing opportunities to a wide variety of user groups in a manner that promotes the conservation of herring for predators and is based on the best available science on the overlap between user groups. The FEIS acknowledges the inshore midwater trawl restricted area is an allocation of fishing opportunities between different user groups. Because the Council designed the measures to help limit concentrated removals of herring in inshore areas to allow for herring as forage in the ecosystem and support businesses that depend on predators of herring, the FEIS correctly describes the measure as a fair compromise that balances the competing needs of user groups. The FEIS recognizes the potential for an effort shift from midwater to bottom trawl gear, and acknowledges that biological benefits and socioeconomic benefits to other user groups may be minimized if midwater trawl vessels continue to fish inshore with bottom trawl gear. Whether midwater trawl vessels convert to bottom trawl gear will likely depend on several factors, such as the cost of converting, market demands, and the availability of herring offshore. In Area 1A, herring is only available for harvest June through December and is more frequently caught using purse seine gear than bottom trawl gear. Additionally, the states of Maine, New Hampshire, and Massachusetts implement weekly landings limits that may deter a midwater trawl vessel from converting to bottom trawl gear to fish in Area 1A. Given time and area restrictions on using small-mesh bottom trawl gear in Management Areas 1B and 3, the FEIS states that herring vessels are unlikely to substantially expand the use of bottom trawl gear in those areas, with the exception that they may try to access the western portion of the Raised Footrope Exemption Area from September to December.

Comment 9: Some commenters assert the amendment does not consider the impact of restricting fishing inshore in combination with the loss of fishing grounds due to future offshore wind development.

Response: During the development of Amendment 8, there were no offshore wind projects in place or construction and operation plans (COPs) made public for any of the herring management areas. While COPs for South Fork Wind Farm were made public in June 2018, the COPs for Vineyard Wind and Bay State Wind were made public in October 2018 and March 2019, respectively, after the Council adopted final measures in Amendment 8 at its September 2018 meeting. The FEIS qualitatively considers the impacts of offshore wind projects, along with environmental and other non-fishing related activities, as part of the cumulative effects assessment (Section 4.9). It concludes that the direct and indirect effects of the management measures in Amendment 8 considered in combination with all other actions (*i.e.,* past, present, and reasonably foreseeable future actions), should yield non-significant low positive impacts on human communities. Without wind projects being in place or COPs made public, quantitatively evaluating the impacts of offshore wind projects in combination with measures considered in Amendment 8 would have been too speculative.

ABC Control Rule

Comment 10: Commenters support implementation of the ABC control rule because they believe it will:

- Balance the goals and objectives of the Herring FMP, including long-term, biologically-sustainable harvest,

accounting for forage, and sustainable source of fishing revenue;

• Better account for forage at times of high biomass while continuing to safeguard the herring fishery during times of lower biomass;

• Provide forage for fish, marine mammals, and seabirds;

• Better align with ecosystem-based management;

• Support ecosystem health and the economies of coastal communities;

• Help reduce inconsistent and unpredictable fishing to ensure a steady supply of bait for the lobster fishery; and

• Help ensure the long-term viability of herring, its fishery, and the predators that rely on herring.

The joint letter from CLF, NAS, NRDC, Pew, and Wild Oceans explained that, initially, they advocated for a more conservative ABC control rule to maintain a forage base for economically valuable predator fisheries and the marine ecosystem. However, recognizing the economic implications of the 2018 herring stock assessment, indicating that herring biomass and recruitment were low, they now support the Council-recommended ABC control rule to provide valuable forage for fish, marine mammals, and seabirds, while allowing fishing opportunities and long-term benefits for the herring and lobster fisheries. They believe the control rule is consistent with the Herring FMP, Magnuson-Stevens Act, National Standard 1 guidelines for managing forage fish, and the best available science.

The TNC supports the ABC control rule given that the 2018 herring stock assessment concluded herring biomass is declining, stock recruitment is at a historic low, and the probability of the stock becoming overfished is high. It acknowledges that the ABC control rule may result in negative short-term economic impacts for participants in the herring and lobster fisheries, but believes it will provide long-term benefits for the marine ecosystem and the fisheries that depend on herring.

Response: We concur with the commenters' support for the ABC control rule.

Comment 11: Members of the herring industry stress that the need for a control rule is flawed because the 2018 stock assessment assumes no link between SSB and recruitment. They explain that recruitment in the herring fishery is environmentally driven and variable, that the recent experience of below average recruitment is unusual, and that small herring seen both inshore and offshore are part of a recruitment event independent of a new control rule.

Response: The Council recommended a new ABC control rule because it determined that the previous ABC control rule did not sufficiently provide for the role of herring in the ecosystem, especially when biomass is reduced and there is uncertainty in the assessment. While the assessment accounts for natural mortality, it is more risk averse to use an ABC control rule that reserves a portion of the catch for predators in the event estimates of biomass are uncertain. The inability of the 2018 stock assessment to quantitatively estimate the relationship between SSB and recruitment does not mean that the relationship does not exist. The FEIS acknowledges that environmental factors likely have a larger influence on herring recruitment and abundance trends than fishing, but concluded that reducing fishing pressure, when there is substantial uncertainty, is expected to prevent overfishing and optimize yield for the fishery in the long term.

Comment 12: Some members of the herring industry expressed concern with the management strategy evaluation (MSE) used to develop the ABC control rule, including the following:

• The MSE was rushed, stakeholder engagement and modeling were limited in scope and not used to their full potential, especially modeling of the spatial distribution of herring and predator/prey interactions;

• The analysis did not consider abundance, availability, or nutritional value of alternative prey species, nor did it consider the impact of herring abundance on the abundance of alternative prey species;

• The Council had no understanding of how this control rule would result in real-world specifications; and

• The analysis did not incorporate rebuilding measures that would be required if the stock is overfished, so the benefits of the more conservative control rules are illusory.

Response: The Council developed alternatives for a herring ABC control rule using an MSE. MSE is a decision-making tool that uses computer modeling to compare the performance of alternatives (*i.e.,* management strategies) under various scenarios to achieve multiple, competing objectives. Because we do not have a complete understanding of the ocean ecosystem and all the sources of uncertainty, MSEs are useful to evaluate how alternatives perform under different environmental conditions. The Council held two public workshops to generate stakeholder input to help identify objectives for the MSE analysis. Input generated by the workshops was considered by the Council and, for the most part, adopted and included in Amendment 8. The MSE used three models, a herring model, a predator model, and an economic model, to compare ABC control rule performance. The models simulated how well the ABC control rules achieved herring management objectives, such as biomass, yield, revenue, and predator considerations, under simulated environmental conditions related to herring growth, stock assessment bias, and productivity of herring. Results of the MSE informed the range of ABC control rule alternatives and impact analyses of those alternatives in Amendment 8.

Development of the control rule with an MSE was, despite unavoidable data gaps and modeling limitations, based on the best scientific information available. To ensure the MSE was sufficient for identifying and analyzing a range of ABC control rules, the Council arranged for an external peer review of the MSE. The reviewers recognized that a tremendous amount of work was completed in a rigorous manner under the time and resource constraints of the MSE. While the models were constrained by the availability of data, the reviewers agreed the three models used in the MSE were appropriate for evaluating ABC control rules in the context of herring's role as forage in the ecosystem. The model used for herring included scenarios where herring productivity was high, as well as low, to explicitly enable the Council to evaluate the impact of ABC control rules on real-world specifications given fluctuations in herring biomass. The commenters are correct that the model used for herring did not include rebuilding measures. However, rebuilding measures are not required to be effective until 2 years after a stock has been declared overfished. There are potential conservation benefits associated with conservative control rules, especially like the Council-recommended control rule that sets herring catch at zero when biomass is low, until rebuilding measures become effective. Overall, the reviewers concluded that the data, methods, and results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators.

Comment 13: Commenters oppose implementation of the ABC control rule because they believe:

• It is too precautionary, as evident by its 2-percent chance of overfishing in

2019 when only a 50-percent or less chance of overfishing is required under the Magnuson-Stevens Act;

• It is not appropriate for herring because it double counts predator needs and adds an additional forage buffer of at least 15 percent;

• It is not capable of explicitly accounting for herring's role as forage because many predators are generalists and consume a variety of prey species;

• Setting catch to zero when biomass is low does not account for herring as forage because herring's role as forage does not diminish as biomass diminishes;

• It would not have prevented the current situation of low herring biomass and recruitment, but it does ensure the economic impact of low herring biomass is more negative than necessary; and

• It lacks ''exceptional circumstances'' protocol to address scenarios with low biomass, especially when it would prohibit fishing.

Response: We disagree with these comments. The control rule was developed by the Council to reflect its harvest policy for herring and provide for a long-term sustainable herring fishery. It moderately reduces fishing mortality (80 percent of the rate that supports MSY reduced from 90 percent) when biomass is high, eliminates catch in response to low biomass (10 percent or less of the B_{MSY}), and takes into account herring's role as forage for predators. As described previously, an external peer review found the results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators. Similar to the inshore midwater trawl restricted area, the ABC control rule also considers impacts across user groups. The control rule modestly reduces the amount of catch available to the herring and lobster fisheries to support herring as forage for other user groups. Instead of an ''exceptional circumstances'' protocol to allow for fishing when biomass is very low, the Council recommended that catch be set at zero to help rebuild biomass and ensure herring is available to predators. The control rule is intended to produce a low variation in yield, low probability of a herring fishery shutdown, and low probability of overfishing. As a result, the Council anticipates that short-term negative economic impacts on participants in the herring, mackerel, or lobster fisheries resulting from a reduced herring harvest may become a long-term economic benefit for them and other user groups.

Comment 14: Some members of the herring industry argue for the continued use of the status quo control rule because it balances scientific uncertainty with stability for the fishery. They also caution the new control rule is not consistent with the Magnuson-Stevens Act because the FEIS did not indicate any benefit to predators, so the economic costs of the control rule outweigh the benefits.

Response: Currently, there is no ABC control rule for the Herring FMP. Interim control rules have been applied in the past, but the harvest policy has been temporary and the Council has considered different ABC options with each specifications action. The commenters' conclusion that the FEIS does not indicate any benefit to predators is incorrect. The FEIS holds that the Council-recommended ABC control rule is expected to have positive biological impacts on the herring stock and low positive biological impacts on herring predators. While the commenters are correct that the FEIS estimates minimal differences in short-term impacts on predator species across ABC control rule alternatives, the ability of the MSE's modeling to detect differences in predator metrics (*i.e.,* common tern productivity, bluefin tuna weight, spiny dogfish biomass) and marine mammals was limited by the amount and scale of available predator data. The FEIS notes that, in general, more herring left unfished in the ecosystem could have positive impacts on herring predators, despite that relatively small differences in overall ABC may not have measurable differences in overall impacts on herring predators because many predators are opportunistic. Additionally, the FEIS explains that using ABC control rules that reduce fishing mortality at lower biomass levels would have more long-term positive benefits on predators, compared to control rules that allow higher fishing mortalities (status quo).

In addition to providing for herring's role as forage in the ecosystem, the control rule is also intended to provide for a sustained participation of fishing communities that depend on herring. Information about the importance of herring to affected fishery-related businesses and communities was included in the FEIS. The FEIS describes preventing overfishing and optimizing yield as expected long-term impacts of establishing an ABC control rule. It also concludes that these impacts are expected to benefit herring fishery-related business, herring fishing communities, and other communities that depend on predators of herring (*e.g.,* other commercial fisheries, recreational fisheries, ecotourism). In the short term, the FEIS explains there will likely be negative impacts on herring vessels, since catch levels would likely be greatly reduced until herring biomass and recruitment increase. But, it acknowledges negative short-term economic impacts are expected under all the control rule alternatives, including status quo, based on low projected herring biomass for the next several years. Therefore, because the potential benefits, biological as well as socioeconomic, are commensurate with potential costs, we determined the ABC control rule is consistent with the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) Assistant Administrator has determined that this final rule is consistent with Amendment 8 to the Herring FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS is also implementing regulations in this rule that are necessary to carry out any fishery management plan or amendment pursuant to section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to carry out a FMP or the Magnuson-Stevens Act.

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

This final rule is not an E.O. 13771 regulatory action because this action is not significant under E.O. 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Council prepared an FEIS for Amendment 8 to the Herring FMP. We filed the FEIS with the Environmental Protection Agency on August 12, 2019. A notice of availability for the FEIS was published in the **Federal Register** on August 16, 2019 (84 FR 41988). The FEIS describes the impacts of the measures on the environment. This amendment establishes a herring ABC control rule and prohibits the use of midwater trawl gear in inshore waters from Canada to Connecticut. The biological impact of the ABC control rule on the herring resource is expected to be positive. However, other factors, such as environmental conditions, may have an even greater influence on herring biomass and could affect the stock regardless of the control rule. Short-term revenue reductions are expected as a result of the ABC control

rule likely resulting in negative economic impacts on the herring fishery, with ripple effects on the communities involved in the Atlantic mackerel and lobster fisheries. These negative economic impacts are expected to be exacerbated by the low herring biomass and recruitment identified in the 2020 stock assessment. In the long term, fishing under a control rule that ensures continued, sustainable harvest of the herring resource is expected to benefit the herring fishery and its communities, as well as indirectly benefiting fisheries that rely on herring as forage in the ecosystem. The biological impacts of prohibiting midwater trawling in inshore areas on the herring resource are expected to be neutral to low positive if the measure prevents the fishery from harvesting the annual catch limit (ACL) or reduces fishing pressure on the inshore stock component. However, in the short term, the ACL is expected to be low, so the fishery is expected to be able to harvest the ACL. The biological impacts of prohibiting trawling on non-target and protected species are somewhat uncertain due to unknown effort shifts. Midwater trawl effort may move offshore or some vessels may decide to change gear type in order to continue fishing inshore. The socioeconomic impacts are expected to be negative for the midwater trawl fleet and associated fishing communities. The gear prohibition is estimated to impact about 30 percent of total revenue for midwater water trawl vessels. Some of this revenue may be recovered by fishing in offshore areas, but trips costs will be higher. The socioeconomic impacts of the gear prohibition on predator fisheries and ecotourism industries are expected to be potentially low positive. This ecosystem is complex and the linkages between herring and predators are complex: Having less fishing pressure in one area may not necessarily mean there are positive impacts on a predator that spends time in that area, as well as other areas. Potential negative impacts associated with user conflicts in these areas are expected to be lower. However, some effort will shift so there could be increased conflicts in other areas and seasons that do not exist now. In approving Amendment 8 on November 19, 2019, NMFS issued a Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

We prepared a final regulatory flexibility analysis (FRFA) in support of this action. The FRFA incorporates the initial RFA (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, our responses to those comments, and a summary of the analyses completed in support of this action. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA and a copy of the EIS/RIR/IRFA are available upon request (see **ADDRESSES**) or via the internet at: *http://www.nefmc.org.*

A Statement of the Significant Issues Raised by the Public in Response to the IRFA, a Statement of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received 268 comment letters on the NOA and proposed rule. Those comments, and our responses, are contained in the Comments and Responses section of this final rule and are not repeated here. Comments 1, 2, 4, 7, 9, 13, and 14 discussed the economic impacts of the measures, but did not directly comment on the IRFA. All revisions and clarifications to the proposed rule, as well as the rationale for those revisions, are described in Revisions and Additional Clarifications to the Proposed Rule section of this final rule and are not repeated here.

Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

Effective July 1, 2016, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry for RFA compliance purposes only (80 FR 81194, December 29, 2015). A commercial fishing business is classified as a small business if it is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $11 million.

This action affects all permitted herring vessels. Therefore, the direct regulated entity is a firm that owns at least one herring permit. There are many firms that hold an open-access Category D herring permit. Unlike open-access Category E herring permit holders, Category D permit holding firms harvest only a small fraction of herring and do not typically use midwater trawl gear so they are minimally affected by the regulations. Category E permit holding firms, however, are affected by the regulations because they have a higher possession limit (20,000 lb (9,072 kg) versus 6,600 lb (2,994 kg)) and are more likely to use midwater trawl gear.

As of June 1, 2018, there were 862 firms (852 small) that held at least 1 herring permit. There were 126 (123 small) firms that were active in the herring fishery (*i.e.,* having landed herring in 2017) and held at least 1 herring permit. There were 101 (94 small) firms that held at least 1 limited access (Categories A, B, C) herring permit or a Category E open access herring permit. There were 53 (50 small) firms that held a limited access or Category E herring permit and were active in the herring fishery. Table 1 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a limited access or Category E open access herring permit. Table 2 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a limited access or Category E open access herring permit and were active in the herring fishery. In both tables, the small entities are further characterized by gear type to facilitate comparisons. There are fewer than three large entities that use midwater trawl gear, so the description of the large entities is not disaggregated to gear type to preserve confidentiality under the Magnuson-Stevens Act. Table 3 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a herring permit and Table 4 characterizes ''gross receipts'' and ''herring receipts'' for firms that held a herring permit and were active in the herring fishery. Tables 3 and 4 include firms with Category D open access herring permits that would be minimally impacted by this action.

TABLE 1—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	7	All	$20,396,374	$492,598
Small	9	Midwater Trawl	2,499,646	1,241,225

TABLE 1—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS IN 2017—Continued

Firm size	Firms	Gear	Gross receipts	Herring receipts
Small	85	Non-Midwater Trawl	1,299,110	137,954

Source: *NMFS.*

TABLE 2—AVERAGE RECEIPTS FROM FIRMS WITH LIMITED ACCESS AND CATEGORY E OPEN ACCESS HERRING PERMITS THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	3	All	$16,567,731	$1,149,395
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	41	Non-Midwater Trawl	1,276,255	286,002

Source: *NMFS.*

TABLE 3—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	10	All	$19,873,801	$344,818
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	843	Non-Midwater Trawl	639,591	14,002

Source: *NMFS.*

TABLE 4—AVERAGE RECEIPTS FROM ALL FIRMS WITH A HERRING PERMIT THAT WERE ACTIVE IN THE HERRING FISHERY IN 2017

Firm size	Firms	Gear	Gross receipts	Herring receipts
Large	3	All	$16,567,731	$1,149,395
Small	9	Midwater Trawl	2,499,646	1,241,225
Small	114	Non-Midwater Trawl	681,943	103,540

Source: *NMFS.*

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This action does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Recognizing the potential economic impact of this amendment, the Council recommended measures that achieved the amendment goals while minimizing negative economic impacts on fishery participants.

Of all the ABC control rule alternatives considered by the Council, the Council recommended the control rule that would provide the second highest level of catch. This control rule was developed by the Council to reflect its harvest policy for herring and provide for a long-term sustainable herring fishery. It moderately reduces fishing mortality (80 percent of the rate that supports maximum sustainable yield reduced from 90 percent) when biomass is high, eliminates catch in response to low biomass (10 percent or less of the biomass to support maximum sustainable yield), and takes into account herring's role as forage for predators. As described previously, an external peer review found the results of the MSE were sufficient for identifying and analyzing a range of ABC control rule alternatives and that the MSE represents the best available science for evaluating the performance of herring control rules and their potential impact on key predators. Similar to the inshore midwater trawl restricted area, the ABC control rule also considers impacts across user groups. The control rule modestly reduces the amount of catch available to the herring and lobster fisheries to support herring as forage for other user groups. The Council anticipates that short-term negative economic impacts on participants in the herring, mackerel, or lobster fisheries resulting from a reduced herring harvest may become a long-term economic benefit for other user groups. Especially if the control rule performs as recommended by the Council, with a low variation in yield, low probability of a herring fishery shutdown, and low probability of overfishing.

The Council developed the inshore midwater trawl restricted area consistent with the amendment's problem statement and the FEIS's overlap analysis. The Council considered other alternatives to minimize user group conflict, including prohibiting midwater trawling inshore of 25 nautical miles (46 km) and 50 nautical miles (93 km), but recommended a shallower midwater trawl restricted area instead as a way to

more fairly and equitably balance the costs and benefits of the measure. Additionally, to help mitigate the economic impact of the inshore midwater trawl restricted area and provide access for the mackerel fishery, the Council also recommended that RSA compensation fishing trips would be exempt from the prohibition on inshore midwater trawling.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a fishery bulletin that serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the fishery bulletin (*i.e.,* compliance guide) will be sent to all holders of permits for the herring fishery. The fishery bulletin and this final rule will be posted on the GARFO website.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 29, 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 § 648.2, revise the definition for ''Observer or monitor'' and add the definition for ''Slippage in the Atlantic herring fishery.''

§ 648.2 Definitions.

* * * * *

Observer or monitor means any person certified by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program. Observers or monitors include NMFS-certified fisheries observers, at-sea monitors, portside samplers, and dockside monitors.

* * * * *

Slippage in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-certified observer or monitor prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-certified observer or monitor after the catch is on board. Slippage also means any catch that is discarded during a trip prior to it being sampled portside by a portside sampler on a trip selected for portside sampling coverage by NMFS. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-certified observer or monitor are also not considered slippage.

* * * * *

■ 3. Amend § 648.11 by:

■ a. Revising paragraphs (h)(1), (4)(ii), (5)(ii)(C), (5)(iv)(A), (5)(vi), (5)(vii)(A), and (5)(vii)(G);

■ b. Revising paragraphs (i)(1), (2), (3)(ii), (4)(iii), and (5);

■ c. Revising paragraph (k)(4)(i); and

■ d. Revising paragraphs (m)(1)(v), (2)(iii)(C), and (4)(i).

§ 648.11 Monitoring coverage.

* * * * *

(h) * * * (1) *General.* An entity seeking to provide monitoring services, including services for IFM Programs described in paragraph (g) of this section, must apply for and obtain approval from NMFS following submission of a complete application. Monitoring services include providing NMFS-certified observers, monitors (at-sea monitors and portside samplers), and/or electronic monitoring. A list of approved monitoring service providers shall be distributed to vessel owners and shall be posted on the NMFS Fisheries Sampling Branch (FSB) website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.*

* * * * *

(4) * * *

(ii) If NMFS approves the application, the monitoring service provider's name will be added to the list of approved monitoring service providers found on the NMFS/FSB website and in any outreach information to the industry. Approved monitoring service providers shall be notified in writing and provided with any information pertinent to its participation in the observer or monitor programs.

* * * * *

(5) * * *

(ii) * * *

(C) The required observer or monitor equipment, in accordance with equipment requirements, prior to any deployment and/or prior to NMFS observer or monitor certification training; and

* * * * *

(iv) * * * (A) A candidate observer's first several deployments and the resulting data shall be immediately edited and approved after each trip by NMFS/FSB prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

* * * * *

(vi) *Observer and monitor training requirements.* A request for a NMFS/FSB Observer or Monitor Training class must be submitted to NMFS/FSB 45 calendar days in advance of the requested training. The following information must be submitted to NMFS/FSB at least 15 business days prior to the beginning of the proposed training: A list of observer or monitor candidates; candidate resumes, cover letters and academic transcripts; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. A medical report certified by a physician for each candidate is required 7 business days prior to the first day of training. CPR/First Aid certificates and a final list of training candidates with candidate contact information (email, phone, number, mailing address and emergency contact information) are due 7 business days prior to the first day of training. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/FSB minimum eligibility standards for observers or monitors as described on the National Observer Program website: *https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer.*

(vii) * * *

(A) *Deployment reports.* The monitoring service provider must report to NMFS/FSB when, where, to whom, and to what vessel an observer or monitor has been deployed, as soon as practicable, and according to

requirements outlined by NMFS. The deployment report must be available and accessible to NMFS electronically 24 hours a day, 7 days a week. The monitoring service provider must ensure that the observer or monitor reports to NMFS the required electronic data, as described in the NMFS/FSB training. Electronic data submission protocols will be outlined in training and may include accessing government websites via personal computers/devices or submitting data through government issued electronics. The monitoring service provider shall provide the raw (unedited) data collected by the observer or monitor to NMFS at the specified time per program.

* * * * *

(G) *Status report.* The monitoring service provider must provide NMFS/FSB with an updated list of contact information for all observers or monitors that includes the identification number, name, mailing address, email address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer or monitor is ''in service,'' indicating when the observer or monitor has requested leave and/or is not currently working for an industry-funded program. Any Federally contracted NMFS-certified observer not actively deployed on a vessel for 30 days will be placed on Leave of Absence (LOA) status (or as specified by NMFS/FSB according to most recent Information Technology Security Guidelines. Those Federally contracted NMFS-certified observers on LOA for 90 days or more will need to conduct an exit interview with NMFS/FSB and return any NMFS/FSB issued gear and Common Access Card (CAC), unless alternative arrangements are approved by NMFS/FSB. NMFS/FSB requires 2-week advance notification when a Federally contracted NMFS-certified observer is leaving the program so that an exit interview may be arranged and gear returned.

* * * * *

(i) * * * (1) *Requirements.* To be certified, employees or sub-contractors operating as observers or monitors for monitoring service providers approved under paragraph (h) of this section. In addition, observers must meet NMFS National Minimum Eligibility Standards for observers specified at the National Observer Program website: *https://www.fisheries.noaa.gov/topic/fishery-observers#become-an-observer.*

(2) *Observer or monitor training.* In order to be deployed on any fishing vessel, a candidate observer or monitor must have passed an appropriate NMFS/FSB Observer Training course and must adhere to all NMFS/FSB program standards and policies. If a candidate fails training, the candidate and monitoring service provider shall be notified immediately by NMFS/FSB. Observer training may include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. Contact NMFS/FSB for the required number of program specific observer and monitor training certification trips for full certification following training.

(3) * * *

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

* * * * *

(4) * * *

(iii) Be physically and mentally capable of carrying out the responsibilities of a monitor on board fishing vessels, pursuant to standards established by NMFS. Such standards shall be provided to each approved monitoring service provider.

* * * * *

(5) *Probation and decertification.* NMFS may review observer and monitor certifications and issue observer and monitor certification probation and/or decertification as described in NMFS policy.

* * * * *

(k) * * *

(4) * * *

(i) An owner of a scallop vessel required to carry an observer under paragraph (k)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the NMFS/FSB from an observer service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hr whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/FSB website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.* The observer service provider may take up to 48 hr to arrange for observer deployment for the specified scallop trip.

* * * * *

(m) * * *

(1) * * *

(v) To provide the required IFM coverage aboard declared Atlantic herring trips, NMFS-certified observers and monitors must hold a high volume fisheries certification from NMFS/FSB.

(2) * * *

(iii) * * *

(C) For a waiver of IFM requirements on trip by a wing vessel as described in paragraph (m)(1)(ii)(E) of this section.

* * * * *

(4) * * *

(i) An owner of an Atlantic herring vessel required to have monitoring under paragraph (m)(3) of this section must arrange for monitoring by an individual certified through training classes operated by the NMFS/FSB and from a monitoring service provider approved by NMFS under paragraph (h) of this section. The owner, operator, or vessel manager of a vessel selected for monitoring must contact a monitoring service provider prior to the beginning of the trip and the monitoring service provider will notify the vessel owner, operator, or manager whether monitoring is available. A list of approved monitoring service providers shall be posted on the NMFS/FSB website: *https://www.fisheries.noaa.gov/resource/data/observer-providers-northeast-and-mid-atlantic-programs.*

* * * * *

■ 4. In § 648.14, add paragraphs (r)(1)(vi)(H) and (I) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vi) * * *

(H) Use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area as defined in § 648.202(a)(2), unless the vessel is on a declared research set-aside trip and operating as authorized by an exempted fishing permit or the vessel has not been issued a valid, federal permit under this part and fishes exclusively in state waters.

(I) Transit the inshore midwater trawl restricted area, defined in § 648.202(a)(2), with midwater trawl gear onboard unless midwater trawl gear is stowed and not available for immediate use, as defined in § 648.2 or the vessel has not been issued a valid, federal permit under this part and fishes exclusively in state waters.

* * * * *

■ 5. In § 648.200, revise paragraphs (b)(1), (2), and (3) to read as follows:

§ 648.200 Specifications.

* * * * *

(b) * * *

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is the fishing rate supporting maximum sustainable yield (*e.g.,* F_{MSY} or proxy). Catch that exceeds this amount would result in overfishing. The stock is considered overfished if stock biomass is less than ½ the stock biomass associated with the MSY level or its proxy (*e.g.,* SSB_{MSY} or proxy). The stock is considered subject to overfishing if the fishing mortality rate exceeds the fishing mortality rate associated with the MSY level or its proxy (*e.g.,* F_{MSY} or proxy).

(2) ABC must be less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council by applying the ABC control rule and considering scientific uncertainty. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described in § 648.201(a).

* * * * *

■ 6. In § 648.202, revise paragraph (a) to read as follows:

§ 648.202 Season and area restrictions.

(a) *Midwater Trawl Restricted Areas.* (1) *Area 1A.* Federally permitted vessels fishing for Atlantic herring may not use, deploy, or fish with midwater trawl gear in Area 1A from June 1 September 30 of each fishing year. A vessel with midwater trawl gear on board may transit Area 1A from June 1–September 30, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels may use any authorized gear type to harvest herring in Area 1A from October 1–May 31.

(2) *Inshore.* Federally permitted vessels may not use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted area. A federally permitted vessel with midwater trawl gear on board may transit the inshore midwater trawl restricted area, provided such midwater trawl gear is stowed and not available for immediate use as defined in § 648.2. Vessels on a declared research set-aside trip are permitted to use, deploy, or fish with midwater trawl gear within the inshore midwater trawl restricted areas provided the vessel is operating as authorized by an exempted fishing permit. The Inshore Midwater Trawl Restricted Area includes all state and federal waters between the US coastline and the following points, connected in the order listed by straight lines, unless otherwise noted:

TABLE 1 TO PARAGRAPH (a)(2)

Point	Latitude	Longitude	Note
IMT1	44° 17.986′ N	67° 5.503′ W	[1] [2]
IMT2	42° 00.00′ N	69° 43.474′ W	[2] [3]
IMT3	42° 00.00′ N	69° 30.00′ W	
IMT4	41° 00.00′ N	69° 30.00′ W	
IMT5	41° 00.00′ N	70° 00.00′ W	
IMT6	41° 2.339′ N	70° 00.00′ W	[4] [5]
IMT7	40° 50.637′ N	71° 51.00′ W	[5] [6]
IMT8	41° 18.503′ N	71° 51.00′ W	[7]

[1] Point IMT1 represents the intersection of the U.S./Canada Maritime Boundary and the 12 nautical mile (nmi) Territorial Sea boundary.
[2] From Point IMT1 to Point IMT2 following the 12 nmi Territorial Sea boundary.
[3] Point IMT2 represents the intersection of the 12 nmi Territorial Sea boundary and 42°00′ N lat.
[4] Point IMT6 represents the intersection of 70°00′ W long. and the 12 nmi Territorial Sea boundary.
[5] From Point IMT6 to Point IMT7 following the 12 nmi Territorial Sea Boundary.
[6] Point IMT7 represents the intersection of 71°51′ W long. and the 12 nmi Territorial Sea boundary.
[7] Point IMT8 represents the intersection of 71°51′ W long. and the coastline of Watch Hill, RI.

* * * * *

■ 7. In § 648.206, revise paragraphs (b)(3), (b)(37) and (b)(38) and add paragraph (b)(39) to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(3) Closed areas, including midwater trawl restricted areas, other than spawning closures;

* * * * *

(37) River herring and shad Catch Cap Areas and Catch Cap Closure Areas;

(38) Modifications to the ABC control rule, including, but not limited to, control rule parameters, if a quantitative stock assessment is not available, if the projections are producing ABCs that are not justified or consistent with available information, or if the stock requires a rebuilding program; and

(39) Any other measure currently included in the FMP.

* * * * *

[FR Doc. 2020–29127 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 6
Monday, January 11, 2021

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF23

Chartering and Field of Membership—Shared Facility Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its chartering and field of membership (''FOM'') rules to modernize requirements related to service facilities for multiple common bond (''MCB'') federal credit unions (''FCUs''). The Board is proposing to include any shared branch, shared ATM, or shared electronic facility in the definition of ''service facility'' for an FCU that participates in a shared branching network. The FCU need not be an owner of the shared branch network for the shared branch or shared ATM to be a service facility. These changes would apply to the definition of service facility both for additions of select groups to MCB FCUs and for expansions into underserved areas.

DATES: Comments must be received on or before February 10, 2021.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF23, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Proposed Rule: Field of Membership—Shared Facility Requirements'' in the transmittal.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6545.

SUPPLEMENTARY INFORMATION:

I. Background
II. Legal Authority
III. Summary of the Proposed Rule
IV. Regulatory Procedures

I. Background

NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of its regulations (''Chartering Manual''),[1] implements the FOM requirements and limitations established by the Federal Credit Union Act (''the Act'')[2] for FCUs. The Act permits an FCU to have one of three charter types: a single common bond comprised of a group whose members all share the same occupational or associational common bond; a multiple common bond in which each group has a distinct occupational or associational common bond among its own members; and a community common bond. With the Board's approval, a MCB FCU may add additional groups and underserved areas to its FOM.[3] This proposal would amend the Chartering Manual so that the facilities of any shared branch network in which an FCU participates, regardless of ownership interest, would qualify as a service facility.

One of the Act's several requirements for adding a group to a MCB FCU is that the credit union must be ''within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.''[4] The Chartering Manual interprets the term ''reasonable proximity'' as requiring the group to be ''within reasonable geographic proximity'' of the credit union. The Chartering Manual then explains this means that the group ''must be within the service area of one of the credit union's service facilities.''[5] For purposes of group additions, the current definition of a service facility is:

> a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) The credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's internet website.[6]

Among the Act's requirements for adding an underserved area to a MCB FCU is that ''the credit union establishes and maintains an office or facility'' in the underserved area.[7] The Chartering Manual implements this provision of the Act by requiring a credit union adding an underserved area to its FOM to ''establish within two years, and maintain, an office or service facility in the community.''[8] For purposes of underserved area additions, the current Chartering Manual definition of a service facility is:

> a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis or a credit union owned electronic facility that meets, at a minimum, the above requirements. This definition does not include an ATM or the credit union's internet website.[9]

A third definition of service facility, which combines the two definitions,

[1] 12 CFR part 701, Appendix B.
[2] 12 U.S.C. 1750 *et. seq.*
[3] *Id.* 1759(f)(2), (c)(2).
[4] *Id.* (f)(1)(B).
[5] Chartering Manual, § 2.IV.A.1.
[6] *Id.* § 2.IV.A.1.
[7] 12 U.S.C. 1759(c)(2)(B).
[8] Chartering Manual, § 2.III.F.
[9] *Id.* § 3.III.F.

appears in the ''Glossary'' appendix to the Chartering Manual.

Although the Chartering Manual requires a service facility for both group and underserved area additions, it currently incorporates a different definition of the term ''service facility'' for each context. For example, under the current rule, an ATM is a service facility for purposes of select group additions but not for purposes of underserved area additions. In addition, the definition of service facility for select group additions requires that a facility provide at least one service from a list of services, but the definition of service facility for underserved area additions requires that a facility provide all of the listed services.[10]

The provisions of the Act authorizing the existence of MCB FCUs were adopted in 1998, in the Credit Union Membership Access Act (''CUMAA''). From the first Chartering Manual the NCUA promulgated after CUMAA's enactment, the NCUA took the position that group additions could only occur around service facilities in which the credit union had an ownership interest.[11] Although the required proportion of ownership was initially unspecific, in 2000 the Board promulgated a rule requiring a MCB to have at least a five percent interest in a facility to add groups based on the location of the shared facility.[12]

In 2003, the Board revised the Chartering Manual to delete the five percent ownership interest requirement, describing the change as follows:

> In response to some commenters, the NCUA Board is clarifying in the final rule that the requisite ownership interest can be in a shared service center, a shared service network, or similar organization. Therefore, as long as the credit union has an ownership interest in the service center, network, or similar organization, the credit union can expand around any of them. The credit union does not need to have an ownership interest in the specific service facility. This means, for example, that, if the credit union has an ownership interest in a CUSO, it can expand around any service center connected to the CUSO. This also would allow a participating credit union with an ownership interest in the service facility to expand around other service facilities connected to the shared service network or similar organization.[13]

Even while eliminating the five percent requirement tied to each specific location, the Board continued to assert, ''[A]n ownership interest is crucial in analyzing the reasonable proximity requirement for ATMs and shared service facilities.''[14]

The Board has now determined that an ownership requirement related to shared facilities and ATMs is needlessly restrictive, and the Board is proposing to remove this requirement. The structure of shared branching has changed dramatically since the NCUA adopted and amended the ownership requirement. Shared branches originated as physical locations specifically designed for shared use, jointly owned by a small group of participating credit unions operating in adjacent areas. Participating credit unions now use their existing branches and ATMs as shared locations, generally without separate facilities designated as shared branches. Entities offering shared branching services have also consolidated over time. In this changed environment, obtaining an ownership interest in a shared branch network may be difficult or a practical impossibility for credit unions not already owners of a shared branching network.

The ownership requirement restricts the use of shared locations for FOM expansions, without enhancing the utility of the shared location for FCU members. Member access to services from a shared branch is the same whether or not the FCU has an ownership interest in the shared branching network. Nor does being a part owner of a shared branching network confer any more permanence to a shared location than being an authorized participant in the shared branching network. In light of these factors, the Board has determined that the Chartering Manual's current requirement that the credit union have ''an ownership interest in the service facility either directly or through a CUSO'' needlessly limits MCB FCU services to additional groups and their members and ignores the way business is done in the current marketplace. The FCU Act places few conditions on what constitutes ''reasonable proximity.'' If a MCB FCU participates in a shared branching network, and has access to a location based on contractual agreements with the network, the Board believes the FCU is in reasonable proximity to a group that is within the service area of the shared location. The change to this definition will expand FOM eligibility to groups that are within the service area of the shared branches and ATMs to which a MCB FCU has access through a shared branching network.

For similar reasons, the Board is also proposing to permit MCB FCUs to add underserved areas based on the location of a shared branch or ATM of a network in which the FCU participates. The Act permits an underserved area addition if the credit union establishes and maintains ''an office or facility'' in the underserved area ''at which credit union services are available.''[15] ATMs and shared branch locations provide credit union services. As noted above, credit union members have the same access to services at shared locations, regardless of whether the FCU has an ownership interest in the shared branching network or is an authorized participant in the network. With continuing technological advances, members will be able to obtain the services they need through using ATMs or other electronic facilities combined with telephone or email communications with credit union staff. In light of the changes to the ways consumers access financial services since CUMAA's enactment, the Board believes its former policies were needlessly restrictive.

In summary, the financial services world has undergone significant changes since the Board adopted the various requirements related to shared locations and shared branching networks some decades ago. For these reasons, the Board believes it is now appropriate to revise its policy about the types of shared facilities that can be considered in the context of the Act's requirement for ''reasonable proximity'' for both additions of groups and additions of underserved areas. The proposed changes will also provide regulatory relief by conforming the several definitions of ''service facility'' in the Chartering Manual.

II. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for all federally insured credit unions (''FICUs'').[16] The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[17]

[10] *Compare* Chartering Manual § 2.IV.A.1. (a service facility is ''a place where shares are accepted for members' accounts, loan applications are accepted *or* loans are disbursed'') *with* Chartering Manual § 3.III.F (a service facility is ''a place where shares are accepted for members' accounts, loan applications are accepted *and* loans are disbursed'') (emphasis added).

[11] 65 FR 64512, 64513 (Oct. 27, 2000).

[12] *Id.*

[13] 68 FR 18334, 18335 (April 15, 2003).

[14] *Id.*

[15] 12 U.S.C. 1759(c)(2)(B).

[16] *Id.* 1752–1775.

[17] *Id.* 1766(a).

The Act requires the Board to develop regulations to establish the criteria for additions of groups [18] and requires the Board to approve a MCB FCU's addition of underserved areas.[19] The Act does not use the term ''service facility.'' Rather, the Board adopted the term ''service facility'' to define the limits of reasonable proximity.[20]

The position that an FCU's participation in a shared branch network constitutes a sufficient interest to make the shared branch a service facility for purposes of MCB expansion is a reversal from a position the agency initiated over two decades ago. The Chartering Manual has consistently required ownership either in the shared service facility itself or the network operating the shared facility in order to permit a MCB FCU to add a group based on the location of the shared facility for any facilities that are not local to the FCU. Similarly, the Chartering Manual has consistently required that a MCB FCU seeking to add an underserved area must, at a minimum, establish and maintain a shared branch (with ownership in the branch), or a credit union-owned electronic facility in the area. As discussed above, the Act does not dictate the agency's prior positions requiring ownership in a shared branching network or excluding ATMs from the definition of service facility for purposes of underserved area expansion, and there are now sound policy reasons for the reversal.

Agencies must ''use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.'' [21] Accordingly, agencies cannot reverse rules adopted by notice-and-comment rulemaking by other, less transparent methods.[22] The term ''service facility'' appears in the Chartering Manual, which the Board has promulgated and amended using notice and comment rulemaking. The Board is now engaging in a notice and comment rulemaking to change its position, proposing to remove ownership requirements when considering shared branch networks and allowing ATMs to qualify as service facilities in underserved areas.

III. Summary of the Proposed Rule

As highlighted above, the Chartering Manual defines ''service facility'' differently for group additions than for underserved area additions. The proposed rule would conform these definitions.

A. Changes to the Definition of Service Facility for Purposes of Group Additions

For group additions, FCU-owned electronic facilities that accept deposits, take loan applications, or disburse loans are service facilities.[23] Credit union-owned branches, mobile branches, offices operated on a regularly scheduled weekly basis, and video teller machines also meet the criteria for service facilities. Finally, shared branching network facilities also meet the criteria for service facilities for group additions, provided the credit union has an ownership interest in the shared branching network. The proposal would leave the definition of service facility intact, but would remove the ownership requirement for shared branch networks.

B. Change to the Definition of Service Facility for Purpose of Underserved Area Additions

For underserved areas, the current definition of ''service facility'' is more limited and allows fewer kinds of facilities to qualify. More specifically, for underserved areas, a service facility includes credit union-owned electronic facilities (other than ATMs) that take deposits, accept loan applications, and disburse loans.[24] Credit union branches, certain shared branches, mobile branches, and offices operated on a regularly scheduled weekly basis also meet the current criteria for a service facility in an underserved area expansion. Under the current definition, shared locations to which an FCU has access by virtue of participating in a shared branching network without an ownership interest do not meet the criteria for a service facility in an underserved area. ATMs are excluded, even if wholly owned by the FCU. The proposal would change the definition to allow shared facilities to qualify as service facilities, without any requirement for shared ownership. The proposal would also permit ATMs to qualify as service facilities, whether wholly owned by an FCU or part of a shared branch network in which the FCU participates.

The proposal would make the definition of service facility for purposes of adding underserved areas identical to the definition of service facility for purposes of adding groups. The proposal also makes the definition of service facility in the glossary section of the Chartering Manual consistent with the other definitions. The Board emphasizes that neither the current rule nor this proposal permit a credit union's transactional website to count as a service facility for purposes of adding a group or an underserved area.

The NCUA invites comments on all aspects of the proposal.[25]

IV. Additional Request for Comment

Over time, the Board's definitions of terms like ''service facility'' have evolved, consistent with the underlying constraints of the FCU Act, to reflect the increasing role of technology in the provision of financial services. For example, the Board determined that a credit union-owned ATM was a service facility for purposes of group additions to MCB FCUs in 2003,[26] although it had initially not viewed an ATM as a service facility.[27] Similarly, in a 2012 Opinion Letter, the NCUA's Office of General Counsel concluded that a video teller machine which permits real-time interaction between a person and an FCU member is a service facility both for additions of groups and for additions of underserved areas.[28] The proposed amendments to the chartering manual outlined above represent a further evolution, reflecting technological advances as well as changes in consumer behaviors.

The Board is also now requesting comment on another possible evolution in the definition of service facility, specifically, whether a credit union's transactional website and mobile banking applications should be included in the definition of service facility. The Board previously proposed to amend the definition of ''service facility'' for group additions to MCB

[18] 12 U.S.C. 1759(d)(3).

[19] *Id.* 1759(c).

[20] 63 FR 71998, 72002 (Dec. 30, 1998); 68 FR 18334, 18335 (April 15, 2003).

[21] *Perez* v. *Mortgage Bankers Ass'n,* 575 U.S. 92, 101 (2015).

[22] *Nat'l Family Planning and Reproductive Health Ass'n, Inc.* v. *Sullivan,* 979 F.2d 227, 236 (D.C. Cir. 1992). (''[The agency] may not constructively rewrite the regulation, which was expressly based upon a specific interpretation of the statute, through internal memoranda or guidance directives that incorporate a totally different interpretation and effect a totally different result''); *Clean Ocean Action* v. *York,* 57 F.3d 328 (3d Cir. 1995).

[23] Chartering Manual, § IV.A.1.

[24] Id. § 3.III.F.

[25] Because this change will not add any increased burden, the Board is not providing the usual 60-day comment period before finalizing this rule. *See* NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and IRPS 15–1. 80 FR 57512 (Sept. 24, 2015), *available at https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf.*

[26] 68 FR 18334, 18352 (April 15, 2003).

[27] 63 FR 71998, 712002 (Dec. 30, 1998).

[28] OGC Op. No. 11–0965 (Aug. 2012), available at *https://www.ncua.gov/regulation-supervision/legal-opinions/2012/video-teller-machine.* Should this proposed rule become final, this opinion will be superseded, as there would no longer be an advantage to having a video teller machine, as opposed to an ATM.

FCUs to include online financial services, including computer-based and mobile phone channels meeting certain criteria for access.[29] In support of its proposal, the Board cited extensive data showing the increasing use of online and mobile banking.[30] After analyzing the comments it received on the proposal, the Board deferred action on it to a later date.[31]

The Board is now renewing its consideration of this issue. In the four years since the Board deferred action on its initial proposal, the proportion of financial services delivered through transactional websites has continued to increase. For example, in 2017, 40% of consumers reported primarily using online banking to manage their accounts.[32] The pandemic has accelerated the trend toward providing financial services digitally. According to the J.D. Power 2020 Retail Banking Satisfaction Survey, 35% of consumers report increased online banking using a computer since the pandemic began, with 17% reporting much more use. The pandemic also caused 30% of consumers to increase their use of mobile banking apps, with 11% stating they used mobile banking much more.[33] Additionally, as of April 2020, 39% of adults planned to make an online banking transaction such as account opening or debt consolidation in the next 30 days.[34] The transition to online financial services is expected to outlast the pandemic.[35] In light of the inexorably increasing use of digital financial services, the Board believes it is now appropriate to reconsider including transactional websites and mobile banking applications in the definition of service facilities.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The proposed rule changes the criteria for service facilities and facilitates the provision of credit union services to additional groups and underserved areas by MCB FCUs. As of September 30, 2020, there are 1,373 MCB FCUs, of which 974 have assets less than $100 million. Of these 974 MCB FCUs with assets less than $100 million, 286 are already participating in a shared branching network. This means that the remaining 688 MCB FCUs under $100 million may have additional incentive to participate in shared branching, as they will be able to use shared locations as a basis for expanding their FOM to additional groups or underserved areas.

Any benefit to small FCUs from the ability to add additional members is likely minimal. The negative effect on small FCUs whose members gain eligibility for membership in another credit union under these changes is also likely minimal. Although this rule is anticipated to economically benefit FCUs that choose to expand their FOMs, NCUA certifies that it will not have a significant economic impact on small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[36] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid Office of Management and Budget (''OMB'') control number. The current information collection requirements for the Chartering Manual are approved under OMB control number 3133–0015. This rule proposes to amend Chapter 2, Chapter 3 and Appendix 1 of Appendix B to Part 701 by changing the definition of service facilities for MCB FCUs seeking to add select groups or underserved areas. The proposed rule creates new strategic opportunities for MCB FCUs while not changing the information FCUs are required to supply to take advantage of these opportunities. Nevertheless, the total information collection burden will increase because the change means more FCUs will qualify to add select groups or underserved areas, which will lead to additional applications.

There are currently 1,373 multiple common bond FCUs, of which 594 participate in shared branching. The proposed change is estimated to increase the number of applications/amendments by an additional 90 respondents.

OMB Control Number: 3133–0015.

Title of information collection: Chartering and Field of Membership Manual, 12 CFR 701.1, App. B to Part 701.

Estimated number respondents: 8,245.

Estimated number of responses per respondent: 1.

Estimated total annual responses: 8,245.

Estimated total annual burden per response: 1.97.

Estimated total annual burden: 16,223.

The NCUA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments to (1) *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting the Agency under ''Currently under Review'' and to (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email

[29] 80 FR 76748, 76752 (Dec. 10, 2015).

[30] *Id.*

[31] 81 FR 88412, 88420 (Dec. 7, 2016).

[32] An additional 26 percent of consumers report mobile devices are their most frequently used banking method. *ABA Banking Journal blog* (Sept. 21, 2017), *https://bankingjournal.aba.com/2017/09/aba-survey-two-thirds-of-americans-use-digital-banking-channels-most-often/.*

[33] As summarized by Jim Marous, *Financial Brand blog,* (April 27, 2020), *https://thefinancialbrand.com/95735/digital-online-banking-coronavirus/.*

[34] Roy Urrico, ''Digital Transformation in the COVID–19 Age, *Credit Union Times* (April 30, 2020), *https://www.cutimes.com/2020/04/30/digital-transformation-in-the-covid-19-age/.*

[35] Stephanie Walden and Daphne Forman, ''5 Fintech Trends Likely to Stick Around After the Pandemic,'' *Forbes Advisor* (Sept. 28, 2020), *https://www.forbes.com/advisor/banking/fintech-trends-after-the-pandemic/.*

[36] 44 U.S.C. 3507(d); 5 CFR part 1320.

at *PRAComments@ncua.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[37]

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated above, the Board proposes to amend 12 CFR part 701, Appendix B as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In Appendix B to Part 701, revise Chapter 2 Section IV.A.1 to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

IV—Multiple Occupational/Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract to, and possessing a strong dependency relationship with, the other company) makes that person part of the occupational common bond of a select employee group within a multiple common bond. In this context, a ''strong dependency relationship'' is a relationship in which the entities rely on each other as measured by a pattern of regularly doing business with each other, for example, as documented by the number, the term length, and the dollar volume of prior and pending contracts between them.

A multiple common bond credit union's charter may also combine individual occupational groups that each consist of employees of a retailer or other business tenant of an industrial park, a shopping mall, office park or office building (each ''a park''). To be able to have this type of clause in its charter, the multiple common bond credit union first must receive a request from an authorized representative of the group or the park to establish credit union service. The park must be within the multiple common bond credit union's service area, and each occupational group must have fewer than 3,000 employees, who are eligible for membership only for so long as each is employed by a park tenant. Under this clause, a multiple common bond credit union can enroll group employees only while the group's retail or business employer is a park tenant, but such credit unions are free to serve employees of new groups under the above conditions as each respective employer becomes a park tenant.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or electronic facility, if the credit union participates in a shared branching network. This definition does not include the credit union's internet website.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's ''paid from'' or ''supervised from'' location is within the service area.

■ 3. In Appendix B to Part 701, revise Chapter 3 Section III.F to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

III.F—Service Facility

Once an ''underserved area'' has been added to a federal credit union's field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or an electronic facility that meets, at a minimum, the above requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or other electronic facility, if a credit union participates in a shared branching network.

This definition does not include the credit union's internet website.

■ 4. In Appendix B to Part 701 revise the entry for ''service facility'' in the Glossary section to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

Appendix 1—Glossary

* * * * *

Service facility—A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or

[37] Public Law 105–277, 112 Stat. 2681 (1998).

a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or other electronic facility, if a credit union participates in a shared branching network. This definition does not include the credit union's internet website.

* * * * *

[FR Doc. 2020–28277 Filed 1–8–21; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

20 CFR Part 501

RIN 1290–AA37

Rules of Practice and Procedure

AGENCY: Employees' Compensation Appeals Board, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is issuing this Notice of Proposed Rulemaking (NPRM) to seek public comments on a proposal to require electronic filing (e-filing) and electronic service (e-service) for attorneys and lay representatives representing parties in proceedings before the Employees' Compensation Appeals Board (ECAB or the Board). These proposed regulations would establish e-filing and e-service rules of practice and procedure for the Board that would apply where a governing statute, regulation, or executive order does not establish contrary rules of practice or procedure. The rule would mandate e-filing, makes e-service automatic of documents for parties represented by attorneys and duly authorized lay representatives, and provides an option for pro se/self-represented parties to utilize these capabilities. It would also allow the Board, in its discretion, to hold oral arguments by videoconference.

DATES: The Department invites interested persons to submit comments on the proposed rules of practice and procedure. To ensure consideration, comments must be in writing and must be received by February 10, 2021.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA37, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use docket number DOL–2020–0017 or key words such as ''Administrative practice and procedure'' or ''Workers' compensation.'' Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *https://www.regulations.gov,* including any personal information provided. If you need assistance to review the comments or the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *ECAB-Inquiries@dol.gov.*

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I explains the process of issuing a proposed rule concurrently with a companion direct final rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a section-by-section summary and discussion of the proposed regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule an identical ''direct final'' rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Board's procedural regulations would require representatives to use the Board's electronic system for filing and serving documents unless exempted by the Board for good cause. Some represented parties are already filing documents through the Board's existing electronic system on a voluntary basis. Moreover, this system is similar to those used by courts and other administrative agency electronic systems and will thus be familiar to the representatives. The proposed rule would also give self-represented (pro se) appellants the option to file and serve documents through the electronic system or via conventional methods. It would also allow the Board to hear oral argument by videoconference under the same discretionary criteria outlined in its 2008 proposal. These changes to the Board's procedures and practices are not expected to be controversial and are consistent with its statements in its 2008 proposal. 73 FR 35103 (''[T]he Board has anticipated that technological advances may, in the future, allow the filing, notice, service and presentation of documents and argument by electronic means.'').

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory

impacts of this rule on the regulated community. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

This rule is not an E.O. 13771 regulatory action because this rule has been determined by the Office of Information and Regulatory Affairs as not significant under E.O. 12866.

Pursuant to the Congressional Review Act (F U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule,' as defined by 5 U.S.C. 804(3).

II. Background of This Rulemaking

The Board is proposing a rule that would make e-filing and e-service mandatory for parties represented by attorneys and lay representatives. The Board's long-term goal is to have entirely electronic case files (e-case files), which would significantly benefit both the Board and the participants in Board appeals. All parties and representatives, as well as appropriate Board employees, would have access to all of the Board's case-related documents through the Board's case management system at any time and place, as long as they have access to the internet. In addition, digitally filed and served documents would allow the Board to leverage its case management system to more efficiently process incoming documents and reduce the time it takes to adjudicate appeals.

The Board's case management system is a consolidated web-based case tracking system that was deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the Department's three Adjudicatory Boards: the Administrative Review Board (created in 1996) is the adjudicatory Board that issues final agency decisions for the Secretary of Labor in cases arising under a variety of worker protection laws; the Benefits Review Board (created in 1972) reviews appeals of administrative law judges' decisions arising primarily under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and its extensions; and the Employees' Compensation Appeals Board (ECAB) (created in 1946) hears appeals taken from determinations and awards under the Federal Employees' Compensation Act by the Department's Office of Workers' Compensation Programs (OWCP) (whose predecessor agency was the Bureau of Federal Employees' Compensation as described in 20 CFR 1.6) with respect to claims of Federal employees injured in performance of duty.

The case management system has provided a broad range of capabilities to the staff of the Boards for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since the initial implementation. In FY 2013, the system was enhanced to provide access to the general public. Specifically, users have the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. Currently, more than 1,400 individuals are registered users of the system.

At present, there are two methods for placing the parties' pleadings into an electronic format for inclusion on the Board's case management system: pleadings can be filed in an electronic format; or pleadings can be digitally imaged after they have been filed in paper form. If e-filing and e-service remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, all pleadings submitted by attorneys and lay representatives are e-filed, imaging the remaining paper pleadings from self-represented parties (pro se parties) would be more manageable and allow greater efficiencies in the processing of appeals. In addition, utilization of e-filing and e-service will reduce case processing times by eliminating, in most cases, the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice of the quality of work and will reduce mailing costs for the Board and private parties.

Although the law requires Federal agencies to provide information and services via the internet, it also mandates that agencies consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. 44 U.S.C. 3501. Accordingly, the Board will make e-filing and e-service optional for self-represented parties. There is no known legal restriction to a requirement that attorneys and lay representatives use e-filing and make e-service automatic, nor are there undue costs or difficulties imposed, particularly because a party may obtain an exemption for good cause shown. The Board notes that in this regard, e-filing is generally mandatory for attorneys in the Federal court system. *See* 76 FR 56107 (Sept. 12, 2011) (Social Security Administration final rule announcing that it will require claimant representatives to use SSA's electronic services as they become available on matters for which the representatives request direct fee payment); 76 FR 63537 (Oct. 13, 2011) (U.S. Merit Systems Protection Board pilot program requiring agencies and attorneys representing appellants to file pleadings electronically for appeals in the Washington Regional Office and Denver Field Office); 84 FR 14554 (Apr. 10, 2019) (Occupational Safety and Health Review Commission final rule adopting mandatory electronic filing and service); 84 FR 37081 (July 31, 2019) (U.S. Patent and Trademark Office final rule amending its Rules of Practice in Trademark Cases and Rules of Practice in Filings to mandate electronic filing of trademark applications and submissions associated with trademark applications and registrations). Individuals who are e-filing appeals to the Board need access to a computer with internet connectivity and an email account.

III. Section-by Section Analysis of Proposed Rule

Title 20

Part 501 Rules of Procedure

Section 501.3 Notice of Appeal

Current § 501.3(a) defines who may ''file for review'' from a final decision of the Director. Proposed § 501.3(a) would change the phrase ''file for review'' to ''file an appeal'' to reflect the terminology contained in this section.

Current § 501.3(b) defines the ''place of filing'' as with the Clerk of the Appellate Boards at a specific mailing address. Proposed § 501.3(b) would define ''how to file'' appeals and all post-appeal pleadings and motions, requiring e-filing by attorneys and lay representatives beginning 45 days after the effective date of the rule and allowing for e-filing by self-represented appellants. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows those who were previously filing and serving documents by mail to adjust to electronic filing.

Current § 501.3(c)(2) contains requirements for the content of an appeal to the Board regarding the name and contact information for an appellant or a deceased employee who is the subject of an appeal. In addition it requires a signed authorization identifying the name and contact

information of his or her representative, if applicable. Proposed § 501.3(c)(2) would require the identifying contact information to include an email address.

Current § 501.3(c)(6) requires an appellant to sign the notice of appeal. Proposed § 501.3(c)(6) would allow for the use of an electronic signature when an appeal is electronically filed by a registered user.

Current § 501.3(f) sets forth how the date of filing an appeal is determined by the Board for purposes of timeliness of an appeal. Proposed § 501.3(f) would change the word ''Clerk'' to ''Clerk of the Appellate Boards'' to reflect the terminology contained in this section.

Current § 501.3(f)(1) sets forth how timeliness of an appeal is determined and provides that a notice of appeal is deemed to be ''received when received by the Clerk.'' Proposed § 501.3(f)(1) would include a provision for the timeliness of an appeal when e-filed. It also contains technical amendments to change the terminology ''United States Mail'' to ''United States Postal Service''; ''Clerk'' to ''Clerk of the Appellate Boards''; and ''received when received'' to ''filed when received.'' Paragraph (f)(2) would be renumbered to (f)(3), and proposed new paragraph (f)(2) would clarify that e-filed documents are deemed filed as of the date and time the Board's electronic case management system records its receipt and must be filed by 11:59:59 p.m. Eastern Time on the due date.

Current § 501.3(h) describes when a notice of appeal will be considered incomplete. Proposed § 501.3(h) would change the terminology from ''Clerk'' to ''Clerk of the Appellate Boards.''

Section 501.4 Case Record; Inspection; Submission of Pleadings and Motions

Current § 501.4(e) requires all filings with the Board to include an original and two copies. This proposal would remove that paragraph because paper copies are not necessary when e-filing, and the Board no longer needs multiple paper copies from self-represented parties or those who are granted an exemption from e-filing.

Section 501.5 Oral Argument

Current § 501.5 provides that oral argument is held only in Washington, DC. The proposal would allow the Board, in its discretion, to hold oral argument by videoconference. It also provides that the notice to the parties will specify whether the oral argument is to be held in person or by videoconference. This would provide the Board with greater flexibility and efficiency. Oral arguments (including those conducted by videoconference) will not be recorded because ECAB decisions are not subject to further review by OWCP or the courts.

IV. Administrative Requirements of the Proposed Rulemaking

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

Executive Order 13211, Energy Supply, Distribution, or Use

The Department has reviewed this proposed rule and has determined that the provisions of Executive Order 13211 are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

List of Subjects in 20 CFR Part 501

Administrative practice and procedure; Claims; Government employees; Worker's compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 501 as follows:

PART 501 [AMENDED]

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: Federal Employees' Compensation Act, 5 U.S.C. 8101, *et seq.*

■ 2. Amend § 501.3 by revising paragraphs (a), (b), (c)(2) and (6), (f), and (h) to read as follows:

§ 501.3 Notice of Appeal.

(a) *Who may file.* Any person adversely affected by a final decision of the Director, or his or her authorized Representative, may file an appeal of such decision to the Board.

(b) *How to file.* (1) Beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], attorneys and lay representatives must file appeals with the Board electronically through the Board's case management system, along with all post-appeal pleadings and motions as set forth in paragraphs (d) and (h) of this section and §§ 501.4(b) through (d), 501.5(b) and (g); 501.7 (a), (e), and (f), and 501.9(b), (c), and (e).

(2) Attorneys and lay representatives may request an exemption (pursuant to § 501.4(d)) for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) Self-represented parties may either file appeals electronically through the Board's case management system or file appeals by mail or other method of delivery to the Clerk of the Appellate Boards at 200 Constitution Avenue NW, Washington, DC 20210.

(c) * * *

(2) Full name, address, email address, and telephone number of the Appellant and the full name of any deceased employee on whose behalf an appeal is taken. In addition, the Appellant must provide a signed authorization identifying the full name, address, email address, and telephone number of his or her representative, if applicable.

* * * * *

(6) Signature: An Appellant must sign the notice of appeal. A filing made electronically through the Board's case

management system by a registered user containing the Appellant's name in an appropriate signature block constitutes the Appellant's signature.

* * * * *

(f) *Date of filing.* A notice of appeal complying with this paragraph (c) is considered to have been filed only if received by the Clerk of the Appellate Boards within the period specified under paragraph (e) of this section, except as otherwise provided in this subsection:

(1) If the notice of appeal is sent via the U.S. Postal Service or commercial carrier and use of the date of delivery as the date of filing would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the postmark or other carriers' date markings. The date appearing on the U.S. Postal Service postmark or other carriers' date markings (when available and legible) shall be prima facie evidence of the date of mailing. If there is no such postmark or date marking, or it is illegible, then other evidence including, but not limited to, certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date. If a notice of appeal is delivered or sent by means other than the U.S. Postal Service or commercial carrier, including e-filing, personal delivery, or fax, the notice is deemed to be filed when received by the Clerk of the Appellate Boards.

(2) For electronic filings made through the Board's case management system, a document is deemed filed as of the date and time the Board's electronic case management system records its receipt, even if transmitted after the close of business. To be considered timely, an e-filed document or pleading must be filed by 11:59:59 p.m. Eastern Time on the due date.

(3) In computing the date of filing, the 180-day time period for filing an appeal begins to run on the day following the date of the OWCP decision. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period runs to the close of the next business day.

* * * * *

(h) *Incomplete notice of appeal.* Any timely notice of appeal that does not contain the information specified in paragraph (c) of this section will be considered incomplete. On receipt by the Board, the Clerk of the Appellate Boards will inform Appellant of the deficiencies in the notice of appeal and specify a reasonable time to submit the requisite information. Such appeal will be dismissed unless Appellant provides the requisite information in the specified time.

§ 501.4 [Amended]

■ 3. Amend § 501.4 by removing paragraph (e).

■ 4. Amend § 501.5 by revising paragraphs (c) and (f) to read as follows:

§ 501.5 Oral argument.

* * * * *

(c) *Notice of argument.* If a request for oral argument is granted, the Clerk will notify the Appellant and the Director at least 30 days prior to the date set for argument. The notice of oral argument will state the issues that the Board has determined will be heard and whether the oral argument will take place in person in Washington, DC or by videoconference.

* * * * *

(f) *Location.* Oral argument in person is heard before the Board only in Washington, DC. The Board may, in its discretion, hear oral argument by videoconference. The Board does not reimburse costs associated with an oral argument.

* * * * *

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28048 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 641, 655, 658, 667, and 683

Office of Workers' Compensation Programs

20 CFR Part 726

Office of the Secretary of Labor

29 CFR Parts 7, 8, 22, 24, 26, 29, 37, 38, and 96

Office of Labor-Management Standards

29 CFR Parts 417 and 458

Wage and Hour Division

29 CFR Parts 500, 525, 530, and 580

Occupational Safety and Health Administration

29 CFR Parts 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1988

Office of Federal Contract Compliance Programs

41 CFR Part 60–30

RIN 1290–AA28

Rules of Practice and Procedure Concerning Filing and Service and Amended Rules Concerning Filing and Service

AGENCY: Employment and Training Administration, Office of Workers' Compensation Programs, Office of the Secretary, Office of Labor-Management Standards, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is issuing this Notice of Proposed Rulemaking (NPRM) to seek public comments on a proposal to require electronic filing (e-filing) and make acceptance of electronic service (e-service) automatic for attorneys and non-attorney representatives representing parties in proceedings before the Administrative Review Board (Board), unless the Board authorizes non-electronic filing and service for good cause. Self-represented persons

will have the option of e-filing or of filing papers by conventional means. This proposed rule would establish a new part containing rules of practice and procedure for the Board and amend existing regulations concerning filing and service that would apply where a governing statute or executive order does not establish contrary rules of filing and service. It would also make other minor corrections to update existing regulations.

DATES: The Department invites interested persons to submit comments on the proposed rule. To ensure consideration, comments must be in writing and must be received by February 10, 2021.

ADDRESSES: You may send comments, identified by Regulatory Identification Number (RIN) 1290–AA28, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use key words such as ''Administrative Review Board'' to search documents accepting comments. Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking. *Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will generally be posted without change to *https://www.regulations.gov,* including any personal information provided. If you need assistance to review the comments or the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov.*

Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov.*

I. Supplementary Information

This preamble is divided into four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a discussion of the proposed changes to the regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

II. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule an identical ''direct final'' rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed enactment of the Board's procedural regulations and proposed revisions to existing program regulations would require parties to use the Board's electronic system for filing and serving documents unless exempted by the Board, as well as make technical corrections to addresses, add cross-references to rules of practice and procedure, and specify where the Secretary has delegated authority under a program to the ARB. Some parties are already filing documents through the Board's existing electronic system on a voluntary basis. Moreover, this system is similar to those used by courts and other administrative agencies and will thus be familiar to some representatives. The proposed rule would also give self-represented (pro se) parties the option to file and serve documents through the electronic system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule will also be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

III. Background of This rulemaking

The Department is proposing a rule that would make e-filing mandatory and acceptance of e-service automatic for parties before the Administrative Review Board represented by attorneys and non-attorney representatives. It proposes to do this by enacting its own rules of practice and procedure and amending existing program regulations. Currently, e-filing is optional and e-service is not available through the Board's existing electronic system: *DOL Appeals.* As a result, the Board receives filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-case files), which would significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents, reducing the time it takes to adjudicate claims. Requiring attorneys and non-attorney representatives to use e-filing and e-service will help the Board move toward this goal.

The Board currently uses *DOL Appeals,* a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: The Board, the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB). The Board has been delegated authority by the Secretary of Labor to issue

decisions on appeal in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H–1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. The BRB reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and its extensions. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system has provided a broad range of capabilities to the Boards' staff for inputting, processing, tracking, managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to the general public. Currently, more than1,400 individuals are registered users of the *DOL Appeals* system. Users have the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. However, users who e-file documents must still serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* does not have an automatic e-service function like that of the Federal courts' electronic filing and service systems. Moreover, because e-filing is optional, the Board continues to receive many paper filings, including from attorneys and non-attorney representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, parties are required to e-file all documents through the Department's electronic case management system, imaging the remaining paper pleadings from authorized parties would be more manageable for the Board. In addition, greater utilization of e-filing and e-service will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Additionally, in an effort to improve e-filing and e-service Department-wide, the rule amends provisions regarding filing and service with the Office of Administrative Law Judges (OALJ) for consistency with proposed amendments to the OALJ rules of practice and procedure in 29 CFR part 18.

IV. Discussion of Changes

A. Administrative Review Board Rules of Practice and Procedure

The Department proposes to add a new section to the Code of Federal Regulations at 29 CFR part 26 in order to establish rules of practice and procedure for the Board regarding filing and service and to address some general procedural matters.

§ 26.1 Purpose and Scope

This section is a new provision addressing the purpose of part 26 and the scope of the Board's authority. Proposed paragraph (a) provides that part 26 contains the rules of practice of the Board and that these rules shall govern all appeals and proceedings before the Board, except where inconsistent with a governing statute, regulation, or executive order. Proposed paragraph (b) provides that the Board has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations, as provided in Secretary's Order 01–2020. The Board shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020 (or any successor to that order).

§ 26.2 General Procedural Matters

This section is a new provision containing procedural provisions. Proposed paragraph (a) supplies definitions. Proposed paragraph (a)(1) defines the *ARB* to mean the Administrative Review Board. Proposed paragraph (a)(2) defines *Electronic case management system* to mean the Department of Labor's electronic filing and electronic service system for adjudications.

Proposed paragraph (b) addresses computation of time. Proposed paragraph (b)(1) provides that when computing a time period stated in days, the day of the event that triggers the period should be excluded; every day, including intermediate Saturdays, Sundays, and legal holidays, should be counted; and the last day of the period should be included, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday. Proposed paragraph (b)(2) addresses when the ''last day'' ends. Proposed paragraph (b)(2)(i) provides that for electronic filing via the Department's electronic case management system or via other electronic means, the ''last day'' ends at 11:59:59 p.m. Eastern Time on the due date. The Board chose this time zone because of its location in Washington, DC. Proposed paragraph (b)(2)(ii) provides that for non-electronic filing, the ''last day'' ends at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, D.C on the due date. These rules are generally consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 6(a), and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 26(a)(4). This provides a default where the applicable statute, regulation, executive order, or judge's order is silent. Proposed paragraph (c) provides the Board's mailing address.

§ 26.3 Filing

This section is a new provision containing all filing requirements. Proposed paragraph (a) governs e-filing through the Department's electronic case management system. Proposed paragraph (a)(1) requires attorneys and lay representatives to file all petitions, pleadings, exhibits, and other documents with the Board via the Department's electronic case management system, and notes that paper copies are not required unless requested by the Board. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. This requirement would apply only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, would allow the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing is mandatory, parties will have received a notice of appeal rights with updated information.

Although Federal agencies are required by law to provide information and services via the internet, agencies must also consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. *See* 44 U.S.C. 3501.

Accordingly, the Department proposes to authorize non-electronic filing and service for good cause and will make e-filing and e-service optional for self-represented parties. The Board notes in this regard that e-filing is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals, unless an exemption for good cause is granted; only self-represented parties have the option of filing pleadings in paper form. Accordingly, proposed paragraph (a)(2) provides that attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

Proposed paragraph (a)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or non-electronic format. This gives these parties the flexibility to easily participate in their cases.

Proposed paragraph (a)(4) provides that documents filed via the Department's electronic case management system are filed when received, and are received as of the date and time recorded by the system. Paragraph (a)(5) allows for electronic signatures when a filing is made through a registered user's account and authorized by that person, along with the person's name. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(3) and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(2)(B)(iii). Many program regulations require filed documents to be signed, and this provision allows filers to comply while filing via the Department's electronic case management system.

Proposed paragraph (a)(6) provides that a person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board. The Board encourages filers to retain documentation of the failure in these instances. Additionally, if technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

Proposed paragraph (b) addresses alternate methods of filing for persons who are excepted from e-filing or who have opted not to use e-filing and provides that documents filed using methods other than the Department's electronic case management system (*e.g.,* by email or mail) are considered filed when received by the Clerk of the Appellate Boards. This similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(d)(2), and provides a default for when laws governing a particular program do not specify the date of filing.

§ 26.4 Service

This section contains all service requirements. Proposed paragraph (a) addresses electronic service. Proposed paragraph (a)(1) provides that electronic service may be completed by email if consented to in writing by the party being served. Proposed paragraph (a)(2) deems service completed by sending the document to a user registered with the Department's electronic case management system by filing via this system. This is consistent with the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2)(E), and the Federal Rules of Appellate Procedure, *see* Fed. R. App. P. 25(c)(2), and provides a default for when laws governing a particular program do not specify the date of service. Proposed paragraph (a)(2) further provides that registering to use the Department's electronic case management system constitutes consent to service through the system. The Board would also issue decisions and orders electronically to registered users who are parties to a case.

Proposed paragraph (b) addresses non-electronic service and allows for service to be completed by personal delivery, mail, or delivery via commercial carrier.

Proposed paragraph (c) provides the effective date of each form of service. Proposed paragraph (c)(1) provides that service by personal delivery is effected on the date the document is delivered to the person being served. Proposed paragraph (c)(2) provides that service by mail or commercial carrier is effected on the date the document is mailed or delivered to the commercial carrier. Proposed paragraph (c)(3) provides that service by electronic means, including via the Department's electronic case management system and via email, is effective on sending. This is similar to the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 5(b)(2), and provides a default for when laws governing a particular program do not specify the date of service.

B. Additional Changes

The Department proposes to revise several parts of the Code of Federal Regulations: 20 CFR parts 641, 655, 658, 667, 683, and 726; 29 CFR parts 7, 8, 22, 24, 29, 37, 38, 96, 417, 458, 500, 525, 530, 580, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987 and 1988; and 41 CFR part 60–30 to harmonize the filing provisions with 29 CFR part 26 and improve e-filing and e-service Department-wide.

1. Changes to Requirements for Filing and Service by Mail or Personal Delivery

Many regulations require parties to file and serve documents by mail or by personal delivery in cases pending before the Board. To ensure that the regulations allow for e-filing and e-service through the Department's electronic case management system, and via email when permissible, the Department proposes to remove requirements for filing and service by mail and personal delivery to allow for e-filing and e-service, except where required by statute. Using the general terms ''filing'' and ''service'' will allow for all forms of filing and service permitted by 29 CFR part 26. The Department also proposes to cross-reference the Board's rules of practice and procedure at 29 CFR part 26 and the OALJ's rules of practice and procedure at 29 CFR part 18 where necessary to clarify the application of those parts.

Further, in 29 CFR parts 24 and 1978–88, where the Occupational Safety and Health Administration (OSHA) is required to deliver its findings and orders by certified mail, the Department proposes to allow OSHA to deliver such findings and orders by means that allow it to confirm delivery to all parties of record and each party's legal counsel. This would provide flexibility to the agency and allow for electronic delivery when appropriate.

2. Changes to Requirements To Send Copies of Documents

Many regulations require parties to send additional paper copies of all documents to the Board. To allow for better transition to full electronic case management and to simplify the filing process for parties, the Department proposes to remove requirements to send copies of all documents to the Board. Paper copies are not necessary when e-filing, and the Board no longer needs multiple paper copies from self-represented parties or those who are granted an exemption from e-filing.

3. Nomenclature and Other Technical Changes

To update the regulations for clarity, accuracy, and to comply with 29 CFR part 26, the Department proposes to make several technical changes to the regulations. Specifically, the Department proposes to remove outdated mailing addresses for both the Board and the Office of Administrative

Law Judges. The Department also proposes to update the regulations that require documents to be filed with the Executive Director of the Board to require that documents be filed the Clerk of the Appellate Boards. The Department also proposes to update the authorities section in 29 CFR parts 7, 8, and 458 to include the applicable Secretary's Order, Secretary's Order 01–2020. Finally, the Department proposes to update the pronouns in 29 CFR 417.15 to account for a previous change from ''Secretary'' to ''Board.''

4. Changes to References to the Secretary

The Department proposes to revise references to the ''Secretary'' or the ''authority head'' to the ''Administrative Review Board,'' ''Board,'' or ''ARB'' to clarify the authority and responsibilities of the Board. Many regulations, particularly older ones, contain references to the ''Secretary'' or ''authority head'' for responsibilities that have been delegated to the Board by the Secretary. Where necessary, these changes are accompanied by a provision allowing for discretionary review by the Secretary, in accordance with Secretary's Order 01–2020 (or any successor to that order). In such cases, Board decisions would become final in accordance with the finality provisions of Secretary's Order 01–2020, or any successor to that order.

V. Administrative Requirements of the Proposed Rulemaking

Executive Orders 12866, Regulatory Planning and Review; 13563, Improving Regulation and Regulatory Review; and 13777, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Department of Labor, in coordination with the Office of Management and Budget (OMB), determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

Executive Order 13211, Energy Supply, Distribution, or Use

The Department has reviewed this proposed rule and has determined that the provisions of Executive Order 13211 are not applicable as this is not a significant regulatory action and there are no direct or implied effects on energy supply, distribution, or use.

List of Subjects

20 CFR Part 641

Administrative practice and procedure, Grievance procedure and appeals process, Senior Community Service Employment Program, Services to participants.

20 CFR Part 655

Administrative practice and procedure, Labor certification process for temporary employment.

20 CFR Part 658

Administrative practice and procedure, Complaint system, Discontinuation of services, State workforce agency compliance, Federal application of remedial action to state workforce agencies, Wagner-Peyser Act Employment Service.

20 CFR Part 667

Adjudication and Judicial Review, Administrative practice and procedure, Oversight and monitoring, Grievance procedures, complaints, and state appeal processes, Sanctions, corrective actions, and waiver of liability, Reporting and recordkeeping requirements, Resolution of findings, Workforce Investment Act.

20 CFR Part 683

Adjudication and judicial review, Administrative practice and procedure, Funding and closeout, Grievance

procedures, complaints, and state appeal processes, Oversight and resolution of findings, Pay-for-performance contract strategies, Reporting and recordkeeping requirements, Rules, costs, and limitations, Sanctions, corrective actions, and waiver of liability, Workforce Innovation And Opportunity Act.

20 CFR Part 726

Administrative practice and procedure, Black lung benefits, Authorization of self-insurers, Civil money penalties.

29 CFR Part 7

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 8

Administrative practice and procedure, Government contracts, Minimum wages.

29 CFR Part 22

Administrative practice and procedure, Appeal to the Administrative Review Board.

29 CFR Part 24

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Environmental protection, Energy Reorganization Act of 1974, as amended.

29 CFR Part 26

Administrative practice and procedure.

29 CFR Part 29

Administrative practice and procedure, Apprenticeship programs, Labor standards, State apprenticeship agencies.

29 CFR Part 37

Administrative practice and procedure, Workforce Investment Act of 1998, Obligations of recipients and governors, Compliance procedures.

29 CFR Part 38

Administrative practice and procedure, Compliance procedures, Obligations of recipients and governors, Workforce Innovation and Opportunity Act.

29 CFR Part 96

Administrative practice and procedure, Audit requirements, Grants, contracts, and other agreements.

29 CFR Part 417

Administrative practice and procedure, Labor management standards, Procedures for removal of local labor organization officers.

29 CFR Part 458

Administrative practice and procedure, Standards of conduct, Labor-Management Reporting and Disclosure Act of 1959.

29 CFR Part 500

Administrative practice and procedure, Migrant and seasonal agricultural worker protection, Enforcement, Worker protections, Registration, Motor vehicles, Housing.

29 CFR Part 525

Administrative practice and procedure, Workers with disabilities, Wage rates, Special certificates.

29 CFR Part 530

Administrative practice and procedure, Homeworkers, Employer Certificates, Denial/revocation of certificates, Civil money penalties.

29 CFR Part 580

Administrative practice and procedure, Assessing and contesting, Civil money penalties.

29 CFR Part 1978

Administrative practice and procedure, Employee protection, Findings, Investigations Litigation, Retaliation complaints, Surface Transportation Assistance Act of 1982.

29 CFR Part 1979

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Retaliation complaints, Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

29 CFR Part 1980

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Sarbanes-Oxley Act of 2002.

29 CFR Part 1981

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, Pipeline Safety Improvement Act of 2002, Retaliation complaints.

29 CFR Part 1982

Administrative practice and procedure, Employee protection, Findings, Litigation, Investigations, National Transit Systems Security Act, Federal Railroad Safety Act, Retaliation complaints.

29 CFR Part 1983

Administrative practice and procedure, Consumer Product Safety Improvement Act of 2008, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1984

Administrative practice and procedure, Affordable Care Act, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1985

Administrative practice and procedure, Consumer Financial Protection Act of 2010, Employee protection, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1986

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Retaliation complaints, Seaman's Protection Act.

29 CFR Part 1987

Administrative practice and procedure, Employee protection, FDA Food Safety Modernization Act, Findings, Investigations, Litigation, Retaliation complaints.

29 CFR Part 1988

Administrative practice and procedure, Employee protection, Findings, Investigations, Litigation, Moving Ahead for Progress in the 21st Century Act, Retaliation complaints.

41 CFR Part 60–30

Administrative practice and procedure, Equal opportunity, Executive Order 11246, Property management, Public contracts.

For the reasons discussed in the preamble, the Department proposes to amend Titles 20, 29, and 41 of the Code of Federal Regulations as set forth below:

DEPARTMENT OF LABOR

Title 20: Employees' Benefits

Employment and Training Administration

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

■ 1. The authority citation for part 641 continues to read as follows:

Authority: 42 U.S.C. 3056 *et seq.;* Pub. L. 114–144, 130 Stat. 334 (Apr. 19, 2016).

■ 2. In § 641.900, revise paragraphs (d) and (e) to read as follows:

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

* * * * *

■ 3. In § 641.920, revise paragraphs (d)(1) and (5) to read as follows:

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

* * * * *

(d) * * *

(1) Within 21 days of receipt of the Department's final determination, the grantee may file a request for a hearing with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, with a copy to the Department official who signed the final determination.

* * * * *

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the ARB (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. The Department will deem any exception not specifically argued to have been waived. A copy of the petition for review must be sent to the grant officer at that time. If, within 30 days of the filing of the petition for review, the ARB does not notify the parties that the case has been accepted for review, then the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 4. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

* * * * *

■ 5. In § 655.182, revise paragraphs (f)(3) and (f)(5)(i) to read as follows:

§ 655.182 Debarment.

* * * * *

(f) * * *

(3) *Hearing.* The recipient of a Notice of Debarment may request a debarment hearing within 30 calendar days of the date of a Notice of Debarment or the date of a final determination of the OFLC Administrator after review of rebuttal evidence submitted pursuant to § 655.182(f)(2). To obtain a debarment hearing, the debarred party must, within 30 days of the date of the Notice or the final determination, file a written request with the Chief Administrative Law Judge, United States Department of Labor, in accordance with 29 CFR part 18, and simultaneously serve a copy to the OFLC Administrator. The debarment will take effect 30 days from the date the Notice of Debarment or final determination is issued, unless a request for review is properly filed within 30 days from the issuance of the Notice of Debarment or final determination. The timely filing of a request for a hearing stays the debarment pending the outcome of the hearing. Within 10 days of receipt of the request for a hearing, the OFLC Administrator will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

* * * * *

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ will be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

* * * * *

■ 6. In § 655.473, revise paragraphs (f)(3)(i) and (f)(5)(i) to read as follows:

§ 655.473 Debarment.

* * * * *

(f) * * *

(3) *Request for review.* (i) The recipient of a Notice of Debarment or Final Determination seeking to challenge the debarment must request review of the debarment within 30 calendar days of the date of the Notice of Debarment or the date of the Final Determination by the OFLC Administrator after review of rebuttal

evidence submitted under paragraph (f)(2) of this section. A request for review of debarment must be filed in writing with the Chief ALJ, United States Department of Labor, in accordance with 29 CFR part 18, with a simultaneous copy served on the OFLC Administrator; the request must clearly identify the particular debarment determination for which review is sought; and must set forth the particular grounds for the request. If no timely request for review is filed, the debarment will take effect on the date specified in the Notice of Debarment or Final Determination, or if no date is specified, 30 calendar days from the date the Notice of Debarment or Final Determination is issued.

* * * * *

(5) *Review by the ARB.* (i) Any party wishing review of the decision of an ALJ must, within 30 calendar days of the decision of the ALJ, petition the ARB to review the decision in accordance with 29 CFR part 26. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 calendar days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 calendar days after the receipt of a timely filing of the petition, the decision of the ALJ is the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

* * * * *

■ 7. In § 655.845, revise paragraph (f) to read as follows:

§ 655.845 What rules apply to appeal of the decision of the administrative law judge?

* * * * *

(f) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, shall be received by the Board either on or before the due date.

* * * * *

■ 8. In § 655.1245, revise paragraph (f) to read as follows:

§ 655.1245 Who can appeal the ALJ's decision and what is the process?

* * * * *

(f) All documents submitted to the Board must be filed with the Administrative Review Board in accordance with 29 CFR part 26. Documents are not deemed filed with the Board until actually received by the Board. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 9. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 10. In § 658.710, revise paragraph (d) to read as follows:

§ 658.710 Decision of the Administrative Law Judge.

* * * * *

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by filing an appeal with the Administrative Review Board in accordance with 29 CFR part 26.

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 11. The authority citation for part 667 continues to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 12. In § 667.800, revise paragraph (d) to read as follows:

§ 667.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

* * * * *

■ 13. In § 667.830, revise paragraph (b) to read as follows:

§ 667.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 14. The authority citation for Part 683 is revised to read as follows:

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 186, 189, 195, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 15. In § 683.800, revise paragraph (d) to read as follows:

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

* * * * *

(d) A request for a hearing must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, with one copy to the Departmental official who issued the determination.

* * * * *

■ 16. In § 683.830, revise paragraph (b) to read as follows:

§ 683.830 When will the Administrative Law Judge issue a decision?

* * * * *

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 01–2020), specifically identifying the procedure, fact, law, or policy to which exception is taken, in accordance with 29 CFR part 26. Any exception not specifically raised in the petition is deemed to have been waived. A copy of

the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. In any case accepted by the ARB, a decision must be issued by the ARB within 180 days of acceptance. If a decision is not so issued, the decision of the ALJ constitutes final agency action.

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

■ 17. The authority citation for part 726 is revised to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.,* 902(f), 925, 932, 933, 934, 936; 33 U.S.C. 901 *et seq.;* 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990 (as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015)); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary's Order 10–2009, 74 FR 58834.

■ 18. In § 726.308, revise paragraphs (a) and (b) to read as follows:

§ 726.308 Service and computation of time.

(a) Service of documents under this subpart while the matter is before OWCP shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's, or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) Service made after a complaint is filed under § 726.309 must be made in accordance with 29 CFR part 18, as appropriate. When proceedings are initiated for review by the Administrative Review Board under § 726.314, service must be made in accordance with 29 CFR part 26, as appropriate.

* * * * *

■ 19. In § 726.314, revise the section heading and paragraph (a) to read as follows:

§ 726.314 Review by the Administrative Review Board.

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Administrative Review Board (Board) for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

* * * * *

■ 20. Revise § 726.316 to read as follows:

§ 726.316 Filing and service.

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery by mail.* Documents are not deemed filed with the Board until actually received by the Board either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(c) *Manner and proof of service.* A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26.

■ 21. Revise § 726.317 to read as follows:

§ 726.317 Discretionary review.

(a) Following receipt of a timely petition for review, the Administrative Review Board (Board) shall determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Board declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Board's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Board.

(b) The Board's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Board deems appropriate.

(c) Upon receipt of the Board notice, the Director shall forward the record to the Board.

■ 22. Revise § 726.318 to read as follows:

§ 726.318 Decision of the Administrative Review Board.

The Administrative Review Board's (Board) review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Board's review of conclusions of law shall be de novo. Upon review of the decision, the Board may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Board's decision shall be served upon all parties and the Chief Administrative Law Judge in accordance with 29 CFR part 26.

Title 29: Labor

OFFICE OF THE SECRETARY OF LABOR

PART 7—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

■ 23. The authority citation for part 7 is revised to read as follows:

Authority: Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301, 3 CFR, 1949–1953 Comp., p. 1007; sec. 2, 48 Stat. 948 as amended; 40 U.S.C. 276c; secs. 104, 105, 76 Stat. 358, 359; 40 U.S.C. 330, 331; 65 Stat. 290; 36 FR 306, 8755; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 24. Revise § 7.3 to read as follows:

§ 7.3 Where to file.

The petition accompanied by a statement of service shall be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. In addition, copies of the petition shall be served upon each of the following:

(a) The Federal, State, or local agency, or agencies involved;

(b) The officer issuing the wage determination; and

(c) Any other person (or the authorized representatives of such persons) known, or reasonably expected, to be interested in the subject matter of the petition.

■ 25. Revise § 7.7 to read as follows:

§ 7.7 Presentations of other interested persons.

Interested persons other than the petitioner shall have a reasonable opportunity as specified by the Board in particular cases to submit to the Board written data, views, or arguments relating to the petition. Such matter

should be filed with the Administrative Review Board, U.S. Department of Labor, in accordance with 29 CFR part 26. Copies of any such matter shall be served on the petitioner and other interested persons.

■ 26. In § 7.9, revise paragraph (a) to read as follows:

§ 7.9 Review of decisions in other proceedings.

(a) Any party or aggrieved person shall have a right to file a petition for review with the Board within a reasonable time from any final decision in any agency action under part 1, 3, or 5 of this subtitle.

* * * * *

■ 27. Revise § 7.12 to read as follows:

§ 7.12 Intervention; other participation.

(a) For good cause shown, the Board may permit any interested person or party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

(1) The petitioner's relationship to the matters involved in the proceedings; and

(2) The nature of the presentation which he would make.

(b) Copies of the petition shall be served to all parties or interested persons known to participate in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

■ 28. Amend § 7.16 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and

■ d. Revising newly redesignated paragraph (b).

The revisions read as follows:

§ 7.16 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be by the filing party or interested person and in accordance with 29 CFR part 26. Service by mail is complete on mailing.

* * * * *

PART 8—PRACTICE BEFORE THE ADMINISTRATIVE REVIEW BOARD WITH REGARD TO FEDERAL SERVICE CONTRACTS

■ 29. The authority citation for part 8 is revised to read as follows:

Authority: Secs. 4 and 5, 79 Stat. 1034, 1035, as amended by 86 Stat. 789, 790, 41 U.S.C. 353, 354; 5 U.S.C. 301; Reorg. Plan No. 14 of 1950, 64 Stat. 1267, 5 U.S.C. Appendix; 76 Stat. 357–359, 40 U.S.C. 327–332; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 30. Amend § 8.10 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d); and

■ d. Revising newly redesignated paragraph (b).

The revisions read as follows:

§ 8.10 Filing and service.

(a) *Filing.* All papers submitted to the Board under this part shall be filed with the Clerk of the Appellate Boards, U.S. Department of Labor.

(b) *Manner of service.* Service under this part shall be in accordance with 29 CFR part 26. Service by mail is complete on mailing. For purposes of this part, filing is accomplished upon the day of service, by mail or otherwise.

* * * * *

■ 31. In § 8.12, by revise the introductory text to read as follows:

§ 8.12 Intervention; other participation.

For good cause shown, the Board may permit any interested party to intervene or otherwise participate in any proceeding held by the Board. Except when requested orally before the Board, a petition to intervene or otherwise participate shall be in writing and shall state with precision and particularity:

* * * * *

PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 32. The authority citation for part 22 continues to read as follows:

Authority: Pub. L. 99–509, § 6101–6104, 100 Stat. 1874, 31 U.S.C. 3801–3812.

■ 33. In § 22.2:

■ a. Redesignate paragraphs (b) through (r) as paragraphs (c) through (s); and

■ b. Add new paragraph (b).

The addition reads as follows:

§ 22.2 Definitions.

* * * * *

(b) *ARB* means the Administrative Review Board delegated to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01–2020 (or any successor to that order).

* * * * *

■ 34. In § 22.10, remove the words ''authority head'' and add in their place the word ''ARB'' wherever they occur in paragraphs (h) through (k) and revise paragraph (l).

The revision reads as follows:

§ 22.10 Default upon failure to file an answer.

* * * * *

(l) If the ARB decides that the defendant's failure to file a timely answer is not excused, the ARB shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the ARB issues such decision and it becomes final in accordance with Secretary's Order 01–2020 (or any successor to that order).

■ 35. In § 22.12, revise paragraph (a) to read as follows:

§ 22.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by 29 CFR part 18. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

* * * * *

■ 36. In § 22.14, revise paragraph (a)(2) to read as follows:

§ 22.14 Separation of functions.

(a) * * *

(2) Participate or advise in the initial decision or the review of the initial decision by the ARB, except as a witness or a representative in public proceedings; or

* * * * *

■ 37. In § 22.16, revise paragraph (f)(3) to read as follows:

§ 22.16 Disqualification of reviewing official or ALJ.

* * * * *

(f) * * *

(3) If the ALJ denies a motion to disqualify, the ARB may determine the matter only as part of its review of the initial decision upon appeal, if any.

■ 38. In § 22.26, revise paragraphs (b) and (c) to read as follows:

§ 22.26 Form, filing and service of papers.

* * * * *

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 22.8 shall be made in accordance with 29 CFR part 18. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document, setting

forth the manner of service, shall be proof of service.

§ 22.31 [Amended]

■ 39. In § 22.31, remove the words ''authority head'' and add in their place the word ''ARB'' in paragraphs (a), (b) introductory text, and (c).

■ 40. In § 22.35, revise paragraph (b) to read as follows:

§ 22.35 The record.

* * * * *

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ, the ARB, and the authority head.

* * * * *

■ 41. In § 22.37, revise paragraphs (c) and (d) to read as follows:

§ 22.37 Initial decision.

* * * * *

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the ARB. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the ARB, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

■ 42. In § 22.38, revise paragraphs (f) and (g) to read as follows:

§ 22.38 Reconsideration of initial decision.

* * * * *

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the ARB in accordance with § 22.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the ARB in accordance with § 22.39.

■ 43. In § 22.39, revise paragraphs (a), (b)(3), (c), (f), and (h) through (l) to read as follows:

§ 22.39 Appeal to ARB.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the ARB by filing a notice of appeal with the ARB in accordance with this section and with 29 CFR part 26.

(b) * * *

(3) The ARB may extend the initial 30-day period for an additional 30 days if the defendant files with the ARB a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the ARB, and the time for filing motions for reconsideration under § 22.38 has expired, the ALJ shall forward the record of the proceeding to the ARB.

* * * * *

(f) There is no right to appear personally before the ARB.

* * * * *

(h) In reviewing the initial decision, the ARB shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the ARB that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the ARB shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The ARB may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision. The ARB's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

(k) The ARB shall promptly serve each party to the appeal with a copy of the decision of the ARB and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 22.3 is final and is not subject to judicial review.

■ 44. In § 22.41, revise paragraph (a) to read as follows:

§ 22.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the ARB.

* * * * *

PART 24—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISIONS OF SIX ENVIRONMENTAL STATUTES AND SECTION 211 OF THE ENERGY REORGANIZATION ACT OF 1974, AS AMENDED

■ 45. The authority citation for part 24 is revised to read as follows:

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j–9(i)BVG, 5851, 6971, 7622, 9610; Secretary of Labor's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 46. In § 24.105, revise paragraph (b) to read as follows:

§ 24.105 Issuance of findings and orders.

* * * * *

(b) The findings and order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and order will inform the parties of their right to file objections and to request a hearing and provide the address of the Chief Administrative Law Judge. The Assistant Secretary will file a copy of the original complaint and a copy of the findings and order with the Chief Administrative Law Judge, U.S. Department of Labor.

* * * * *

■ 47. In § 24.106, revise paragraph (a) to read as follows:

§ 24.106 Objections to the findings and order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and order pursuant to § 24.105(b). The objection and/or request for a hearing must be in writing and state whether the objection is to the findings and/or the order. The date of the postmark, facsimile transmittal, email communication, or electronic submission will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge,

U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 48. In § 24.107, revise paragraph (b) to read as follows:

§ 24.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties. Hearings will be conducted de novo, on the record.

* * * * *

■ 49. In § 24.110, revise paragraphs (a) and (c) to read as follows:

§ 24.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor, in accordance with 29 CFR part 26. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the case for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, email communication, or electronic submission will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The final decision of the ARB will be issued within 90 days of the filing of the complaint. The decision will be served upon all parties and the Chief Administrative Law Judge. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

■ 50. Add part 26 to read as follows:

PART 26—ADMINISTRATIVE REVIEW BOARD RULES OF PRACTICE AND PROCEDURE

Sec.
26.1 Purpose and scope.
26.2 General procedural matters.
26.3 Filing.
26.4 Service.

Authority: Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

§ 26.1 Purpose and scope.

(a) This part contains the rules of practice of the Administrative Review Board (ARB) when it is exercising its authority as described in paragraph (b) of this section. These rules shall govern all appeals and proceedings before the ARB except when inconsistent with a governing statute, regulation, or executive order, in which event the latter shall control.

(b) The ARB has authority to act as the authorized representative of the Secretary of Labor in review or on appeal of decisions and recommendations as provided in Secretary's Order 01–2020 (or any successor to that order). The ARB shall act as fully and finally as the Secretary of Labor concerning such matters, except as provided in Secretary's Order 01–2020 (or any successor to that order).

§ 26.2 General procedural matters.

(a) *Definitions.* (1) *ARB* means the Administrative Review Board.

(2) *Electronic case management system* means the Department of Labor's electronic filing and electronic service system for adjudications.

(b) *Computing time.* (1) Unless a different time is set by statute, regulation, executive order, or judge's order, when computing a time period stated in days,

(i) Exclude the day of the event that triggers the period;

(ii) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

(2) Unless a different time is set by statute, regulation, executive order, or judge's order, the ''last day'' ends:

(i) For electronic filing via the Department's electronic case management system or via other electronic means, at 11:59:59 Eastern Time on the due date.

(ii) For non-electronic filing, at the time the office of the Clerk of the Appellate Boards is scheduled to close in Washington, DC on the due date.

(c) *Mailing address.* The mailing address for the ARB is: Administrative Review Board, Clerk of the Appellate Boards, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210.

§ 26.3 Filing.

(a) *Filing by electronic submission (e-filing) via the Department's electronic case management system*—(1) *Attorneys and lay representatives.* Except as otherwise provided in this section, beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], attorneys and lay representatives must file all petitions, pleadings, exhibits, and other documents with the ARB via the Department's electronic case management system. Paper copies are not required unless requested by the ARB.

(2) *Good cause exception.* Attorneys and lay representatives may request an exemption to e-filing for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) *Self-represented persons.* Self-represented persons may use but are not required to use the Department's electronic case management system to file documents.

(4) *Filing—date of receipt.* Unless a different time is set by statute, regulation, executive order, or judge's order, a document is considered filed when received by the Clerk of the Appellate Boards. Documents filed through the Department's electronic case management system are considered received by the Clerk of the Appellate Boards as of the date and time recorded by the Department's electronic case management system.

(5) *Signing.* A filing made through a registered user's account on the Department's electronic case management system and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(6) *Relief for Technical Failures.* A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic

document may seek appropriate relief from the ARB. If a technical malfunction or other issue prevents access to the Department's case management system for a protracted period, the ARB by special order may provide appropriate relief pending restoration of electronic access.

(b) *Alternate methods of filing.* Unless a different time is set by statute, regulation, executive order, or judge's order, a document filed using a method other than the Department's electronic case management system is considered filed when received by the Clerk of the Appellate Boards.

§ 26.4 Service.

(a) *Electronic service.* Electronic service may be completed by

(1) Electronic mail, if consented to in writing by the person served; or

(2) Sending it to a user registered with the Department's electronic case management system by filing via this system. A person who registers to use the Department's case management system is deemed to have consented to accept service through the system.

(b) *Non-electronic service.* Unless otherwise provided by statute, regulation, executive order, or judge's order, non-electronic service may be completed by:

(1) Personal delivery;

(2) Mail; or

(3) Commercial delivery.

(c) *When service is effected.* Unless otherwise provided by statute, regulation, executive order, or judge's order,

(1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS

■ 51. The authority citation for part 29 is revised to read as follow:

Authority: Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 3145; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

■ 52. In § 29.10, revise paragraphs (a) introductory text and (c) to read as follows:

§ 29.10 Hearings for deregistration.

(a) Within 10 days of receipt of a request for a hearing, the Administrator of the Office of Apprenticeship must contact the Department's Office of Administrative Law Judges to request the designation of an Administrative Law Judge to preside over the hearing. The Administrative Law Judge shall give reasonable notice of such hearing to the appropriate sponsor. Such notice will include:

* * * * *

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board in accordance with 29 CFR part 26, specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be served on the opposing party at the same time in accordance with 29 CFR part 26. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must issue a decision in any case it accepts for review within 180 days of the close of the record. If a decision is not so issued, the Administrative Law Judge's decision constitutes final agency action.

■ 53. In § 29.13, revise paragraph (g) introductory text and paragraph (g)(3) to read as follows:

§ 29.13 Recognition of State Apprenticeship Agencies.

* * * * *

(g) *Denial of state apprenticeship agency recognition.* A denial by the Office of Apprenticeship of a State Apprenticeship Agency's application for new or continued recognition must be in writing and must set forth the reasons for denial. The notice must be sent by certified mail, return receipt requested. In addition to the reasons stated for the denial, the notice must specify the remedies which must be undertaken prior to consideration of a resubmitted request, and must state that a request for administrative review of a denial of recognition may be made within 30 calendar days of receipt of the notice of denial from the Department. Such request must be filed with the Chief Administrative Law Judge for the Department in accordance with 29 CFR part 18. Within 30 calendar days of the filing of the request for review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

* * * * *

(3) Within 20 days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and amici curiae in accordance with 29 CFR part 26.

* * * * *

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

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

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.;* Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.;* Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; Title IX of the Education Amendments of 1972, as amended, 29 U.S.C. 1681; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; and Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 55. In § 37.111, revise paragraph (b)(2) introductory text to read as follows:

§ 37.111 What hearing procedures does the Department follow?

* * * * *

(b) * * *

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

* * * * *

■ 56. Revise § 37.112 to read as follows:

§ 37.112 What procedures for initial and final decisions does the Department follow?

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties in accordance with 29 CFR part 18.

(b) *Exceptions; final decision*—(1) *Final decision after a hearing.* The

initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Administrative Review Board (Board) serves notice that it will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Board within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Board no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Board may, within 30 days of the expiration of the time for filing exceptions, on its own motion serve notice on the parties that it will review the decision.

(vii) Final decision and order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Board has served notice on the parties that it will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) In any case reviewed by the Board under this paragraph, a decision must be issued within 180 days of the notification of such review. If the Board fails to issue a Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) *Final Decision where a hearing is waived.* (i) If, after issuance of a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 57. The authority citation for part 38 continues to read as follows:

Authority: 29 U.S.C. 3101 *et seq.;* 42 U.S.C. 2000d *et seq.;* 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.;* and 20 U.S.C. 1681 *et seq.*

■ 58. In § 38.111, revise paragraph (b)(2) introductory text to read as follows:

§ 38.111 Hearing procedures.

* * * * *

(b) * * *

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges in accordance with 29 CFR part 18.

* * * * *

■ 59. In § 38.112, revise paragraphs (a) and (b)(1)(i) and (iv) to read as follows:

§ 38.112 Initial and final decision procedures.

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties.

(b) * * *

(1) * * *

(i) *Exceptions.* A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Administrative Review Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof, in accordance with 29 CFR part 26.

* * * * *

(iv) *Reply.* Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding in accordance with 29 CFR part 26.

* * * * *

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

■ 60. The authority citation for part 96 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, as amended.

■ 61. In § 96.63, revise paragraphs (b)(1)(i) and (b)(4) to read as follows:

§ 96.63 Federal financial assistance

* * * * *

(b) * * *

(1) * * *

(i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may file a request for hearing with the Chief Administrative Law Judge, United States Department of Labor, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

* * * * *

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Administrative Review Board (the Board), specifically identifying the procedure or finding of fact, law, or policy with which exception is taken, in accordance with 29 CFR part 26. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Board, within 30 days of such filing, has notified the parties that the case has been accepted for review.

* * * * *

Office of Labor-Management Standards

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

■ 62. The authority for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 63. In § 417.14, revise paragraph (a) to read as follows:

§ 417.14 Form and time for filing of appeal with the Administrative Review Board.

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Administrative Review Board within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Administrative Review Board may allow), together with supporting reasons for such exceptions, in accordance with 29 CFR part 26. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Administrative Review Board, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

* * * * *

■ 64. Revise § 417.15 to read as follows:

§ 417.15 Decision of the Administrative Review Board.

Upon appeal filed with the Administrative Review Board pursuant to § 417.14, or within its discretion upon its own motion, the complete record of the proceedings shall be certified to it; it shall notify all interested persons who participated in the proceedings; and it shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as it deems appropriate. Its decision shall become a part of the record and shall include a statement of its findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

PART 458—STANDARDS OF CONDUCT

■ 65. The authority for part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 66. In § 458.88, revise paragraph (c) to read as follows:

§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Administrative Review Board; exceptions.

* * * * *

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Administrative Review Board within fifteen (15) days after service of the recommended decision and order, in accordance with 29 CFR part 26. The Administrative Review Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Administrative Review Board.

■ 67. In § 458.90, revise paragraph (a) introductory text to read as follows:

§ 458.90 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall be filed in accordance with 29 CFR part 26, contain only matters included within the scope of the exceptions, and contain, in the order indicated, the following:

* * * * *

Wage and Hour Division

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 68. The authority for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

■ 69. In § 500.20, revise paragraph (b) to read as follows:

§ 500.20 Definitions.

* * * * *

(b) *Administrative Law Judge* means a person appointed as provided in title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 557. Chief Administrative Law Judge means the Chief Administrative Law Judge, United States Department of Labor.

* * * * *

■ 70. In § 500.263, revise the section heading and introductory text to read as follows:

§ 500.263 Authority of the Administrative Review Board.

The Administrative Review Board may modify or vacate the Decision and Order of the Administrative Law Judge whenever it concludes that the Decision and Order:

* * * * *

■ 71. In § 500.264, revise paragraph (a) to read as follows:

§ 500.264 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Administrative Review Board (Board) a petition for issuance of a Notice of Intent as described under § 500.265. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

* * * * *

■ 72. Revise 500.265 to read as follows:

§ 500.265 Implementation by the Administrative Review Board.

(a) Whenever, on the Administrative Review Board's (Board) own motion or upon acceptance of a party's petition, the Board believes that a Decision and Order may warrant modifying or vacating, the Board shall issue a Notice of Intent to modify or vacate.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (*i.e.,* briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Board shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

■ 73. Revise § 500.266 to read as follows:

§ 500.266 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Administrative Review Board's (Board) Notice of Intent

to Modify or Vacate a Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify, and forward a copy of the complete hearing record to the Board.

■ 74. Revise § 500.267 to read as follows:

§ 500.267 Filing and service.

(a) *Filing.* All documents submitted to the Administrative Review Board (Board) shall be filed in accordance with 29 CFR part 26.

(b) *Computation of time for delivery.* Documents are not deemed filed with the Board until actually received by that office. All documents, including documents filed by mail, must be received by the Board either on or before the due date.

(c) *Manner and proof of service.* A copy of all documents filed with the Board shall be served upon all other parties involved in the proceeding. Service under this section shall be in accordance with 29 CFR part 26.

■ 75. Revise § 500.268 to read as follows:

§ 500.268 Decision of the Administrative Review Board.

(a) The Administrative Review Board's (Board) Decision and Order shall be issued within 120 days from the notice of intent granting the petition, except that in cases involving the review of an Administrative Law Judge decision in a certificate action as described in § 500.224(b), the Board's decision shall be issued within ninety (90) days from the date such notice. The Board's Decision and Order shall be served upon all parties and the Chief Administrative Law Judge, in accordance with 29 CFR part 26.

(b) Upon receipt of an Order of the Board modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

(c) The Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

PART 525—EMPLOYMENT OF WORKERS WITH DISABILITIES UNDER SPECIAL CERTIFICATES

■ 76. The authority citation for part 525 continues to read as follows:

Authority: 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–486, 100 Stat. 1229 (29 U.S.C. 214).

■ 77. In § 525.22, revise paragraphs (e) through (h) to read as follows:

§ 525.22 Employee's right to petition

* * * * *

(e) The ALJ shall issue a decision within 30 days after the termination of the hearing and shall serve the decision on the Administrator and all interested parties in accordance with 29 CFR part 18. The decision shall contain appropriate findings and conclusions and an order. If the ALJ finds that the special minimum wage being paid or which has been paid is not justified, the order shall specify the lawful rate and the period of employment to which the rate is applicable. In the absence of evidence sufficient to support the conclusion that the proper wage should be less than the minimum wage, the ALJ shall order that the minimum wage be paid.

(f) Within 15 days after the date of the decision of the ALJ, the petitioner, the Administrator, or the employer who seeks review thereof may request review by the Administrative Review Board (Board). The request must be filed in accordance with 29 CFR part 26 and must include a copy of the ALJ's decision. Any other interested party may file a reply thereto with the Board and the Administrator within 5 working days of receipt of such request for review. The request for review and reply thereto shall be transmitted by the Administrator to all interested parties by a method guaranteeing one-day delivery.

(g) The decision of the ALJ shall be deemed to be final agency action 30 days after issuance thereof, unless within 30 days of the date of the decision the Board grants a request to review the decision. Where such request for review is granted, within 30 days after receipt of such request the Board shall review the record and shall either adopt the decision of the ALJ or issue exceptions. The decision of the ALJ, together with any exceptions issued by the Board, shall be deemed to be a final agency action, unless the Secretary exercises discretionary review over the decision and exceptions as provided in Secretary's Order 01–2020 (or any successor to that order).

(h) Within 30 days of issuance of the decision of the ALJ, ARB, or Secretary becoming a final action, any person adversely affected or aggrieved by such action may seek judicial review pursuant to chapter 7 of title 5, United States Code. The record of the case, including the record of proceedings before the ALJ, shall be transmitted by the Board to the appropriate court pursuant to the rules of such court.

PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

■ 78. The authority citation for part 530 continues to read as follows:

Authority: Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 79. In § 530.403, revise paragraph (c) to read as follows:

§ 530.403 Request for hearing.

* * * * *

(c) In the case of an emergency revocation, a request for an administrative hearing shall be filed with the Chief Administrative Law Judge in accordance with 29 CFR part 18, and must be received no later than 20 days after the issuance of the notice referred to in § 530.402 of this subpart.

■ 80. In § 530.406, revise paragraph (c) to read as follows:

§ 530.406 Decision and order of Administrative Law Judge.

* * * * *

(c) The decision shall be served on all parties and the Secretary. The decision when served by the Administrative Law Judge shall constitute the final order of the Department of Labor unless the Administrative Review Board, as provided for in § 530.407 of this subpart, determines to review the decision.

§ 530.407 [Amended]

■ 81. In § 530.407, remove the word ''Secretary'' wherever it occurs and add in its place the words ''Administrative Review Board''.

§ 530.408 [Amended]

■ 82. In § 530.408, remove the word ''Secretary'' wherever it occurs and add in its place the words ''Administrative Review Board''.

■ 83. Revise § 530.409 to read as follows:

§ 530.409 Decision of the Secretary.

The Administrative Review Board's decision shall be served upon all parties and the Administrative Law Judge. The Administrative Review Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

■ 84. In § 530.411, revise paragraphs (c), (d), and (f) to read as follows:

§ 530.411 Emergency certificate revocation procedures.

* * * * *

(c) The Office of Administrative Law Judges shall notify the parties, electronically or at their last known address, of the date, time, and place for the hearing, which shall be no more than 60 days from the date of receipt of the request for the hearing. All parties shall be given at least 5 days' notice of such hearing. No requests for postponement shall be granted except for compelling reasons.

(d) The Administrative Law Judge shall issue a decision pursuant to § 530.406 of this subpart within 30 days after the termination of a proceeding at which evidence was submitted. The decision shall be served on all parties and the Administrative Review Board (''Board'') and shall constitute the final order of the Department of Labor unless the Board determines to review the decision.

* * * * *

(f) The Board's decision shall be issued within 60 days of the notice by the Board accepting the submission, and shall be served upon all parties and the Administrative Law Judge. The Board's decision is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 85. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 86. In § 580.8, revise paragraphs (a) and (c) to read as follows:

§ 580.8 Service and computation of time.

(a) Service of documents under this subpart shall be made to the individual, an officer of a corporation, or attorney of record in accordance with 29 CFR part 18.

* * * * *

(c) Time will be computed in accordance with part 18.

■ 87. In § 580.13, revise paragraphs (b) and (d) to read as follows:

§ 580.13 Procedures for appeals to the Administrative Review Board.

* * * * *

(b) All documents submitted to the Board shall be filed with the Administrative Review Board in accordance with 29 CFR part 26.

* * * * *

(d) A copy of each document filed with the Board shall be served upon all other parties involved in the proceeding in accordance with 29 CFR part 26. Service by mail is deemed effected at the time of mailing to the last known address of the party.

■ 88. Revise § 580.16 to read as follows:

§ 580.16 Decision of the Administrative Review Board.

The Board's decision shall be served upon all parties and the Chief Administrative Law Judge.

Occupational Safety and Health Administration

PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982 (STAA), AS AMENDED

■ 89. The authority citation for part 1978 is revised to read as follows:

Authority: 49 U.S.C. 31101 and 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 90. In § 1978.105, revise paragraph (b) to read as follows:

§ 1978.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 91. In § 1978.106, revise paragraph (a) to read as follows:

§ 1978.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1978.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record and the OSHA official who issued the findings.

* * * * *

■ 92. In § 1978.107, revise paragraph (b) to read as follows:

§ 1978.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 93. In § 1978.110, revise paragraph (c) to read as follows:

§ 1978.110 Decisions and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Occupational Safety and Health, U.S, Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

■ 94. The authority citation for part 1979 is revised to read as follows:

Authority: 49 U.S.C. 42121; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 95. In § 1979.105, revise paragraph (b) to read as follows:

§ 1979.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

* * * * *

■ 96. In § 1979.106, revise paragraph (a) to read as follows:

§ 1979.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1979.105(b). The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 97. In § 1979.107, revise paragraph (b) to read as follows:

§ 1979.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted as hearings de novo, on the record. Administrative law judges shall have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 98. In § 1979.110, revise paragraphs (a) and (c) to read as follows:

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''). The decision of the Administrative Law Judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions, or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the Administrative Law Judge. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

(c) The decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS AMENDED

■ 99. The authority citation for part 1980 is revised to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary of Labor's Order No. 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 100. In § 1980.105, revise paragraph (b) to read as follows:

§ 1980.105

* * * * *

(b) The findings, and where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings, and where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. The findings, and where appropriate,

the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 101. In § 1980.106, revise paragraph (a) to read as follows:

§ 1980.106 Objections to the findings and the preliminary order and request for a heading.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under the Act, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1980.105(b). The objections and/or request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 102. In § 1980.107, revise paragraph (b) to read as follows:

§ 1980.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 103. In § 1980.110, revise paragraph (c) to read as follows:

§ 1980.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, even if the Assistant Secretary is not a party.

* * * * *

PART 1981—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

■ 104. The authority citation for Part 1981 is revised to read as follows:

Authority: 49 U.S.C. 60129; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 105. In § 1981.105, revise paragraph (b) to read as follows:

§ 1981.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

* * * * *

■ 106. In § 1981.106, revise paragraph (a) to read as follows:

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 60 days of receipt of the findings and preliminary order pursuant to § 1981.105(b). The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 107. In § 1981.107, revise paragraph (b) to read as follows:

§ 1981.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 108. In § 1981.110, revise paragraph (c) to read as follows:

§ 1981.110

* * * * *

(c) The decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the Administrative Law Judge—*i.e.,* 10 business days after the date of the decision of the Administrative Law Judge unless a motion for reconsideration has been filed with the

Administrative Law Judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1982—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT AND THE FEDERAL RAILROAD SAFETY ACT

■ 109. The authority citation for part 1982 is revised to read as follows:

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary of Labor's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 110. In § 1982.105, revise paragraph (b) to read as follows:

§ 1982.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent under NTSSA to request award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ) regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 111. In § 1982.106, revise paragraph (a) to read as follows:

§ 1982.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under NTSSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1982.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 112. In § 1982.107, revise paragraph (b) to read as follows:

§ 1982.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. Administrative Law Judges have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 113. In § 1982.110, revise paragraph (c) to read as follows:

§ 1982.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

■ 114. The authority citation for part 1983 is revised to read as follows:

Authority: 15 U.S.C. 2087; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 115. In § 1983.105, revise paragraph (b) to read as follows:

§ 1983.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 116. In § 1983.106, revise paragraph (a) to read as follows:

§ 1983.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a

respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under CPSIA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1983.105. The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 117. In § 1983.107, revise paragraph (b) to read as follows:

§ 1983.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 118. In § 1983.110, revise paragraph (c) to read as follows:

§ 1983.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

■ 119. The authority citation for part 1984 is revised to read as follows:

Authority: 29 U.S.C. 218C; Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 120. In § 1984.105, revise paragraph (b) as follows:

§ 1984.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if respondent alleges that the complaint was frivolous or brought in bad faith. The findings, and where appropriate, the preliminary order, also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 121. In § 1984.106, revise paragraph (a) to read as follows:

§ 1984.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under section 18C of the FLSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1984.105(b). The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings and/or the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 122. In § 1984.107, revise paragraph (b) to read as follows:

§ 1984.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 123. In § 1984.110, revise paragraph (c) to read as follows:

§ 1984.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor,

even if the Assistant Secretary is not a party.

* * * * *

PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER FINANCIAL PROTECTION ACT OF 2010

■ 124. The authority citation for part 1985 is revised to read as follows:

Authority: 12 U.S.C. 5567; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 125. In § 1985.105, revise paragraph (b) to read as follows:

§ 1985.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 126. In § 1985.106, revise paragraph (a) to read as follows:

§ 1985.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under CFPA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1985.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 127. In § 1985.107, revise paragraph (b) to read as follows:

§ 1985.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 128. In § 1985.110, revise paragraph (c) to read as follows:

§ 1985.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED

■ 129. The authority citation for part 1986 is revised to read as follows:

Authority: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 01–2020, 85 FR 13186 (March 6, 2020).

■ 130. In § 1986.105, revise paragraph (b) to read as follows:

§ 1986.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or the order and to request a hearing. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 131. In § 1986.106, revise paragraph (a) to read as follows:

§ 1986.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1986.105(c). The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, and

the OSHA official who issued the findings.

* * * * *

■ 132. In § 1986.107, revise paragraph (b) to read as follows:

§ 1986.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 133. In § 1986.110, revise paragraph (c) to read as follows:

§ 1986.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision also will be served on the Assistant Secretary and on the Associate Solicitor, Division of Occupational Safety and Health, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT

■ 134. The authority citation for part 1987 is revised to read as follows:

Authority: 21 U.S.C. 399d; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 135. In § 1987.105, revise paragraph (b) to read as follows:

§ 1987.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 136. In § 1987.106, revise paragraph (a) to read as follows:

§ 1987.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under FSMA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1987.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 137. In § 1987.107, revise paragraph (b) to read as follows:

§ 1987.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 138. In § 1987.110, revise paragraph (c) to read as follows:

§ 1987.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP–21)

■ 139. The authority citation for part 1988 is revised to read as follows:

Authority: 49 U.S.C. 30171; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order No. 01–2020, 85 FR 13186 (March 6, 2020).

■ 140. In § 1988.105, revise paragraph (b) to read as follows:

§ 1988.105 Issuance of findings and preliminary orders.

* * * * *

(b) The findings and, where appropriate, the preliminary order will be sent by means that allow OSHA to confirm delivery to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the

parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor, or appropriate information regarding filing objections electronically with the Office of Administrative Law Judges. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

* * * * *

■ 141. In § 1988.106, revise paragraph (a) to read as follows:

§ 1988.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under MAP–21, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1988.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic transmittal is considered the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, in accordance with 29 CFR part 18, and copies of the objections must be served at the same time on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

* * * * *

■ 142. In § 1988.107, revise paragraph (b) to read as follows:

§ 1988.107 Hearings.

* * * * *

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

* * * * *

■ 143. In § 1988.110, revise paragraph (c) to read as follows:

§ 1988.110 Decision and orders of the Administrative Review Board.

* * * * *

(c) The decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's decision will be served upon all parties and the Chief Administrative Law Judge. The decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

* * * * *

Title 41: Public Contracts and Property Management

PART 60—30 RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 144. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 145. In § 60–30.4, revise paragraphs (b) and (c) to read as follows:

§ 60–30.4 Form, filing, service of pleadings and papers.

* * * * *

(b) *Service.* Service upon any party shall be made by the party filing the pleading or document in accordance with 29 CFR part 26. When a party is represented by an attorney, the service shall be upon the attorney.

(c) *Proof of service.* A certificate of the person serving the pleading or other document, setting forth the manner of service, shall be proof of the service.

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28056 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–HW–P

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Part 802

RIN 1290–AA35

Rules of Practice and Procedure

AGENCY: Benefits Review Board, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is issuing this Notice of Proposed Rulemaking to seek public comments on a proposal to require electronic filing (e-filing) and make acceptance of electronic service (e-service) automatic by attorneys and lay representatives representing parties in proceedings before the Benefits Review Board (Board), and to provide an option for self-represented parties to utilize these electronic capabilities.

DATES: The Department invites interested persons to submit comments on the proposed rules of practice and procedure. To ensure consideration, comments must be in writing and must be received by February 10, 2021.

ADDRESSES: You may submit comments, identified by Regulatory Identification Number (RIN) 1290–AA35, only by the following method: Electronic Comments. Submit comments through the Federal eRulemaking Portal *http://www.regulations.gov.* To locate the proposed rule, use docket number DOL–2020–0013 or key words such as ''Administrative practice and procedure,'' ''Black lung benefits,'' ''Longshore and harbor workers,'' or ''Workers' compensation.'' Follow the instructions for submitting comments. All comments must be received by 11:59 p.m. on the date indicated for consideration in this rulemaking.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, or email addresses in comments. It is the

responsibility of the commenter to safeguard personal information.

If you need assistance to review the comments and the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Shepherd, Clerk of the Appellate Boards, at (202) 693–6319 or *Shepherd.Thomas@dol.gov.* Individuals with hearing or speech impairments may access this telephone number by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This preamble is divided into four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides general background information on the development of the proposed rulemaking; Section III is a section-by-section summary and discussion of the proposed regulatory text; and Section IV covers the administrative requirements for this proposed rulemaking.

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

The Department is simultaneously publishing with this proposed rule an identical ''direct final'' rule elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. The proposed rule then provides the procedural framework to finalize the rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

The Department has determined that this rule is suitable for direct final rulemaking. The proposed revisions to the Board's procedural regulations would require represented parties, unless exempted by the Board for good cause shown, to file documents via the Board's new electronic case management system, which will also automatically serve these documents on registered system users. Some parties are already e-filing documents with the Board on a voluntary basis. Moreover, this new system is similar to those used by courts and other administrative agencies and will thus be familiar to the representatives. The proposed rule also would give self-represented (*pro se*) parties the option to file and serve documents through the electronic case management system or via conventional methods. These changes to the Board's procedures and practices should not be controversial. The Department has determined that this rule is exempt from the notice and comment requirements under 5 U.S.C. 553(b) as a rule of agency practice and procedure. Nonetheless, the agency has decided to allow for public input by issuing a direct final rule and concurrent notice of proposed rulemaking.

The comment period for this proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this proposed rule also will be considered as comments regarding the direct final rule and vice versa. For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the rule would be ineffective without the addition.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because the Department will not initiate an additional comment period on the proposed rule even if it withdraws the direct final rule.

This rule is not an E.O. 13771 regulatory action because the Office of Information and Regulatory Affairs has determined it is not significant under E.O. 12866.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(3).

I. Background of This Rulemaking

The Department promulgates this rule under the authority of 5 U.S.C. 301, as well as the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*

The Board is proposing a rule that would make e-filing mandatory and acceptance of e-service automatic for parties represented by attorneys and lay representatives. E-filing has been optional and e-service was not available through the Board's prior electronic system. As a result, the Board would receive filings in both paper and electronic form. The Board's long-term goal is to have entirely electronic case files (e-case files), which the Board believes will significantly benefit both the Board and the participants in Board appeals by allowing the Board to more efficiently process incoming documents and to reduce the time it takes to adjudicate claims. Requiring attorneys and lay representatives to use e-filing and automatically receive service of e-filed documents through the Department's electronic case management system will help the Board move toward this goal.

The Board previously used *DOL Appeals,* a consolidated web-based case tracking system deployed in FY2011 to replace individual legacy applications and streamline business processes specific to each of the three Adjudicatory Boards in the Department: the Board, the Administrative Review Board (ARB), and the Employees' Compensation Appeals Board (ECAB). The Board reviews appeals of administrative law judges' decisions arising under the Black Lung Benefits Act, and the Longshore and Harbor Workers' Compensation Act and its extensions. The ARB issues decisions in cases arising under a variety of worker protection laws, including those governing environmental, transportation, and securities whistleblower protections; H–1B immigration provisions; child labor; employment discrimination; job training; seasonal and migrant workers; and Federal construction and service contracts. ECAB hears appeals taken from determinations and awards under the Federal Employees' Compensation Act with respect to claims of Federal employees injured in the course of their employment.

The *DOL Appeals* case management system provided a broad range of capabilities to the Adjudicatory Boards' staff for inputting, processing, tracking,

managing, and reporting specific details on thousands of cases since its initial implementation. In FY2013, the system was enhanced to provide access to parties. More than 1,400 individuals were registered users of the *DOL Appeals* system. Users had the ability to check their case status, electronically file motions and briefs, and receive Board issuances electronically. However, users who e-filed documents still had to serve those documents on other parties by some other method (typically mail, commercial delivery, or electronic mail), as *DOL Appeals* did not have an automatic e-service function like that of the Federal courts' electronic filing system. Moreover, because e-filing has been optional, the Board received, and still receives, many paper filings, including from attorneys and lay representatives.

At present, the Board lacks sufficient resources to digitally image all pleadings received in paper form, and that option is unduly burdensome and labor intensive. Furthermore, if e-filing remains optional, it is unlikely that the Board will achieve the goal of completely electronic case files. If, however, attorneys and lay representatives are required to e-file all documents through the Board's new case management system, imaging the remaining paper pleadings from self-represented parties would be manageable for the Board. In addition, greater utilization of e-filing and e-service through the new case management system will reduce case processing times by eliminating the timeframes required to allow for the delivery of traditional mailings. These time savings will allow the Board to more efficiently process appeals without any sacrifice to quality of work and will also greatly reduce mailing and copying costs for both the Board and the parties.

Although Federal agencies are required by law to provide information and services via the internet, agencies must also consider the impact on persons without access to the internet and, to the extent practicable, ensure that the availability of government services has not been diminished for such persons. 44 U.S.C. 3501 note. Accordingly, the Board will make e-filing and e-service optional for self-represented parties. The Board sees no legal restriction to making e-filing mandatory and acceptance of e-service automatic for attorneys and lay representatives, and does not believe it would impose undue costs or difficulties for them, particularly since a party may obtain an exemption for good cause shown. The Board notes in this regard that e-filing is generally mandatory for attorneys in the Federal district courts and U.S. Courts of Appeals; unless an exemption is granted, only self-represented parties have the option of filing pleadings in paper form. The Board also notes that, consistent with the Federal courts, the Department's electronic case management system requires the filer to convert other electronic formats to Portable Document File (PDF) before filing. Parties filing via the electronic case management system need a computer, access to email and the internet, and the ability to convert documents to a PDF format. The rule also provides that registered electronic case management system users are deemed to accept service of all documents through the system. The Board will issue decisions and orders electronically to registered users who are parties to a case.

III. Section-by-Section Analysis of Proposed Rules

The Board proposes to remove and reserve the following sections: § 802.204, Place for filing notice of appeal and correspondence; § 802.207, When a notice of appeal is considered to have been filed in the office of the Clerk of the Board; and § 802.216, Service and form of papers. The Board is making this change to clarify and consolidate its rules governing computation of time in current § 802.221, filing of documents in new § 802.222, and service of documents in new § 802.223.

In general, the provisions in §§ 802.204, 802.207, and 802.216 will be moved into these three consolidated regulations and revised to accommodate mandatory e-filing and automatic acceptance of e-service for represented parties. The Board has proposed, however, to remove from its regulations the requirement in § 802.204 that a party who files a notice of appeal must serve a copy of it on the ''deputy commissioner'' (an official who is now called ''district director,'' 20 CFR 701.301(a)(7), 725.101(a)(16)). This non-statutory procedure is no longer required because the Board routinely provides the district director with notice of each appeal filed.

Sec. 802.219 Motions to the Board; Orders

The Board proposes to amend § 802.219(d) to replace the current cross-reference to § 802.216, a regulation the Board proposes to remove, with cross-references to new §§ 802.222 and 802.223. The new regulations will govern filing and service of motions made to the Board.

Sec. 802.221 Computation of Time

The Board proposes to amend § 802.221 in several ways. Proposed paragraph (a) retains the same general time computation rule as in current paragraph (a) but substitutes the word ''must'' for ''shall'' wherever it occurs. This substitution is consistent with Executive Order 13563, which states that regulations must be ''written in plain language[.]'' 76 FR 3821 (Jan. 18, 2011). No alteration in meaning is intended by this change.

Proposed paragraph (b) is limited to computing time for nonelectronic documents. Paragraph (b)(1) retains the current provision that, when sent by mail, the time period calculated under paragraph (a) is satisfied if the document is mailed within that time period, as demonstrated by postmark or other evidence. Paragraph (b)(2) adds a new provision to address the widespread use of commercial carriers (*e.g.,* FedEx, UPS) for delivering documents. The rule provides that the time period calculated under paragraph (a) is satisfied if delivered to the carrier within that time period, as evidenced by the carrier's receipt or tracking information.

Proposed paragraph (c) is a new provision that addresses electronic filings made through the case management system. The time period calculated under paragraph (a) is deemed met if the pleading is filed by 11:59:59 p.m. Eastern Time on the due date. The Board chose the Eastern Time zone based on the fact that Washington, DC is located within it. This mirrors the approach of Federal courts. *See, e.g.,* Fed. R. App. P. 26(a)(4); Fed. R. Civ. P. 6(a)(4). Finally, proposed paragraph (d), which notes that waivers of filing time limits may be requested by motion (except for notices of appeal), is identical to current paragraph (c).

Sec. 802.222 Filing Notice of Appeal, Pleadings, and Other Correspondence

Proposed § 802.222 is a new rule containing all filing requirements. The rule incorporates many of the general provisions in current § 802.216 and adds additional provisions for electronic filings. The rule also includes the special provisions for determining when a notice of appeal is filed that currently appear in § 802.207. Placing all of this information in one section will clarify the parties' obligations when filing any pleading, exhibit, or other document with the Board.

Proposed paragraph (a) contains the general requirements that apply to all pleadings, including captions, certificates of service, signatures, and

formatting. Because documents in a case may need to be served by more than one method, paragraph (a)(2) requires the parties to include detailed service information on the certificate of service. To simplify signatures on electronic filings, paragraph (a)(3) provides that pleadings filed via the case management system will be deemed signed by the filing person.

Proposed paragraph (b) is a new provision requiring filing parties to redact certain personally identifiable and sensitive information from all documents filed with the Board. The rule is intended to protect the interests of the parties, minors who may be involved in a case, and the public generally. The language of this rule is based on similar rules in the Federal courts. *See, e.g.,* Fed. R. Civ. P. 5.2(a); *see also* Fed. R. App. P. 25(a)(5).

Proposed paragraph (c) governs nonelectronic filings. It retains the current requirements for submitting paper documents (*e.g.,* parties must file an original and two copies of each pleading) and includes the Board's address, which is currently located in § 802.204.

Proposed paragraph (d) is an entirely new provision addressing electronic filings. Paragraph (d)(1) requires attorneys and lay representatives to register for the electronic case management system and file all documents through it. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Office of Administrative Law Judges to update its notices of appeal rights so that by the time e-filing with the Board is mandatory, parties will have received a notice of appeal rights with updated information. It also allows parties who were previously filing and serving documents by mail to adjust to electronic filing. As discussed above, mandating electronic filing and automatically serving documents electronically filed through the system will benefit the parties and improve case processing. The regulation requires that e-filed documents be in PDF format and expresses a preference for text-searchable PDF format. To simplify the filing process, the regulation also informs filers that no paper copies need be filed unless requested by the Board; electronic submission alone is sufficient. Paragraph (d)(2) permits attorneys and lay representatives to request, by motion, an exemption from mandatory e-filing or acceptance of automatic e-service for good cause shown.

Proposed paragraph (d)(3) allows self-represented (*i.e., pro se*) parties to file in either electronic or nonelectronic format. Providing this flexibility will allow these parties to easily participate in their cases. To remove any confusion about whether an electronically filed document is a ''paper,'' paragraph (d)(4) specifically provides that such documents are written papers for purposes of all of the Board's procedural rules. Proposed paragraph (d)(5) addresses technical failures in two ways. First, any person encountering technical difficulties in filing or receiving electronic documents through the case management system may file a motion with the Board requesting relief appropriate to the particular incident. The Board encourages filers to retain documentation of the failure in these instances. Second, paragraph (d)(5) provides that the Board may issue a special order providing relief (*e.g.,* allowing nonelectronic filings) when the case management system is not operational.

Proposed paragraph (e) contains special rules on filing notices of appeal. Paragraph (e)(1) incorporates the general rule contained in current § 802.207(a)(1) on the filing date of a notice of appeal. Paragraph (e)(2) generally incorporates the provision in current § 802.207(a)(2) that the Board may consider an appeal submitted to another governmental unit to have been filed with the Clerk of the Board as of the date it was received by the other governmental unit. Paragraph (e)(2) does not specifically require that the other governmental unit promptly forward the notice of appeal to the office of the Clerk of the Board because the Board does not have such authority. Paragraph (e)(3) incorporates the provisions in current § 802.207(b) that permit the Board to use the date of mailing as the filing date for the notice of appeal if appeal rights would otherwise be lost. Paragraph (e)(3) extends this same protection to notices of appeal sent by commercial carrier (*e.g.,* FedEx, UPS) and provides that the filing date in these instances is the date of delivery to the commercial carrier. Given the widespread use of commercial carriers, this additional provision will help ensure that parties' appeal rights are not lost. Finally, paragraph (e)(4) clarifies that electronic notices of appeal filed through the case management system are considered received, and thus filed, as of the date and time recorded by the system.

Sec. 802.223 Service Requirements

Proposed § 802.223 is a new rule containing all service requirements. Paragraph (a) requires, akin to current § 802.216(c), parties to serve every party in the case and the Solicitor of Labor with a copy of all documents filed with the Board. Paragraph (b) identifies the types of nonelectronic service (personal delivery; mail or commercial delivery) and electronic service (electronic mail, if consented to in writing by the person served, and electronic service to a registered user through the case management system) permitted. Significantly, paragraph (b)(2)(B) provides that a registered electronic case management system user ''is deemed to have consented to accept service through the system.'' Thus, automatic service through the electronic case management system is effective with respect to registered system users without any additional form of service. Paragraph (c) describes when service is effected for different delivery methods, which could become important to a cross-appeal filing under § 802.205(b).

Finally, paragraph (d) governs the date of receipt for electronic documents served by the case management system or electronic mail. The receipt date is particularly important to determining deadlines for response briefs, responses to motions, and requests for oral argument. *See* §§ 802.212, 802.219, 802.305. Under paragraph (d)(1), electronic case management system-served documents are considered received by the system's registered users in the case on the date the document is sent by the system. Similarly, under paragraph (d)(2) documents served via electronic mail are considered received when sent. In both instances, the recipients of service will have rapid access to the filed pleading, exhibit, or other document.

IV. Administrative Requirements of the Proposed Rulemaking

Executive Orders 12866, Regulatory Planning and Review; and 13563, Improving Regulation and Regulatory Review

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

reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) determined that this direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the proposed rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the proposed rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, OMB has waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by state, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

List of Subjects in 20 CFR Part 802

Administrative practice and procedure, Black lung benefits, Longshore and harbor workers, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 802 as follows:

PART 802—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 802 continues to read as follows:

Authority: 5 U.S.C. 301; 30 U.S.C. 901 *et seq.;* 33 U.S.C. 901 *et seq.;* Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor's Order 03–2006, 71 FR 4219, January 25, 2006.

§ 802.204 [Removed and Reserved]

■ 2. Remove and reserve § 802.204.

§ 802.207 [Removed and Reserved]

■ 3. Remove and reserve § 802.207.

§ 802.216 [Removed and Reserved]

■ 4. Remove and reserve § 802.216.

■ 5. In § 802.219, revise paragraph (d) to read as follows:

§ 802.219 Motions to the Board; orders

* * * * *

(d) The rules governing the filing and service of documents in §§ 802.222 and 802.223 apply to all motions.

* * * * *

■ 6. Revise § 802.221 to read as follows:

§ 802.221 Computation of time.

(a) In computing any period of time prescribed or allowed by these rules, by direction of the Board, or by any applicable statute which does not provide otherwise, the day from which the designated period of time begins to run must not be included. The last day of the period so computed must be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) For nonelectronic documents, the time period computed under paragraph (a) of this section will be deemed complied with if—

(1) When sent by mail, the envelope containing the document is postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(2) When sent by commercial carrier, the receipt or tracking information demonstrates that the paper was delivered to the carrier within the time period allowed.

(c) For electronic filings made through the Board's case management system, paragraph (a) of this section will be deemed to be met if the document is electronically filed within the time period allowed. A document is deemed filed as of the date and time the Board's electronic case management system records its receipt, even if transmitted outside of the Board's business hours set forth in § 801.304 of this chapter. To be considered timely, an e-filed pleading must be filed by 11:59:59 p.m. Eastern Time on the due date.

(d) A waiver of the time limitations for filing a paper, other than a notice of appeal, may be requested by proper motion filed in accordance with §§ 802.217 and 802.219.

■ 7. Add § 802.222 to subpart B to read as follows:

§ 802.222 Filing notice of appeal, pleadings, and other correspondence.

This section prescribes rules and procedures by which parties and representatives to proceedings before the Board file pleadings (including notices of appeal, petitions for review and briefs, response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence.

(a) *Requirements for all pleadings.* All pleadings filed with the Board must—

(1) Include a caption and title.

(2) Include a certificate of service containing—

(i) The date and manner of service;

(ii) The names of persons served; and

(iii) Their mail or electronic mail addresses or the addresses of the places of delivery, as appropriate for the manner of service.

(3) Include a signature of the party (or his or her attorney or lay representative) and date of signature. Pleadings filed by an attorney, lay representative or self-represented party via the Board's case management system will be deemed to be signed by that person.

(4) Conform to standard letter dimensions (8.5 x 11 inches).

(b) *Redacted filings and exhibits.* Any person who files a pleading, exhibit, or other document that contains an individual's social security number, taxpayer-identification number, or birth date; the name of an individual known to be a minor; or a financial-account number, must redact all such information, except the last four digits of the social security number and taxpayer-identification number; the year of the individual's birth; the minor's initials; and the last four digits of the financial-account number.

(c) *Nonelectronic filings.* All nonelectronic pleadings filed with the Board must be secured at the top. For each pleading filed with the Board, the original and two legible copies must be submitted. Nonelectronic filings must be sent to the U.S. Department of Labor, Benefits Review Board, ATTN: Office of the Clerk of the Appellate Boards (OCAB), 200 Constitution Ave. NW, Washington, DC 20210–0001, or otherwise presented to the Clerk.

(d) *Electronic filings.* (1) Except as provided in paragraph (d)(2) of this section, beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], attorneys and lay representatives must register for the Board's electronic case management system and file all pleadings, exhibits, and other documents with the Board through this system (e-file). All e-filed documents must be in Portable Document Format (PDF). The Board prefers that pleadings be filed in text-searchable PDF format. Paper copies are not required unless requested by the Board.

(2) Attorneys and lay representatives may request an exemption (pursuant to § 802.219) for good cause shown. Such a request must include a detailed explanation why e-filing or acceptance of e-service should not be required.

(3) Self-represented parties may file pleadings, exhibits, and other documents in electronic or nonelectronic form in accordance with paragraph (c) or (d) of this section.

(4) A document filed electronically is a written paper for purposes of this Part.

(5) A person who is adversely affected by a technical failure in connection with filing or receipt of an electronic document may seek appropriate relief from the Board under § 802.219. If a technical malfunction or other issue prevents access to the Board's case management system for a protracted period, the Board by special order may provide appropriate relief pending restoration of electronic access.

(e) *Special rules for notices of appeal.* (1) Except as otherwise provided in this section, a notice of appeal is considered to have been filed only as of the date it is received by the office of the Clerk of the Board.

(2) A notice of appeal submitted to any other agency or subdivision of the Department of Labor or of the U.S. Government or any state government, and subsequently received by the office of the Clerk of the Board, will be considered filed with the Clerk of the Board as of the date it was received by the other governmental unit if the Board finds in its discretion that it is in the interest of justice to do so.

(3) If the notice of appeal is sent by mail or commercial carrier and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, it will be considered to have been filed as of the date of mailing or the date of delivery to the commercial carrier.

(i) For notices sent by mail, the date appearing on the U.S. Postal Service postmark (when available and legible) will be prima facie evidence of the date of mailing. If there is no such postmark or it is not legible, other evidence such as, but not limited to, certified mail receipts, certificates of service, and affidavits, may be used to establish the mailing date.

(ii) For notices sent by commercial carrier, the date of delivery to the carrier may be demonstrated by the carrier's receipt or tracking information.

(4) If the notice of appeal is electronically filed through the Board's case management system, it is considered received by the office of the Clerk of the Board as of the date and time recorded by the system under § 802.221(c).

■ 6. Add § 802.223 to subpart B to read as follows:

§ 802.223 Service requirements

This section prescribes rules and procedures for serving pleadings (including notices of appeal, petitions for review, and response briefs, additional briefs, and motions), exhibits, and other documents including routine correspondence on other parties and representatives.

(a) A copy of any document filed with the Board must be served on each party and the Solicitor of Labor by the party filing the document.

(b) *Manner of service.* (1) Nonelectronic service may be completed by:

(i) Personal delivery;

(ii) Mail; or

(iii) Commercial delivery.

(2) Electronic service may be completed by:

(i) Electronic mail, if consented to in writing by the person served; or

(ii) Sending it to a user registered with the Board's electronic case management system by filing via this system. A person who registers to use the Board's case management system is deemed to have consented to accept service through the system.

(c) *When service is effected.* (1) Service by personal delivery is effected on the date the document is delivered to the recipient.

(2) Service by mail or commercial carrier is effected on mailing or delivery to the carrier.

(3) Service by electronic means is effected on sending.

(d) *Date of receipt for electronic documents.* Unless the party making service is notified that the document was not received by the party served—

(1) A document filed via the Board's case management system is considered received by registered users on the date it is sent by the system; and

(2) A document served via electronic mail is considered received by the recipient on the date it is sent.

Signed on this 14th day of December, 2020, in Washington, DC

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28058 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–HT–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

RIN 1290–AA36

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is proposing to revise the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ rules of practice and procedure) to provide for electronic filing (e-filing) and electronic service (e-service) of papers. In addition to technical amendments, the revised regulations provide that e-filing will be required for persons represented by attorneys or non-attorney representatives unless good cause is shown justifying a different form of filing. Self-represented persons will have the option of e-filing or of filing papers by conventional means. Finally, the Department is proposing to revise

the OALJ rules of practice and procedure to require advance notice to the parties of the manner of a hearing or prehearing conference, whether in person in the same physical location, by telephone, by videoconference, or by other means.

DATES: Submit comments on or before February 10, 2021.

ADDRESSES: You may read background documents, submit comments, and read comments received through the Federal eRulemaking Portal at *http://www.regulations.gov.* To locate this notice of proposed rulemaking, identified by Regulatory Identification Number (RIN) 1290–AA36, search for docket number DOL–2020–0015 or key words such as ''Office of Administrative Law Judges'' or ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.'' Instructions for submitting comments are found on the *www.regulations.gov* website. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Therefore, the Department recommends that commenters safeguard their personal information by not including social security numbers, personal addresses, telephone numbers, and email addresses in comments. It is the responsibility of the commenters to safeguard their information.

If you need assistance to review the comments or the proposed rule, the Department will consider providing the comments and the proposed rule in other formats upon request. For assistance to review the comments or obtain the proposed rule in an alternate format, contact Mr. Todd Smyth, General Counsel, at (513) 684–3252.

FOR FURTHER INFORMATION CONTACT: Todd Smyth, General Counsel, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street NW, Washington, DC 20001–8002; telephone (513) 684–3252. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This preamble has four sections: Section I describes the process of rulemaking using a direct final rule with a companion proposed rule; Section II provides background; Section III provides a section-by-section analysis of the proposed regulatory text; and Section IV addresses the administrative requirements for this rulemaking.

I. Direct Final Rule Published Concurrently With Companion Proposed Rule

This notice of proposed rulemaking is being published concurrently with a direct final rule on the same subject. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, the Department approved these amendments as a direct final rule without a prior proposal because the Department views such amendments as a noncontroversial action and anticipates no adverse comment. This companion notice of proposed rulemaking in the ''Proposed Rules'' section of this issue of the **Federal Register** is published to expedite notice-and-comment rulemaking in the event the Department receives significant adverse comment and withdraws the direct final rule.

The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. The Department will treat comments received on the companion direct final rule as comments regarding the proposed rule, and vice versa. Thus, if the Department receives significant adverse comment on either this proposed rule or the companion direct final rule, the Department will publish a **Federal Register** notice withdrawing the direct final rule and will proceed with this proposed rule. If the Department does not receive a timely filed adverse comment, it will take no further action on this proposed rule and the direct final rule will become effective with no further action on February 25, 2021. For more information about the Department's determination to publish this proposed rule as a companion to the direct final rule, and what constitutes a significant adverse comment, refer to Section I of the Supplementary Information portion of the direct final rule.

The Department requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community.

This proposed rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

II. Background

On May 19, 2015, the regulations governing practice and procedure for proceedings before the United States Department of Labor, Office of Administrative Law Judges (OALJ) were significantly revised. 80 FR 28768 (May 19, 2015). At the time, the Department acknowledged that implementation of a dedicated electronic filing system and electronic service system for OALJ adjudications would be beneficial, but stated that because the OALJ did not have a dedicated electronic filing and service system, the rules of practice and procedure necessarily focused on traditional filing and service. 80 FR at 28772, 28775. The Department now has an electronic filing and service system (eFile/eServe system) for its adjudicatory agencies. This proposed revision to part 18 makes regulatory changes to implement this new system.

When the Department revised the OALJ rules of practice and procedure in 2015, it modeled those rules on the Federal Rules of Civil Procedure (FRCP). The Department noted that ''[u]sing language similar or identical to the applicable FRCP gains the advantage of the broad experience of the Federal courts and the well-developed precedent they have created to guide litigants, judges, and reviewing authorities within the Department on procedure. Parties and judges obtain the additional advantage of focusing primarily on the substance of the administrative disputes, spending less time on the distraction of litigating about procedure.'' 77 FR 72142, 72144 (Dec. 4, 2012) (proposed rule). Accordingly, the Department proposes to amend part 18 to accommodate electronic filing with a view toward aligning part 18, to the extent practicable, with the equivalent Federal rules.

The current OALJ rule at 29 CFR 18.30 governs serving and filing of pleadings and other papers, and was modeled on FRCP 5. As noted above, § 18.30 did not address in detail electronic filing or service because OALJ did not have a dedicated e-filing system in 2015. In 2018, FRCP 5 was amended to revise the provisions for electronic service based on the Federal judiciary's experience with its electronic filing system, namely the Case Management/Electronic Case Files (CM/ECF) system. In brief, the changes to FRCP 5 deleted the requirement of consent in writing to electronic service where service is made on a registered user through the court's electronic filing system; ended the practice of leaving it to local rules to require or allow electronic filing, and instead established a uniform national rule that makes electronic filing mandatory for parties represented by counsel (providing, however, for certain exceptions); required that any local rule requiring electronic filing by self-represented parties must allow reasonable exceptions; established a uniform national signature provision; and provided that no certificate of service is required when a paper is

served by filing it with the court's electronic filing system.

Most of the Rule 5 revisions make sense in regard to DOL OALJ adjudications but with some modifications to reflect administrative practice and functional differences between CM/ECF and the Department's eFile/eServe system. As explained in more detail below, the regulatory amendments propose to address the following:

- Require persons represented by attorney and non-attorney representatives to use the Department's system to file all papers electronically and to receive electronic service of documents unless another form of filing or service is allowed by the presiding judge for good cause or is required by standing order;
- give self-represented persons the option to use conventional means of filing, or to use the Department's system to file all papers electronically and to receive electronic service of documents;
- provide that a filing made through a person's eFile/eServe system account and authorized by that person, together with that person's name on a signature block, constitutes that person's signature.

FRCP 5(d)(1)(B) was revised in 2018 to provide that ''[n]o certificate of service is required when a paper is served by filing it with the court's electronic-filing system.'' The Department, however, has determined that a certificate of service should continue to be required for all filings with OALJ given that (1) OALJ proceedings have a significant number of self-represented parties as participants, and (2) especially early in OALJ proceedings, the identification of parties and their representatives—and accurate contact information for such persons and entities—is often fluid and uncertain. *Compare* ''Notice for Comment on Proposed Amendments to the Local Civil and Criminal Rules for the Middle District of Louisiana'' (Apr. 12, 2019) (proposing to revise court's local rule to provide that a certificate of service is required for an initial complaint filed with the court's electronic filing system, and the case involves a party who is not an electronic filer); General Order 2019–06 (M.D. La. Nov. 12, 2019) (adopting amendment to Local Civil Rule 5(e)(1) to provide that ''[w]hen a document filed after the initial complaint is served by filing it with the Court's electronic filing system, no certificate of service is required when all parties are electronic filers.'').

The Department notes that, as with all OALJ rules of practice and procedure, the e-filing provisions will not apply if they are ''inconsistent with a governing statute, regulation, or executive order. . . . If a specific Department of Labor regulation governs a proceeding, the provisions of that regulation apply[.]'' 20 CFR 18.10(a). For instance, OALJ will continue to serve decisions via certified mail where required by the governing statute or regulation, including on persons participating in the Department's eFile/eServe system.

Finally, as a consequence of the COVID–19 national emergency in 2020, courts and administrative adjudicators across the Nation have dramatically increased the use of telephonic and video hearings, including the Department of Labor's OALJ. The Department proposes to revise part 18 to require the judge to give advance notice of the manner of the hearing—whether in person in the same physical location, by telephone, by videoconference, or by other means—and to provide parties an opportunity to request a different manner of hearing. *See* 5 U.S.C. 554(b)(1) (requiring timely notice of the time, place, and nature of the hearing).

III. Section-by-Section Analysis

General Provisions

Sec. 18.11 Definitions.

A definition of ''*eFile/eServe system*'' is proposed to be added to the definitions section of part 18 to clarify that it means the Department of Labor's electronic filing and electronic service system for adjudications.

A definition of ''*registered user*'' is proposed to be added to the definitions section of part 18 to clarify that it means any person registered to file papers using the Department's eFile/eServe system.

A definition of ''*standing order*'' is proposed to be added to the definitions section of Part 18. Amendments to § 18.30 follow the language of FRCP 5 to permit exceptions, permissions, or requirements relating to e-filing to be established by ''local rule.'' OALJ is organized differently than the judiciary, and does not use local rules. However, OALJ sometimes issues Administrative Orders addressing court administration applicable to all cases pending before OALJ, or to all cases pending in a district office. For example, in the past when an OALJ district office was closed for an extended period due to severe weather conditions and the aftermath, the Chief Judge or District Chief Judge issued an Administrative Order extending filing dates and permitting alternative forms of filing (such as email) until the office returned to normal operations. Similarly, OALJ may need to issue standing orders to address national or local conditions impacting electronic filing.

Service, Format, and Timing of Filings and Other Papers

Sec. 18.30 Service and Filing

The current § 18.30 is modeled on FRCP 5. FRCP 5 was amended in 2018 in regard to electronic filing, and the following proposed revisions to § 18.30 are modeled on the FRCP 5 amendments to the extent practicable.

Paragraph (a)(2)(ii)(E) is proposed to be revised to permit a registered user of the Department's eFile/eServe system to serve filings on other registered users through the Department's system.

A new paragraph (a)(2)(iii) is proposed to be added to provide that represented persons required to file electronically using the Department's eFile/eServe system, and self-represented persons who opt to file electronically using that system, are deemed to have consented to electronic service of documents issued by the judge and papers filed by other registered users of the system.

The first sentence of paragraph (b)(1) is proposed to be revised to harmonize it to the current FRCP 5 in regard to the time period for filing a paper. Specifically, rather than the current requirement to file a paper ''within a reasonable time after service with a certificate of service,'' the proposed amended paragraph requires filing ''no later than a reasonable time after service.'' The FRCP 5 made this change because ''within'' might be read as barring filing before the paper is served. ''No later than'' was substituted in FRCP 5 to ensure that it is proper to file a paper before it is served.

Paragraph (b)(2) is proposed to be revised to clarify that a paper submitted electronically in the Department's eFile/eServe system is filed when received by that system.

The provisions of § 18.30(b)(3) are proposed to be amended and reorganized. New paragraph (b)(3)(i)(A) is proposed to provide that a person represented by an attorney or non-attorney representative is required to file using the Department's eFile/eServe system following the instructions on the system's website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order. This aligns practice before OALJ with current common practice before State and Federal courts and agencies. *See* 76 FR 56107 (Sept. 12, 2011) (Social Security Administration final rule announcing that it will require claimant representatives to use SSA's electronic

services as they become available on matters for which the representatives request direct fee payment); 76 FR 63537 (Oct. 13, 2011) (U.S. Merit Systems Protection Board pilot program requiring agencies and attorneys representing appellants to file pleadings electronically for appeals in the Washington Regional Office and Denver Field Office); 84 FR 14554 (Apr. 10, 2019) (Occupational Safety and Health Review Commission final rule adopting mandatory electronic filing and service); 84 FR 37081 (July 31, 2019) (U.S. Patent and Trademark Office final rule amending its Rules of Practice in Trademark Cases and Rules of Practice in Filings to mandate electronic filing of trademark applications and submissions associated with trademark applications and registrations). The Department believes that, rather than imposing undue costs or difficulties on representatives, e-filing will reduce costs and make filing with OALJ more convenient and certain. *See generally http://www.azd.uscourts.gov/efiling/advantages* (outlining advantages of electronic case filing). At present, a representative filing via the Department's eFile/eServe system would need a computer, access to email and the internet, and a Portable Document Format (PDF) application. Such capacities are common, if not essential, in legal practice today. Moreover, because a representative is allowed to establish good cause for using other forms of filing, the amended rule allows for reasonable exceptions to an e-filing mandate. This requirement applies only to those documents filed 45 days after the effective date or later. This time period between the effective date, when litigants can be certain that the direct final rule will not be withdrawn, and the applicability date, on which e-filing becomes mandatory, allows the Department time to update its communications to parties about how to file and allows parties who were previously filing and serving documents by mail to adjust to electronic filing.

Proposed new paragraph (b)(3)(i)(B) provides that a self-represented person may use the Department's eFile/eServe system to file papers. This is a more permissive approach than found in FRCP 5, which allows a self-represented party to file electronically only by court order or a local rule. The Department, by contrast, encourages all persons participating in OALJ hearings to use the Department's eFile/eServe system for filings.

Proposed new paragraph (b)(3)(i)(C) provides that a filing made through the Department's eFile/eServe system containing the registered user's name on a signature block constitutes that person's signature. This is consistent with FRCP 5 and provides a simple, practical solution to the signing of papers filed electronically through the Department's system.

Proposed new paragraph (b)(3)(i)(D) provides that a paper filed electronically is a written paper for purposes of the part 18 regulations. This provision is consistent with FRCP 5(d)(3)(D).

Current § 18.30(b)(3) is proposed to be moved to paragraph (b)(3)(ii), and modified to state the permissible methods of filing for those persons excepted from mandatory use of the Department's eFile/eServe system. The Department also proposes to provide in paragraph (b)(3)(ii) the website address at which current OALJ National and District office addresses are listed—specifically: *https://www.dol.gov/agencies/oalj/contacts.*

Current § 18.30(b)(3)(i) requires prior permission from the judge to file by facsimile. With the availability of e-filing, the concerns that prompted that limitation on facsimile filing will be largely mooted. For self-represented persons who do not have ready access to reliable internet services, filing by facsimile may be a viable alternative. Thus, the Department proposes to eliminate the requirement of current § 18.30(b)(3)(i)(A) to receive prior permission to file by facsimile. The Department, however, proposes to retain the current requirements for use of a facsimile cover sheet and retention of the original document and a transmission record. These requirements are proposed to be consolidated and re-lettered as new paragraphs (b)(3)(ii)(A) and (B).

Current § 18.30(b)(4) is proposed to be deleted as it will be been mooted by the new provisions in paragraph 18.30(b)(3)(i).

Sec. 18.32 Computing and Extending Time

FRCP 6(a) governs the computation of time periods under the FRCP, in any local rule or court order, or in any statute that does not specify a method of computing time. In this regard, FRCP 6(a)(1)(C) provides that the ''last day'' of a time period is included in the calculation, and provides that the ''last day'' ends at midnight in the court's time zone for electronic filing, and when the clerk's office is scheduled to close for filing by other means. FRCP 6(a)(4)(A) and (B).

The current § 18.32 is modeled on FRCP 6, but does not address electronic filing. Thus, the Department proposes to revise § 18.32(a)(2)(i) to provide that unless a different time is set by a statute, executive order, regulation, or judge's order, for electronic filing, the ''last day'' goes through 11:59:59 p.m. in the time zone of the presiding judge's office—or, for cases not yet assigned to an OALJ national or district office—in the time zone of the office of the Chief Judge of OALJ. Although standardizing the time for electronic filing at midnight Eastern Time on the last day of the filing period was considered, because the Department's eFile/eServe system is administered in Washington, DC, the Department proposes to set the time based on local time at the presiding judge's location in order not to reduce hours available for e-filing for persons outside the Eastern time zone. In regard to filing by means other than electronic filing, the Department proposes to revise § 18.32(a)(2)(ii) to follow FRCP 6(a)(4)(B) to state ''when the clerk's office is scheduled to close.'' OALJ clerks' offices close at 4:30 p.m. in the time zone of the presiding judge's office or 4:30 p.m. in the time zone of the office of the Chief Judge of OALJ for cases not yet assigned to an OALJ national or district office.

Sec. 18.34 Format of Papers Filed

The current § 18.34 addresses the format of papers filed in hard copy. The Department proposes to amend § 18.34 to require that papers filed electronically be in a format that is accepted by the Department's eFile/eServe system.

Prehearing Procedure

Current § 18.40(a) requires that the judge provide at least 14 days' notice of the date, time, and place of the hearing. In view of increased use of telephonic and video hearings, the Department proposes to amend § 18.40(a) to require the judge to also provide 14 days' notice of the manner of hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. The Department also proposes to revise § 18.40(a) to refer to the provisions of new § 18.30(a) in regard to how the notice of hearing will be sent to the parties. This revision is necessary to harmonize § 18.40(a) with the new eFile/eServe system.

The Department proposes to amend § 18.40(b) to require the judge to consider the convenience and necessity of the parties and witnesses in selecting the manner of the hearing.

Current § 18.41 addresses changes to the time, date, and place of the hearing. The Department proposes to amend § 18.41(a), (b), and (c) to add the manner of the hearing to the subjects that can be changed by the judge or upon motion of a party.

Current § 18.44(b) provides that prehearing conferences may be conducted in person, by telephone, or other means. The Department proposes to amend § 18.44(b) to explicitly include videoconferences as a permissible means of conducting prehearing conferences.

Hearing

Sec. 18.82 Exhibits

By 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); Delivering Government Solutions in the 21st Century, at 22, 100–102 (June 21, 2018). Accordingly, the Department must move expeditiously toward conducting administrative adjudications using electronic records to the greatest extent practical. Thus, the Department proposes a new § 18.82(a) to provide that those who are required or have opted to file using the Department's eFile/eServe system must file electronically any exhibits to be offered into evidence at the hearing, unless the exhibit is not susceptive to electronic filing. An example of an exhibit not susceptive to electronic filing is a three-dimensional object. Current paragraphs (a) through (g) are proposed to be re-lettered to paragraphs (b) through (h). The Department proposes that newly lettered paragraph (d) on exchange of exhibits would be amended to clarify that if a copy of a written exhibit being offered into evidence was previously filed electronically pursuant to § 18.82(a), a physical copy of the exhibit need not be produced for the judge at the hearing unless the judge directs otherwise.

IV. Administrative Requirements

Executive Orders 12866, Regulatory Planning and Review; and 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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.

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866. The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 because the rule will not have an annual effect on the economy of $100 million or more; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Furthermore, the rule does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, OMB waived review.

Regulatory Flexibility Act of 1980

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act, the regulatory flexibility requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to this rule. *See* 5 U.S.C. 601(2).

Paperwork Reduction Act (PRA)

The Department has determined that this proposed rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), as this rulemaking involves administrative actions to which the Federal government is a party or that occur after an administrative case file has been opened regarding a particular individual. *See* 5 CFR 1320.4(a)(2), (c).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132, Federalism

The Department has reviewed this proposed rule in accordance with the requirements of Executive Order 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, and tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this proposed rule in accordance with Executive Order 13175 and has determined that it does not have ''tribal implications.'' The proposed rule does not ''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.''

List of Subjects in 29 CFR Part 18

Administrative practice and procedure, Labor.

For the reasons set out in the Preamble, the Department of Labor proposes to amend 29 CFR part 18 as set forth below.

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

■ 1. The authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

■ 2. Amend § 18.11 by adding definitions in alphabetical order for ''eFile/eServe system'', ''Registered user'', and ''Standing order'' to read as follows:

§ 18.11 Definitions.

* * * * *

eFile/eServe system means the Department of Labor's electronic filing and electronic service system for adjudications.

* * * * *

Registered user means any person registered to file papers using the Department's eFile/eServe system.

* * * * *

Standing order means an order issued by the Chief Judge or District Chief Judge addressing court administration that applies to all cases pending before OALJ or an OALJ district office, and which is in force until changed or withdrawn by a subsequent order.

■ 3. Amend § 18.30 by revising paragraph (a)(2)(ii)(E), adding paragraph (a)(2)(iii), revising the first sentence in paragraph (b)(1) introductory text, revising paragraphs (b)(2) and (3), and removing paragraph (b)(4).

The revisions and addition read as follows:

§ 18.30 Service and filing.

(a) * * *

(2) * * *

(ii) * * *

(E) Sending it to a registered user by filing it with the Department's eFile/eServe system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

* * * * *

(iii) *Consent to electronic service.* Any person required to file electronically pursuant to § 18.30(b)(3)(i)(A) and any person who opts to file electronically pursuant to § 18.30(b)(3)(i)(B) is deemed to have consented to electronic service of documents issued by the judge and papers filed by a registered user of the Department's eFile/eServe system.

* * * * *

(b) * * *

(1) * * * Any paper that is required to be served must be filed no later than a reasonable time after service with a certificate of service. * * *

(2) *Filing: when made—in general.* A paper submitted electronically in the Department's eFile/eServe system is filed when received by the system. Papers submitted by other means are filed when received by the docket clerk or by the judge during a hearing.

(3) *Filing: how made*—(i) *Electronic filing and signing*—(A) *By a represented person—generally required; exceptions.* Beginning on [DATE 45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], a person represented by an attorney or non-attorney representative must file using the Department's eFile/eServe system following the instructions on the system's website, unless another form of electronic or non-electronic filing is allowed by the judge for good cause or is allowed or required by standing order.

(B) *By a self-represented person—when allowed or required.* A person not represented by an attorney or non-attorney representative may file using the Department's eFile/eServe system following the instructions on the system's website.

(C) *Signing.* A filing made through a person's eFile/eServe system account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) *Same as a written paper.* A paper filed electronically is a written paper for purposes of these rules.

(ii) *Other forms of filing.* Persons who are excepted from e-filing under § 18.30(b)(3)(i)(A), or who have opted not to use e-filing as permitted by § 18.30(b)(3)(i)(B), may file papers by mail, courier service, hand delivery, facsimile, or alternative means of electronic delivery. The mailing addresses for OALJ's National and District offices are found at *https://www.dol.gov/agencies/oalj/contacts.*

(A) *Filing by facsimile—cover sheet.* Filings by facsimile must include a cover sheet that identifies the sender, the total number of pages transmitted, and the matter's docket number and the document's title.

(B) *Filing by facsimile—retention of the original document.* The original signed document will not be substituted into the record unless required by law or the judge. Any party filing a facsimile of a document must maintain the original document and transmission record until the case is final. A transmission record is a paper printed by the transmitting facsimile machine that states the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication that no error in transmission occurred. Upon a party's request or judge's order, the filing party must provide for review the original transmitted document from which the facsimile was produced.

■ 4. Amend § 18.32 by revising paragraph (a)(2) to read as follows:

§ 18.32 Computing and extending time.

(a) * * *

(2) ''*Last day*'' defined. Unless a different time is set by a statute, regulation, executive order, or judge's order, the ''last day'' ends:

(i) For electronic filing, at 11:59:59 p.m. in the time zone of the presiding judge's office—or, for cases not yet assigned to an OALJ national or district office—at 11:59:59 p.m. in the time zone of the office of the Chief Judge of OALJ; and

(ii) For filing by other means, when the clerk's office is scheduled to close.

* * * * *

■ 5. Amend § 18.34 by revising the introductory text to read as follows:

§ 18.34 Format of papers filed.

Papers submitted electronically in the Department's eFile/eServe system must be in a format accepted by the Department's eFile/eServe system. Papers not filed electronically must be printed in black ink on 8.5 x 11-inch opaque white paper. All papers must be legible, and begin with a caption that includes:

* * * * *

■ 6. Revise § 18.40 to read as follows:

§ 18.40 Notice of hearing.

(a) *In general.* Except when the hearing is scheduled by calendar call, the judge must, at least 14 days before the hearing, notify the parties of the hearing's date, time, and place, and of the manner of the hearing, whether in person in the same physical location, by telephone, by videoconference, or by other means. The notice is sent by the means provided for in § 18.30(a), unless the judge determines that circumstances require service by certified mail or other means. The parties may agree to waive the 14-day notice for the hearing.

(b) *Date, time, place, and manner.* The judge must consider the convenience and necessity of the parties and the witnesses in selecting the date, time, place, and manner of the hearing.

■ 7. Amend § 18.41 to revise the section title and paragraphs (a), (b) introductory text, and (b)(2) as follows:

§ 18.41 Continuances and changes in place or manner of hearing.

(a) *By the judge.* Upon reasonable notice to the parties, the judge may change the time, date, place, and manner of the hearing.

(b) *By a party's motion.* A request by a party to continue a hearing or to change the place or manner of the hearing must be made by motion.

(1) * * *

(2) *Change in place or manner of hearing.* A motion to change the place or manner of a hearing must be filed promptly.

■ 8. Amend § 18.44 by revising paragraph (b) to read as follows:

§ 18.44 Prehearing conference.

* * * * *

(b) *Scheduling.* Prehearing conferences may be conducted in person in the same physical location, by telephone, by videoconference, or by other means after reasonable notice of time, place, and manner of conference has been given.

* * * * *

■ 9. Revise § 18.82 to read as follows:

§ 18.82 Exhibits.

(a) *Filing of exhibits to be offered into evidence.* Persons who are required to file electronically pursuant to § 18.30(b)(3)(i)(A)—or who have opted to use e-filing as permitted by § 18.30(b)(3)(i)(B)—must electronically file in the Department's eFile/eServe system any exhibits to be offered in evidence at a hearing, unless that exhibit is not susceptive to filing in electronic form.

(b) *Identification.* All exhibits offered in evidence must be marked with a designation identifying the party offering the exhibit and must be numbered and paginated as the judge orders.

(c) *Electronic data.* By order, the judge may prescribe the format for the submission of data that is in electronic form.

(d) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to the judge and to each of the parties. If the exhibit being offered was previously filed with the judge, either electronically pursuant to paragraph (a) of this section or otherwise, and furnished to the other parties prior to hearing, the exhibit need not be produced at the hearing unless the judge directs otherwise. If the exhibit being offered at the hearing was not furnished to each party or filed with the judge prior to the hearing, a paper copy of that exhibit for the judge and each party must be produced at the hearing unless the judge directs otherwise. If the judge does not fix a date for the exchange of exhibits, the parties must exchange copies of exhibits at the earliest practicable time before the hearing begins.

(e) *Authenticity.* The authenticity of a document identified in a pre-hearing exhibit list is admitted unless a party files a written objection to authenticity at least seven days before the hearing. The judge may permit a party to challenge a document's authenticity if the party establishes good cause for its failure to file a timely written objection.

(f) *Substitution of copies for original exhibits.* The judge may permit a party to withdraw original documents offered in evidence and substitute accurate copies of the originals.

(g) *Designation of parts of documents.* When only a portion of a document contains relevant matter, the offering party must exclude the irrelevant parts to the greatest extent practicable.

(h) *Records in other proceedings.* Portions of the record of other administrative proceedings, civil actions, or criminal prosecutions may be received in evidence, when the offering party shows the copies are accurate.

Signed on this 14th day of December, 2020, in Washington, DC.

Eugene Scalia,

Secretary of Labor.

[FR Doc. 2020–28050 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–20–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2020–0572; FRL–10017–90–OAR]

RIN 2060–AU57

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action presents the proposed results of the U.S. Environmental Protection Agency's (EPA's) residual risk and technology review (RTR) required under the Clean Air Act (CAA) for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for major source Flexible Polyurethane Foam Fabrication Operations, initially promulgated in 2003. Pursuant to the CAA, this action also presents the proposed results of the technology review for the NESHAP for two area source categories, Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication, which are combined in one subpart initially promulgated in 2007. In this action, the EPA is proposing to establish a numeric emission limit for one major source subcategory; remove exemptions for periods of startup, shutdown, and malfunction (SSM) and specify that the emissions standards apply at all times; require periodic performance tests; and require electronic reporting of performance test results and compliance reports. Implementation of these proposed rules is not expected to result in significant changes to the hazardous air pollutant (HAP) emissions from affected facilities in these three source categories or to human health impacts or environmental impacts associated with those emissions. However, this action, if finalized, would result in improved monitoring, compliance, and implementation of the existing standards and codify existing industry practices to prevent backsliding.

DATES: *Comments.* Comments must be received on or before February 25, 2021. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 10, 2021.

Public hearing: If anyone contacts us requesting a public hearing on or before January 19, 2021, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–0572 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2020–0572- in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2020–0572.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2020–0572 EPA Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Dr. Tina Ndoh, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1516; fax number: (919) 541–4991; and email address: *ndoh.tina@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. Chris Sarsony, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4843; fax number: (919) 541–0840; and email address: *sarsony.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. Please note that the EPA is deviating from its typical approach for public hearings because the President has declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on January 26, 2021. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing, if a hearing is requested. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be January 25, 2021. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *ndoh.tina@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by January 19, 2021. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2020–0572. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2020–0572. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

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 CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2020–0572. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
ATSDR Agency for Toxic Substances and Disease Registry
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CDC Centers for Disease Control and Prevention
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ERT Electronic Reporting Tool
GACT generally available control technology
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.5.5
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NSR New Source Review
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PDF portable document format
POM polycyclic organic matter
ppm parts per million
RBLC Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate Clearinghouse
REL reference exposure level
RfC reference concentration
RfD reference dose
RTR residual risk and technology review
SAB Science Advisory Board
SDS safety data sheets
SSM startup, shutdown, and malfunction
TDI toluene diisocyanate
TOSHI target organ-specific hazard index
tpy tons per year
TRI Toxics Release Inventory
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
URE unit risk estimate

Organization of this document. The information in this preamble is organized as follows:

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B. Where can I get a copy of this document and other related information?
II. Background
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B. What are the source categories and how do the current NESHAP regulate their HAP emissions?
C. What data collection activities were conducted to support this action?
D. What other relevant background information and data are available?
III. Analytical Procedures and Decision-Making
A. How do we consider risk in our decision-making?
B. How do we perform the technology review?
C. How do we estimate post-MACT risk posed by the source category?
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B. What are the results of the risk assessment and analyses for the Flexible Polyurethane Foam Fabrication Operations source category?
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VI. Request for Comments
VII. Submitting Data Corrections
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A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
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F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The source categories that are the subject of this proposal are Flexible Polyurethane Foam Fabrication Operations Major Sources regulated under 40 CFR part 63, subpart MMMMM, and Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication Area Sources, regulated under 40 CFR part 63, subpart OOOOOO. The North American Industry Classification System (NAICS) code for fabricators of flexible polyurethane foam industry is 326150. This list of categories and NAICS codes is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action.

The Flexible Polyurethane Foam Fabrication Operations major source category was added to the EPA's HAP source category list in 1996. (61 FR 28197, June 4, 1996.) The NESHAP for that major source category, 40 CFR part 63, subpart MMMMM, was promulgated in 2003. (68 FR 18062, April 14, 2003.) The Flexible Polyurethane Foam Fabrication area source category was added to the EPA's HAP source category list in 1999. (64 FR 38706, July 19, 1999.) The Flexible Polyurethane Foam Production area source category was added to the EPA's HAP source category list in 2002. (67 FR 70427, November 22, 2002.) The Flexible Polyurethane Foam Production major source category, Part 63, subpart III, was included on the EPA's initial HAP source category list. (57 FR 31576, July 16, 1992.) The maximum achievable control technology (MACT) standards for subpart III were initially promulgated in 1998. (63 FR 53980, October 7, 1998.) The EPA established one area source NESHAP at 40 CFR part 63, subpart OOOOOO, that applies to the two area source categories due to similarity of their operations and because they are often collocated. (72 FR 38864, July 16, 2007.)

The Flexible Polyurethane Foam Fabrication Operations major source category and the Flexible Polyurethane Foam Fabrication area source category include facilities engaged in cutting, gluing, and/or laminating pieces of flexible polyurethane foam. Those source categories include fabrication operations that are collocated with foam production plants as well as those located offsite from foam production plants. Emissions from foam fabrication primarily result from the lamination of polyurethane foam to adhere foam to other substrates and from the use of HAP-based adhesives in the gluing process. The Flexible Polyurethane Foam Production area source category includes facilities that manufacture foam made from a polymer containing a plurality of carbamate linkages in the chain backbone (polyurethane). Polyurethane is commonly made by reacting a polyisocyanate with an organic polyhydroxyl material in the presence of water. Application of blowing agents, catalysts, surfactants, and fillers transform the polyurethane into a foam with specialized properties.

This proposed action addresses the major source NESHAP that applies to the Flexible Polyurethane Foam Fabrication Operations major source category and also addresses the area source NESHAP that applies to the Flexible Polyurethane Foam Production area source category and the Flexible Polyurethane Foam Fabrication area source category.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

The proposed changes to the CFR that would be necessary to incorporate the changes proposed in this action are set out in an attachment to the memorandum titled *Proposed Regulation Edits for 40 CFR Part 63, subparts MMMMM and OOOOOO,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0572). This document includes the specific proposed amendatory language for revising the CFR and, for the convenience of interested parties, a redline version of the regulations. Following signature by the EPA Administrator, the EPA will also post a copy of this memorandum and the attachment to *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.*

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of HAP from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on MACT to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any ''developments in practices, processes, or control technologies.'' This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air

quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards in lieu of numerical emission standards. The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk pursuant to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Residual Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' (54 FR at 38045). If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6). The EPA is required to address regulatory gaps, such as missing standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN)* v. *EPA,* 955 F.3d 1088 (D.C. Cir. 2020). Section 112(k)(3)(B) of the CAA required the EPA to identify at least 30 HAP that pose the greatest potential health threat in urban areas, and CAA section 112(c)(3) requires the EPA to regulate the area source categories that represent 90 percent of the emissions of the 30 ''listed'' HAP (''urban HAP'').

B. What are the source categories and how do the current NESHAP regulate their HAP emissions?

For both the Flexible Polyurethane Foam Fabrication Operations major source category and the Flexible Polyurethane Foam Fabrication area source category, operations involve cutting, bonding, and/or laminating pieces of flexible polyurethane foam together or to other substrates. Typical bonding techniques include gluing, taping, and flame lamination. In years preceding the listing of the flexible polyurethane foam fabrication major and area source categories, some foam fabrication operations may have used methylene chloride-based adhesives to adhere pieces of foam together; however, the industry no longer uses any methylene chloride-based adhesives. Most foam fabrication adhesives are applied by workers using spray guns. Application of adhesives is typically performed in large open rooms, with workstations spaced along a conveyor that moves the pieces of foam to be glued together. Loop slitter adhesive use is a specialized type of foam fabrication adhesive use. Loop slitters are equipment used at slabstock foam production and/or fabrication facilities to slice large foam ''buns'' into thin sheets. Adhesive is used to attach the ends of the foam buns to one another before they are mounted on the loop slitter. The amount of adhesive used for loop slitters is relatively low because the adhesive is not applied continuously, just once or twice per shift when the foam buns are loaded onto the loop slitter. Flame lamination refers to the bonding of foam to any substrate (*e.g.,* fabric, foam, plastic) where the bonding agent is scorched or melted foam. Thin sheets of foam are passed under a flame which scorches the foam surface and makes it sticky. The tacky foam sheet is then applied and adhered to a substrate.

The Flexible Polyurethane Foam Production area source category includes facilities that manufacture foam made from polyurethanes, which are in the class of compounds called ''reaction polymers.'' Application of blowing agents, catalysts, surfactants, and fillers transforms the polyurethane into a foam with specialized properties. There are three types of polyurethane foam production facilities: Slabstock flexible polyurethane foam (slabstock foam), molded flexible polyurethane foam (molded foam), and rebond foam.

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

Slabstock foam is produced in large continuous buns that are then cut into the desired size and shape. Slabstock foam is used in a wide variety of applications, including furniture and mattresses. Molded foam is produced by ''shooting'' the foam mixture into a mold of the desired shape and size. Molded foam is used in office furniture, automobile seats, novelties, and many other applications. Rebond foam is made from scrap foam that is converted into a material primarily used for carpet underlay.

The EPA estimates that there are 32 facilities currently subject to the area source standards, of which approximately 20 are believed to be owned by small businesses.

The EPA promulgated MACT standards for major source Flexible Polyurethane Foam Fabrication Operations facilities in 2003 under 40 CFR part 63, subpart MMMMM. The standards apply to major sources of HAP at existing and new flexible polyurethane foam fabrication facilities. Because of their potential to generate HAP emissions, the processing units of interest at foam fabrication facilities are loop slitters and flame lamination units. The MACT standards for Flexible Polyurethane Foam Fabrication Operations require HAP emissions reductions and control for new flame lamination units and prohibit use of HAP-based adhesives in new and existing loop slitting operations. For new flame lamination units, a 90-percent reduction in HAP emissions is required. For existing flame lamination units, there are currently no MACT emission limits. For new and existing loop slitters, the MACT standards prohibit use of any adhesive containing 5 percent or more (by weight) of total HAP. The EPA estimates that there are currently three facilities subject to subpart MMMMM—two in Indiana, and one in New Mexico.

Both the Flexible Polyurethane Foam Production and Flexible Polyurethane Fabrication Operations area source categories were listed for regulation due to emissions of the urban HAP methylene chloride. At the time of the initial area source standards promulgation, methylene chloride was the only urban HAP used at foam production and foam fabrication facilities. Now, however, there are no known urban HAP used at foam production and foam fabrication facilities. In the past, slabstock foam production facilities sometimes used methylene chloride as an auxiliary blowing agent to control the density and other properties of the foam as it expanded during the pouring process.[2] Methylene chloride was also sometimes used as an equipment cleaner, in particular for mix heads. A small number of molded and rebond foam facilities used methylene chloride in mold release agents, and some molded foam facilities used it as a mixhead cleaner. Foam fabricators used methylene chloride-based adhesives to adhere pieces of foam to one another. Flame laminators have never used methylene chloride and, as such, are not regulated by the area source standards.

In 2007, the EPA promulgated GACT standards for the Flexible Polyurethane Foam Production area source category and the Flexible Polyurethane Foam Fabrication area source category together under 40 CFR part 63, subpart OOOOOO. The GACT standards required that methylene chloride be significantly reduced or eliminated from slabstock foam production, molded foam release agents, equipment cleaning, rebond foam mold release agents, and from foam fabrication adhesive use. Although both area source categories were listed for regulation due to emissions of the urban HAP methylene chloride, the EPA finds that methylene chloride is no longer used within either source category.

C. What data collection activities were conducted to support this action?

For the Flexible Foam Fabrication Operations NESHAP RTR, the EPA used emissions and supporting data from the 2017 and 2014 National Emissions Inventory (NEI), 2018 and 2019 Toxics Release Inventory (TRI) data, and 2014 stack test data from one facility to develop the model input files for the residual risk assessments for major source flexible foam fabrication facilities.

The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes data necessary for conducting risk modeling, including annual HAP emissions estimates from individual emission sources at facilities and the related emissions release parameters. In certain cases, we contacted state inventory compilers and facility owners or operators to confirm and clarify the sources of emissions, emissions estimates, and release parameters that were reported in the NEI.

The TRI is a resource for learning about toxic chemical releases and pollution prevention activities reported by industrial and federal facilities. The TRI tracks the management of certain toxic chemicals that may pose a threat to human health and the environment. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery, and treatment.[3]

Additional information on the development of the modeling file can be found in Appendix 1 to the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

For the Flexible Foam Production and Fabrication area source standards, we relied on information provided by industry to determine whether any urban HAP were emitted from the regulated facilities. Through industry meetings and email and telephone conversations, the EPA found that there are no additional urban HAP emitted from flexible foam production and fabrication facilities subject to area source standards. Detailed information of the technology review can be found in the memorandum titled *Technology Review for the Flexible Polyurethane Foam Production and Fabrication Area Source Categories,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

The Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication MACT standards were promulgated in 1998 and 2003 respectively. Since that time, the EPA has developed air toxics regulations for a number of additional source categories that emit HAP from the same types of emission sources that are present in the Flexible Polyurethane Foam Production and Fabrication source categories. In air toxic regulatory actions carried out subsequent to the initial MACT standard development for these source categories, the EPA has consistently evaluated any new practices, processes, and control technologies. A review of

[2] Other regulations address methylene chloride. For example, the EPA listed methylene chloride as an unacceptable (prohibited) blowing agent for use in flexible polyurethane under section 612 of the CAA (81 FR 86778, December 1, 2016).

[3] Available at *https://www.epa.gov/toxics-release-inventory-tri-program.*

these initial and subsequent air toxics regulations, including supporting documentation used in the rulemakings, was conducted to determine whether any practices, processes, or control technologies could be applied to the Flexible Foam Fabrication source category.

One potential development in practices, processes, and control technologies was identified through the review of other air toxics regulations, which is discussed further in section IV.D of this document.

D. What other relevant background information and data are available?

For the risk review portion of the RTR, we reviewed facility permits for the three major sources subjected to the Flexible Polyurethane Foam Fabrication Operations NESHAP. Facility permits provide data on maximum allowable emissions and other relevant production and emission factors.

For the technology review portion of the RTR, we collected information from the Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate Clearinghouse (RBLC) to identify developments in practices, processes, and control technologies since the MACT standards were developed. The RBLC is a database that contains case-specific information on air pollution technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions above certain defined thresholds, an NSR permit must be obtained. The RBLC promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RBLC to determine what technologies are currently used for these source categories to reduce air emissions. Additional information about these data collection activities for the technology reviews is contained in the technology review memorandum titled *Technology Review for the Flexible Polyurethane Foam Fabrication Operations Source Category,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

The RBLC provides several options for searching the permit database on-line to locate applicable control technologies. Our initial search of the RBLC specified processes in polyurethane foam products manufacturing, with permits dating back to 2001. This search did not provide any results for foam fabrication operations. Further searches of the database were conducted based on relevant keywords. The search included all available data fields, which among others, included the following:

- RBLC ID;
- Facility Name and State;
- Permit Date;
- Process name;
- Throughput;
- Pollutant;
- Control technology;
- Percent efficiency of control; and
- Pollutants/Compliance Notes.

The results of this search are presented in Appendix 1 of the *Technology Review for the Flexible Polyurethane Foam Manufacturing Source Category.* As shown in Appendix 1, no control technologies more stringent than the Flexible Polyurethane Foam NESHAP were identified through this search.

Two of the three facilities subject to major source standards have loop slitter operations and use adhesives. Both facilities provided the EPA with safety data sheets (SDS) for the adhesives in use. Those SDS were used to determine chemical composition and potential HAP emissions from the adhesives. Additional background information on adhesive use and regulation was collected through review of other NESHAP in similar industrial sectors. Specifically, we searched for other NESHAP regulating HAP emissions from coatings and adhesives and compared the stringency of those standards to the existing requirements for HAP adhesives for loop slitters. Data from the SDS provided and the NESHAP for similar source categories were also used in the technology evaluation for the Flexible Polyurethane Foam Fabrication Operations NESHAP. The findings for the technology review are discussed further in section IV.D of this preamble.

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

In this proposed action, pursuant to CAA section 112(f), the EPA is conducting a risk review for the major source NESHAP (40 CFR part 63, subpart MMMMM) MACT standards for Flexible Polyurethane Foam Fabrication Operations. Consistent with the provision regarding alternative standards for area sources in CAA section 112(d)(5), the risk review does not cover the NESHAP for area sources. Therefore, the discussions of risk assessment methods and modeling analyses described in the following paragraphs only apply to the major source category.

However, pursuant to CAA section 112(d)(6), the EPA is proposing the technology review for both the major source NESHAP and the area source NESHAP (40 CFR part 63, subpart OOOOOO). Therefore, the discussions in the paragraphs below regarding how the EPA conducted the technology reviews apply to both major sources and area sources.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and, thus, ''[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information.'' (54 FR at 38046). Similarly, with regard to the ample margin of safety determination, ''the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by emissions of HAP that are carcinogens from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[4] The assessment also provides estimates of the distribution of cancer

[4] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the explanation in the EPA's response to comments on our policy under the Benzene NESHAP:

> The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will ''protect the public health''.

(54 FR at 38057). Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.'' *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [5]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review primarily focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and

[5] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

• Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. We also review the NESHAP and the available data to determine if there are any unregulated emissions of HAP within the source category and evaluate this data for use in developing new emission standards. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this proposed rule contains the following document that provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;[6] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The actual emissions and the emission release characteristics for each facility were obtained primarily from either the 2014 NEI or the 2017 NEI; most data were obtained from the 2017 NEI, unless a facility was not included in that base year file, in which case the 2014 NEI data were used. In one instance, a facility was contacted to confirm emissions that appeared to be outliers because they were inconsistent with our understanding of the industry. That facility provided a test report containing data that were more consistent with our understanding of emissions from the industry and were ultimately used as actual emissions for the risk modeling file. Additional information on the development of the modeling file for the Flexible Polyurethane Foam Fabrication Operations source category, including the development of the actual emissions and emissions release characteristics, can be found in the memorandum, *Emissions Data for the National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations,* which is available in the respective docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19992, 19998 and 19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34421, 34428, June 14, 2006, and 71 FR 76603, 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach (54 FR 38044).

For the Flexible Polyurethane Foam Fabrication Operations source category, allowable emissions were assumed to be equal to actual emissions. For the subcategory of flame laminators, there currently are no emissions limits for existing sources, and there have been no new sources since the promulgation of the standards. Therefore, we conclude that the emissions that are allowed under the existing standards are equal to actual emissions. For the loop slitter subcategory, there were no HAP emissions from the adhesive, and we are not aware of any HAP-based substitutes that could be used in place of current industry practice; therefore, we again conclude that allowable emissions would be equal to actual emissions, which in this case are zero.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the major source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[7] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial

[6] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. Available at: *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

[7] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

facilities.[8] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[9] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the major source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP[10] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary*). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. As part of our efforts to continually improve our

[8] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[9] A census block is the smallest geographic area for which census statistics are tabulated.

[10] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[11] we revised our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* This revised approach has been used in this proposed rule and in all other RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[12] reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [13] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[14] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [15] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

For this source category, we used a default multiplier of 10 to provide a conservatively high estimate of acute effects.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we assess the site-specific data to ensure that the acute HQ is at an off-site location.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's

[11] *See, e.g.,* U.S. EPA, *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017). *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

[12] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

[13] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[14] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[15] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*). For the Flexible Polyurethane Foam Fabrication Operations source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of multipathway risk was conducted for this source category.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, polycyclic organic matter (POM), mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Flexible Polyurethane Foam Fabrication Operations source category emitted any of the environmental HAP. For the Flexible Polyurethane Foam Fabrication Operations source category, we identified emissions of HCl. Because one or more of the environmental HAP evaluated emitted HCl by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. For the Flexible Polyurethane Foam Fabrication Operations source category, we did not identify emissions of any PB–HAP. Because we did not identify PB–HAP emissions, no further evaluation of PB–HAP for the environmental risk assessment was conducted for this source category.

For further information on the PB–HAP environmental assessment approach, see the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and square kilometers; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

6. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For

this source category, we conducted the facility-wide assessment using a dataset compiled from the 2014 and 2017 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble: *What data collection activities were conducted to support this action?* Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Flexible Polyurethane Foam Fabrication Operations Source Category in Support of the 2020 Risk and Technology Review Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report.*

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the MIR or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper

bound estimate of risk.[16] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[17] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[18] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case actual exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model (TRIM.FaTE) and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary National Ambient Air Quality Standards for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[19]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTRs.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using

[16] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[17] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[18] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

[19] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume-rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3) for the Flexible Polyurethane Foam Fabrication Operations source category?

We are proposing pursuant to CAA section 112(d)(2) and (3) to establish a numeric limit for HCl emissions from existing flame laminators. The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and (3) are presented below.

For the Flexible Polyurethane Foam Fabrication Operations source category, there are four unregulated existing source flame laminators at two facilities. For major sources, the EPA is required to set technology-based standards that reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as MACT standards. Furthermore, CAA section 112(d)(3)(B) provides that MACT shall not be less stringent than ''the average emission limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in the category for categories with fewer than 30 sources. In this category, the MACT floor for existing sources is the average (or mean) of the four known flame lamination sources. However, emissions data for HCl emissions from only one of these units is available. As this is the only unit of which we are aware that has had emissions testing conducted for HCl, the proposed MACT floor is based on the HCl data for this unit. In order to determine the level of the MACT floor, the Upper Prediction Limit method was used in order to account for variability in flame laminator emissions performance, and the MACT floor was calculated at 1.45 pounds per hour of HCl.[20]

When establishing an emission standard pursuant to section 112 of the CAA, the EPA must also determine whether to control emissions ''beyond the floor'' after considering the costs, non-air quality health and environmental impacts, and energy requirements of such more stringent control. For the existing source flame laminators, the EPA evaluated whether a beyond-the-floor emissions limit would be appropriate; specifically, we evaluated whether the incremental emissions reduction achievable with a venturi scrubber would be cost effective. The venturi scrubber was the only control technology in use at flame lamination sources that was identified by the EPA with the initial promulgation of the NESHAP, and no other developments in control technologies were identified in the review of these standards. The EPA's previous cost estimates of this technology conducted for the proposal of the NESHAP in 2001 showed that the average cost per ton of HCl emissions reduced was approximately $18,000. As nothing has substantially changed with this technology or in how it would be implemented, the EPA assumes that the cost effectiveness today would be similar to that previously estimated, once the costs of inflation are considered. Inflated to 2020 dollars, the average incremental cost per ton of HCl emissions reduced is estimated to be approximately $26,000. We do not find this to be cost effective for the control of HCl and, therefore, propose that floor-level MACT controls are appropriate for existing flame laminators.

B. What are the results of the risk assessment and analyses for the Flexible Polyurethane Foam Fabrication Operations source category?

As described in section III.C of this preamble, for the Flexible Polyurethane Foam Fabrication Operations major source category, we conducted a risk assessment for all HAP emitted. We present results of the risk assessment briefly below and in more detail in the *Flexible Polyurethane Foam Fabrication Risk Assessment Report,* in the docket for this action (Docket ID No. EPA–HQ–OAR–2020–0572).

[20] *MACT Floor and Beyond-the-Floor Analysis for Existing Flame Laminators in the Flexible Polyurethane Foam Fabrication Source Category* (EPA–HQ–OAR–2020–0572).

1. Chronic Inhalation Risk Assessment Results

Table 1 below provides a summary of the results of the inhalation risk assessment for the source category. As discussed in section III.C of this preamble, we set MACT-allowable HAP emission levels equal to actual emissions. For more detail about the MACT-allowable emission levels, see Appendix 1 to the *Flexible Polyurethane Foam Fabrication Risk Assessment Report,* in the docket for this action.

TABLE 1—FLEXIBLE POLYURETHANE FOAM FABRICATION SOURCE CATEGORY INHALATION RISK ASSESSMENT RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million)		Estimated population at increased risk of cancer ≥ 1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [21]		Maximum screening acute noncancer HQ[22]
	Based on actual emissions	Based on allowable Emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Source category	0	0	0	0	0	0	0.002	0.002	HQREL = <1
Whole Facility	0.1		0		0.00001		0.2		

The results of the inhalation risk modeling using actual emissions data, as shown in Table 1 of this preamble, indicate that no carcinogens are emitted by this category. Therefore, the cancer MIR based on actual emissions (lifetime) is zero and the total estimated annual cancer incidence (national) from these facilities based on actual emission levels is zero excess cancer cases per year. The maximum chronic noncancer TOSHI value based on actual emissions is 0.002 driven by HCl.

2. Screening Level Acute Risk Assessment Results

Table 1 of this preamble shows the acute risk results for the Flexible Polyurethane Foam Fabrication source category. The screening analysis for acute impacts was based on an emissions multiplier of 10 for all emissions sources, to estimate the peak emission rates from the average rates. The maximum screening acute noncancer HQ value (off-facility site) is 0.003 driven by HCl. For more detailed acute risk screening results, refer to the *Flexible Polyurethane Foam Fabrication Risk Assessment Report,* in the docket for this action.

3. Multipathway Risk Screening Results

No PB–HAP are emitted from the Flexible Polyurethane Foam Fabrication source category, therefore, a multipathway assessment was not conducted.

4. Environmental Risk Screening Results

As described in section III.A of this document, we conducted an environmental risk screening assessment for the Flexible Polyurethane Foam Fabrication source category for HCl.

For HCl, the average modeled concentration around each facility (*i.e.,* the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

5. Facility-Wide Risk Results

As shown in Table 1, the maximum facility-wide cancer MIR is 0.1-in-1 million, driven by 2,4/2,6-toluene diisocyanate mixture (TDI) emissions from a vertical non-category point source and a non-category fugitive point source. The total estimated cancer incidence from the whole facility is 0.00001 excess cancer cases per year, or one excess case in every 100,000 years. No people were estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-MACT sources at the three facilities in this source category. The maximum facility-wide TOSHI for the source category is estimated to be 0.2, mainly driven by 2,4/2,6-TDI emissions from a vertical non-category point source and a non-category fugitive point source.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the Flexible Polyurethane Foam Fabrication Operations major source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Flexible Polyurethane Foam Fabrication Operations major source category across different demographic groups within the populations living near facilities.[23]

Results of the demographic analysis for the source category indicate that the minority population is slightly higher within 5 km of the three facilities than the national percentage (40 percent versus 38 percent). This difference is accounted for by the larger African American population around the facilities (17 percent versus 12 percent nationally). In addition, the percentage of the population living within 5 km of facilities in the source category is greater than the corresponding national percentage for the demographic groups, ''Ages 0 to 17'' and ''Below the Poverty Level.'' When examining the risk levels of those exposed to emissions from Flexible Polyurethane Foam Fabrication facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Flexible Polyurethane Foam Fabrication Operations Source Category,* September 2020 (hereafter referred to as the Flexible Polyurethane Foam Fabrication Demographic Analysis Report), available in the docket for this action.

[21] The TOSHI is the sum of the chronic noncancer HQ for substances that affect the same target organ or organ system.

[22] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.

[23] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section III.A of this preamble, we weigh all health risk factors in our risk acceptability determination, including the cancer MIR, the number of persons in various cancer and noncancer risk ranges, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent of noncancer risks, the distribution of cancer and noncancer risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Flexible Polyurethane Foam Fabrication Operations major source category, the risk analysis indicates that there is no cancer risk due to actual emissions or allowable emissions. Since there is no cancer risk, the risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also shows we did not identify a potential for adverse chronic noncancer health effects. The acute noncancer risks based on actual emissions are low at an HQ of less than 1 (based on the REL) for HCl. Therefore, we find there is little potential concern of acute noncancer health impacts from actual emissions. In addition, the risk assessment indicates no significant potential for multipathway health effects.

Considering all of the health risk information and factors discussed above, including the uncertainties discussed in section III.C.7 of this preamble, we propose to find that the risks from the Flexible Polyurethane Foam Fabrication source category are acceptable.

2. Ample Margin of Safety Analysis

We are proposing that the risks from the Flexible Polyurethane Foam Fabrication Operations major source category are acceptable. No carcinogens are emitted by the Flexible Polyurethane Foam Fabrication source category. Therefore, there are no individuals in the exposed population with lifetime cancer risks above 1-in-1 million as a result of actual or allowable emissions from this category. In addition, the maximum chronic noncancer TOSHI value based on actual and allowable emissions is well below 1 (0.002 and 0.2, respectively) and the maximum screening acute noncancer HQ value (off-facility site) is also well below 1 (0.003). Therefore, we are proposing that additional emissions controls for flexible polyurethane foam fabrication facilities are not necessary to provide an ample margin of safety to protect public health.

3. Environmental Effect

The emissions data for the Flexible Polyurethane Foam Fabrication Operations major source category indicate that one environmental HAP is emitted by sources within this source category: HCl. The screening-level evaluation of the potential for adverse environmental effects associated with emissions of HCl from the Flexible Polyurethane Foam Fabrication source category indicated that each individual concentration (*i.e.,* each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. In addition, we are unaware of any adverse environmental effects caused by HAP emitted by this source category. Therefore, we do not expect there to be an adverse environmental effect as a result of HAP emissions from this source category, and we are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

D. What are the results and proposed decisions based on our technology review for the Flexible Polyurethane Foam Fabrication Operations major source category and for the Flexible Polyurethane Foam Production and Fabrication area source categories?

As described in section III.B of this preamble, our technology review focused on the identification and evaluation of potential developments in practices, processes, and control technologies that have occurred since the major source and area source NESHAP for Flexible Polyurethane Foam Fabrication were promulgated in 2003 and 2007, respectively. During the technology review we identified existing flame laminators as an unregulated process in the major source category. This proposal included the establishment of MACT standards for that process is described in section IV.A of this preamble. In conducting the technology review, we reviewed various information sources regarding the emissions from flexible polyurethane foam fabrication operations facilities and flexible polyurethane foam production facilities. We conducted separate but similar reviews for the Flexible Polyurethane Foam major source category and the two area source categories. The reviews included a search of the RBLC database, reviews of air permits for flexible polyurethane foam fabrication operations facilities and flexible polyurethane foam production facilities, and a review of emissions standards for similar source categories. We reviewed these data sources for information on practices, processes, and control technologies that were not considered during the development of the Flexible Polyurethane Foam Fabrication Operations NESHAP and the Flexible Polyurethane Foam Production and Fabrication area source NESHAP. We also looked for information on improvements in practices, processes, and control technologies that have been employed since development of the NESHAP. Through searches of the data sources described in section IV.D of this preamble, one development in a practice, process, or control technology was identified for loop slitter use in the Flexible Polyurethane Foam Fabrication Operations major source category.

A loop slitter is a large machine used to create thin sheets of foam from the large blocks of foam or ''buns'' created at a foam production plant. A slitter consists of a large, vertical, oval conveyor belt and a cutting mechanism, which cuts a thin sheet of foam to the desired thickness. When the buns are mounted on the conveyor of the slitter, they are glued end-to-end, forming a loop. Loop slitter emissions of HAP can occur from the application of the adhesives used to glue the foam buns together if the adhesive used contains HAP. The application of the adhesive is performed at the beginning of the loop slitting process, which can run for several hours before the bun is fully cut and the machine is loaded with new buns of foam.

At the time of the development of the NESHAP, the EPA found that the foam fabrication industry had effectively discontinued the use of adhesives containing methylene chloride, which was the primary HAP in the adhesives used, and had switched to other adhesives that did not contain methylene chloride or other HAP. As a result, for both existing and new loop slitters, the MACT standard for loop slitters proposed in 2001 was the prohibition of HAP-based adhesives. The definition in the 2001 proposed standards for a HAP-based adhesive was an adhesive containing detectable HAP. In comments on the proposed standards, industry representatives indicated that the adhesives used contained small amounts of HAP rather than the estimated zero HAP content. In response to these comments, the definition of HAP-based adhesive was revised in the promulgated rule to be an adhesive

containing 5 percent (by weight) or greater of HAP.

For new and existing loop slitters, we identified a potential development in existing practices and control techniques not currently required by the Flexible Polyurethane Foam Fabrication Operations MACT standards. Through the review of other air toxics MACT standards, we noted that several other NESHAP, developed both before and after the Flexible Polyurethane Foam Fabrication Operations NESHAP, include a definition of non-HAP adhesive or coating (where the coating definition included adhesives) with a lower percentage of HAP content than that of the definition included in the Flexible Polyurethane Foam Fabrication Operations rule.

Additionally, through review of SDS provided by industry, we found that the current adhesives used in loop slitting operations are less than 1-percent HAP content by total weight. Based on the current industry standards of adhesive usage containing less than 1-percent HAP and the definition for HAP-based adhesive from similar source categories regulating adhesives, we are proposing to revise the definition of ''HAP-based adhesive'' to read: ''an adhesive containing 1 percent (by weight) or more of HAP, according to EPA Method 311 (appendix A to 40 CFR part 63) or another approved alternative.'' This lowering of the total HAP weight of an adhesive from 5 percent to 1 percent is not expected to yield any reductions in emissions but will codify current industry practices and prevent backsliding.

We propose to amend 40 CFR 63.8802(a)(1)(i) and (a)(3)(i), which describe how to determine the mass fraction of HAP in each material used, to remove references to Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4). The reference to OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) was intended to specify which compounds must be included in calculating total HAP content of a coating material if they are present at 0.1-percent or greater by mass. We are proposing to remove these references because 29 CFR 1910.1200(d)(4) has been amended and no longer readily defines which compounds are carcinogens. We are proposing to replace these references to OSHA-defined carcinogens and 29 CFR 1910.1200(d)(4) with a list (in proposed new Table 8 to 40 CFR part 63, subpart MMMMM) of those HAP that must be included in calculating total HAP content of a coating material if they are present at 0.1 percent or greater by mass.

We propose to include HAP in proposed Table 8 to 40 CFR part 63, subpart MMMMM if they were categorized in the EPA's *Prioritized Chronic Dose-Response Values for Screening Risk Assessments* (May 9, 2014), as a ''human carcinogen,'' ''probable human carcinogen,'' or ''possible human carcinogen'' according to *The Risk Assessment Guidelines of 1986* (EPA/600/8–87/045, August 1987),[24] or as ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' or with ''suggestive evidence of carcinogenic potential'' according to the *Guidelines for Carcinogen Risk Assessment* (EPA/630/P–03/001F, March 2005).[25]

For the Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication area source categories, we find that there are no additional emissions of the listed urban HAP methylene chloride. As noted in section II.B of this document, methylene chloride is no longer used within either source category. Additionally, we did not find any advances in technologies during our review of the source categories. Detailed information of the technology review can be found in the memorandum titled *Technology Review for the Flexible Polyurethane Foam Production and Fabrication Area Source Categories,* which is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2020–0572).

E. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing various other changes to reporting and recordkeeping requirements and to periodic testing requirements. Our analyses and proposed changes related to these issues are discussed below.

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of SSM exemptions in this rule, including any reference to requirements included in 40 CFR part 63, subpart A (General Provisions). Consistent with *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 7 to 40 CFR part 63, subpart MMMMM, as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that each source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of an emissions control, process, or monitoring equipment. (40 CFR 63.2, Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, and this reading has been upheld as reasonable by the court. See *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the

[24] *See https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

[25] See *https://www.epa.gov/risk/guidelines-carcinogen-risk-assessment.*

category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. The court has recognized that the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the court recognized in *U.S. Sugar Corp.,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *U.S. Sugar Corp.* at 608 (''The EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.'').

Moreover, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state-type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and are significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers. 80 FR 75178, 75211 through 14 (December 1, 2015). The EPA considers whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best-performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused, in part, by poor maintenance or careless operation. 40 CFR 63.2 (Definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. See *U.S. Sugar Corp.,* 830 F.3d at 606–610. Therefore, we are proposing to change the requirements for SSM by removing the exemption for new flame laminators from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. The EPA is proposing revisions to Table 7 of subpart MMMMM, The Applicability of General Provisions, to remove SSM exemptions and plan development for new flame lamination sources.

Electronic reporting. The EPA is proposing that owners or operators of flexible polyurethane foam fabrication operations facilities submit electronic copies of required performance test reports, performance evaluation reports, and periodic reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [26] at the time of the test be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. The proposed rule requires that Notification of Compliance Status

[26] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

reports be submitted as a PDF upload in CEDRI.

For performance test reports, performance evaluation reports, and periodic reports, the proposed rule requires that owners or operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template(s) for these reports is included in the docket for this action.[27] The EPA specifically requests comment on the content, layout, and overall design of the template(s).

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are (1) outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with the requirement to submit a report electronically. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners or operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements, and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan[28] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy[29] developed in response to the White House's Digital Government Strategy.[30] For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

F. What compliance dates are we proposing?

The EPA is proposing that affected sources that commenced construction or reconstruction on or before January 11, 2021, must comply with all of the amendments, with the exception of the proposed electronic format for submitting notifications and compliance reports, no later than 180 days after the effective date of the final rule, or upon startup, whichever is later. Affected sources that commence construction or reconstruction after January 11, 2021, must comply with all requirements of the subpart, including the amendments being proposed, with the exception of the proposed electronic format for submitting notifications and compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart MMMMM, until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing four changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart MMMMM. As discussed elsewhere in this preamble, we are proposing to add numeric limits for HCl emissions from existing flame laminators. We are also proposing a requirement that notifications, performance test results, and compliance reports be submitted electronically.

Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days, is generally necessary to accomplish these revisions. For the proposed SSM revisions, we recognize that there are no facilities that are currently using the SSM provisions for new flame laminators, since there have not been any new sources since the standard was promulgated. As a result, we do not believe that any additional time is needed for compliance with the revised SSM provisions.

We have consulted with the regulated industry regarding the proposed limits for existing flame laminators, and the requirement to conduct performance testing to demonstrate initial compliance within 180 days of the publication of the final rule and no less than every 5 years thereafter, to better understand the likely implications of the proposed revisions. There are two impacted facilities, owned by one parent company, and representatives from that company have indicated that performance testing could be done within the proposed time frame for compliance. For the proposed limit for existing sources, we believe that the two facilities that would be subject to the standards are able to meet the limit without add-on controls. However, we do recognize that facilities will need time to conduct performance tests and demonstrate compliance with the proposed emission limit.

The EPA recognizes the confusion that multiple and different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and is, thus, proposing that all affected sources that commenced construction or reconstruction on or before January 11, 2021, be in compliance with all of this regulation's

[27] See Flexible Foam Fabrication ERT templates, available at Docket ID. No. EPA–HQ–OAR–2020–0572.

[28] The EPA's *Final Plan for Periodic Retrospective Reviews,* August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[29] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[30] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

revised requirements within 180 days of the regulation's effective date, with the exception of the electronic reporting requirements.

We solicit comment on the proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

Currently, three major sources subject to the Flexible Polyurethane Foam Fabrication Operations NESHAP are operating in the United States. The affected sources under the NESHAP include flexible polyurethane foam fabrication plant sites that operate loop slitters and/or flame laminators. Facilities that use loop slitter adhesive processes would be required to comply with a ban on the use of adhesives containing air toxics. However, the EPA estimates that current air toxic emissions from loop slitter adhesive users are essentially zero as the result of changes in adhesive composition required by OSHA's permissible exposure limit for methylene chloride prior to the promulgation of the original MACT standard. Additionally, the EPA estimates that current air toxic emissions from flame laminators for the entire source category are less than 3.5 tpy.

Currently, there are approximately 32 area sources subject to the Flexible Polyurethane Foam Production and Fabrication NESHAP. The area source standard only regulates methylene chloride emissions and, similar to the major source standards, emissions of methylene chloride are essentially zero as required by OSHA's permissible exposure limit for methylene chloride prior to the promulgation of the original GACT standards. Based on information provided by industry, there are no emissions of methylene chloride from these sources. For detailed information please see the memorandum titled *Technology Review for the Flexible Polyurethane Foam Production and Fabrication Area Source Categories,* located in the docket for this action.

B. What are the air quality impacts?

Current estimated emissions from the Flexible Polyurethane Foam Fabrication Operations source category are approximately 3.5 tpy. We do not estimate any HAP emission reductions from the proposed requirement for MACT limits for existing flame laminators nor from the proposed revision to the definition of HAP-based adhesives for loop slitters. Both proposed revisions reflect current practices.

C. What are the cost impacts?

The proposed revisions to the Flexible Polyurethane Foam Fabrication Operations NESHAP for major sources are expected to have minimal cost impacts. The costs are associated with periodic emissions performance testing, electronic reporting, and reviewing the proposed rule. Three major source facilities are affected by these costs. The one-time cost associated with reviewing the proposed rule and becoming familiar with the electronic reporting system is estimated to be $2,200 per facility in 2019 dollars. The EPA estimates the cost of the HCl emissions testing requirement to be $12,000 per test. This test is required every 5 years. Prior to the initial test, installation and calibration of equipment is required which costs an estimated $3,200. The total cost per facility in Year 1 is estimated to be $17,300, and subsequent costs are estimated to be $12,000 every 5 years thereafter.

D. What are the economic impacts?

The proposed revisions to the Flexible Polyurethane Foam Fabrication Operations NESHAP for major sources and the Flexible Polyurethane Foam Production and Fabrication NESHAP for area sources are not expected to have market impacts. Over a 10-year timeframe from 2021 to 2030, the net present value of the estimated cost impacts is $83,000 at a 3-percent discount rate and $77,600 at a 7-percent discount rate in 2019 dollars. The equivalent annualized value of the cost impacts is $9,700 at a 3-percent discount rate and $11,000 at a 7-percent discount rate. Since the costs associated with the proposed rule are minimal, no significant economic impacts are anticipated due to the proposed revisions. See the memorandum titled *Economics Memo Flex Foam NESHAP Proposal,* in the docket for discussion of the facility-level cost estimates as well as the net present value and equivalent annualized value estimates.

E. What are the benefits?

Although the EPA does not anticipate any significant reductions in HAP emissions as a result of the proposed amendments, the action, if finalized as proposed, would result in improvements to the rule and prevent backsliding. Specifically, the proposed amendments codify existing industry practices both for existing flame laminators and for new and existing sources of adhesives used with loop slitters. The proposed revisions also amend the standards such that they apply at all times. Additionally, the proposed amendments requiring electronic submittal of initial notifications, performance test results, and semiannual reports will increase the usefulness of the data, are in keeping with current trends of data availability, will further assist in the protection of public health and the environment, and will ultimately result in less burden on the regulated community. See section IV.E of this preamble for more information.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data

downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested to the data fields appropriate for that information.

2. Fill in the commenter information fields for each suggested revision (*i.e.*, commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emission revisions (*e.g.*, performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA-HQ-OAR-2020-0572 (through the method described in the **ADDRESS** section of this preamble).

5. If you are providing comments on a single facility or mulitiple facilities, you need only submit one file for all facilities. The file should contain all suggested for all sources at the facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the project website at *https://www.epa.gov/stationary-sources-air-pollution/flexible-polyurethane-foam-fabrication-operations-national-emission.*

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2027.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The ICR is specific to information collection associated with the Flexible Polyurethane Foam Fabrication Operations source category, through amendments to 40 CFR part 63, subpart MMMMM. (The subject rulemaking imposes no new information collection associated with either the Flexible Polyurethane Foam Production area source category or the Flexible Polyurethane Foam Fabrication area source category.) We are proposing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart MMMMM, in the form of: Requiring periodic (every 5 years) performance tests at major sources; eliminating the SSM plan and reporting requirements; including reporting requirements for deviations in the semiannual report; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed. The number of respondents was reduced from 20 to 3 based on consultation with industry representatives and state/local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of flexible polyurethane foam fabrication operations subject to 40 CFR part 63, subpart MMMMM.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMMMM).

Estimated number of respondents: 3 facilities.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 148 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 51 hours (per year) for the Agency. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $15,000 (rounded, per year). There are no estimated capital and operation and maintenance costs. The total average annual Agency cost over the first 3 years after the amendments are final is estimated to be $2,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than February 10, 2021. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. As proposed, this action would potentially impose new requirements only on major sources, and none of the major sources in the Flexible Polyurethane Foam Fabrication Operations source category are considered a small entity. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the industries that would be affected by this action nor are there any adverse health or environmental effects from this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A, IV.B, and IV.C of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in sections IV.B and IV.C of this preamble. As discussed in sections IV.B and IV.C of this preamble, we performed a demographic analysis for the Flexible Polyurethane Foam Fabrication Operations major source category, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). In our analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the Flexible Polyurethane Foam Fabrication Operations major source category across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks. Results of the demographic analysis performed for the Flexible Polyurethane Foam Fabrication Operations major source category indicate that the minority population is slightly higher within 5 km of the three facilities than the national percentage (40 percent versus 38 percent). This difference is accounted for by the larger African American population around the facilities (17 percent versus 12 percent nationally). In addition, the percentage of the population living within 5 km of facilities in the source category is greater than the corresponding national percentage for the demographic groups, ''Ages 0 to 17'' and ''Below the Poverty Level.'' When examining the risk levels of those exposed to emissions from flexible polyurethane foam fabrication facilities, we find that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Andrew Wheeler,

Administrator.

[FR Doc. 2021–00250 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[EPA–HQ–OPPT–2020–0493; FRL–10018–40]

RIN 2070–AK64

Fees for the Administration of the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing updates and adjustments to the 2018 fees rule established under the Toxic Substances Control Act (TSCA). TSCA requires EPA to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees. This document describes the proposed modifications to the TSCA fees and fee categories for fiscal years 2022, 2023 and 2024, and explains the methodology by which these TSCA fees were determined. EPA is proposing to add three new fee categories: A Bona Fide Intent to Manufacture or Import Notice, a Notice of Commencement of Manufacture or Import, and an additional fee associated with test orders. In addition, EPA is proposing exemptions for entities subject to certain fee triggering activities; including: An exemption for research and development activities, an exemption for entities manufacturing less than 2,500 lbs. of a chemical subject to an EPA-initiated risk evaluation fee; an exemption for manufacturers of chemical substances produced as a non-isolated intermediate; and exemptions for manufacturers of a chemical substance subject to an EPA-initiated risk evaluation if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity. EPA is updating its cost estimates for administering TSCA, relevant information management activities and individual fee calculation methodologies. EPA is proposing a volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario where a consortium is not formed and is proposing to require export-only manufacturers to pay fees for EPA-initiated risk evaluations. EPA is also proposing various changes to the timing of certain activities required throughout the fee payment process.

DATES: Comments must be received on or before February 25, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0493, through the *Federal eRulemaking Portal* at *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.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Marc

Edmonds, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0758; email address: *edmonds.marc@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.*

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you manufacture (including import), distribute in commerce, or process a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5, or if you manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6(b). The following list of North American Industry 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 companies found in major NAICS groups:

- Chemical Manufacturers (NAICS code 325).
- Petroleum and Coal Products (NAICS code 324).
- Chemical, Petroleum and Merchant Wholesalers (NAICS code 424).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

TSCA, 15 U.S.C. 2601 *et seq.,* as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016 (Pub. L. 114–182) (Ref. 1), provides EPA with authority to establish fees to defray a portion of the costs associated with administering TSCA sections 4, 5, and 6, as amended, as well as the costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances under TSCA. EPA is required in TSCA section 26(b)(4)(F) to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees, to ensure that funds are sufficient to defray part of the cost of administering TSCA. EPA is issuing this proposed rule under TSCA section 26(b), 15 U.S.C. 2625(b).

C. What action is the Agency taking?

Pursuant to TSCA section 26(b), EPA is issuing this proposed rule to establish, update and/or revise fees collected from manufacturers (including importers) and, in some cases, processors, to defray some of the Agency's costs related to activities under TSCA sections 4, 5, and 6, and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances. EPA is proposing updates and changes to the 2018 Fee Rule (Ref. 2), including: (a) The addition of three new fee categories—a Bona Fide Intent to Manufacture or Import Notice (bona fide notice), Notice of Commencement of Manufacture or Import (NOC), and an additional fee related to test orders; (b) The addition of exemptions for manufacturers subject to fees for EPA-initiated risk evaluations under TSCA section 6(b), including: Exemptions for manufacturers if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity (as discussed in the March 25, 2020 EPA Press Release announcing its plan and summarized at *https://www.epa.gov/tsca-fees/information-plan-reduce-tsca-fees-burden-and-no-action-assurance* (Ref. 3)), an exemption for research and development activities, an exemption for manufacturers of chemical substances produced as a non-isolated intermediate, and an exemption for entities manufacturing less than 2,500 lbs. of a chemical; (c) Updates to TSCA sections 4, 5, and 6 costs and costs of relevant information management activities as well as fee calculation methodology; and (d) Various changes to how the fee regulations are implemented including certain timing requirements throughout the fee payment process. EPA is not proposing to change the ''small business concerns'' definition. Although EPA is required to review and, if necessary, amend the TSCA fees every three years, EPA may propose additional amendments to TSCA fees, when warranted, based on its experience with implementing the requirements or analysis of future cost and revenue data.

D. Why is the Agency taking this action?

The proposed fees are intended to achieve the goals articulated by Congress by providing a sustainable source of funds for EPA to fulfill its legal obligations under TSCA sections 4, 5, and 6 and with respect to information management. These activities include designating applicable substances as High- and Low-Priority for future risk evaluation, conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, requiring testing of chemical substances and mixtures, and evaluating and reviewing new chemical submissions, as required under TSCA sections 4, 5 and 6, as well as collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances under TSCA. EPA reviewed fees established in the 2018 Fee Rule and determined that it is necessary to adjust the fees. EPA is proposing changes to the TSCA fee requirements established in the 2018 Fee Rule based upon over two years of TSCA fee implementation and is proposing to adjust the fees based on changes to program costs and inflation and address certain issues related to implementation of the fee requirements.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental economic impacts of this proposed rule for FY 2022 through FY 2024. The ''Economic Analysis of the Proposed Rule for Fees for the Administration of the Toxic Substances Control Act'' (Economic Analysis) (Ref. 4), which is available in the docket, is discussed in Unit IV., and is briefly summarized here.

1. *Benefits.* The principal benefit of the proposed rule is to provide EPA a sustainable source of funding necessary to administer certain provisions of TSCA.

2. *Cost.* The fees collected from industry for this proposed rule under the proposed options, annualized over the period from fiscal year 2022–2024, are approximately $22 million (at both 3% and 7% discount rates), excluding fees collected for manufacturer-requested risk evaluations. Total annualized fee collection was calculated by multiplying the estimated number of fee-triggering events anticipated each year by the corresponding fees. Total annual fee collection for manufacturer-requested risk evaluations is estimated to be $1.9 million for chemicals included in the 2014 TSCA Work Plan (TSCA Work Plan) (based on two requests over the three-year period) and approximately $5.7 million for chemicals not included in the TSCA Work Plan (based on three requests over the three-year period) (Ref. 4). EPA analyzed a three-year period because the

statute requires EPA to reevaluate and adjust, as necessary, the fees every three years.

3. *Small entity impact.* EPA estimates that 35% of section 5 submissions will be from small businesses that are eligible to pay the section 5 small business fee because they meet the definition of ''small business concern.'' ''Small business concern'' means a manufacturer or processor who meets the size standards at 40 CFR 700.43. Total annualized fee collection from small businesses submitting notices under section 5 is estimated to be $411,000 (Ref. 4). For sections 4 and 6, reduced fees paid by eligible small businesses and fees paid by non-small businesses may differ because the fee paid by each entity would be dependent on the number of entities identified per fee-triggering event and production volume of that chemical substance. EPA estimates that average annual fee collection from small businesses for fee-triggering events under section 4 and section 6 would be approximately $8,000 and $922,000, respectively. For each of the three years covered by this proposed rule, EPA estimates that total fee revenue collected from small businesses will account for about 6 percent of the approximately $22 million total fee collection, for an annual average total of approximately $1.3 million.

4. *Environmental justice.* The fees will enable the Agency to better protect human health and the environment, including in low-income and minority communities.

5. *Effects on State, local, and Tribal governments.* The rule would not have any significant or unique effects on small governments, or federalism or tribal implications.

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *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. Background

A. Statutory Requirements for TSCA Fees

The proposed Fee Rule (83 FR 8212, February 26, 2018) (FRL–9974–31) provides a robust overview of the history of fees under TSCA and the 2016 amendments to TSCA. TSCA authorizes EPA to establish, by rule, fees for certain fee-triggering activities under TSCA sections 4, 5 and 6. In so doing, the Agency must set lower fees for small business concerns and establish the fees at a level such that they will offset 25% of the Agency's costs to carry out a broader set of activities under sections 4, 5, and 6 and relevant information management activities. In addition, in the case of manufacturer-requested risk evaluations, the Agency is directed to establish fees sufficient to defray 50% of the costs associated with conducting a manufacturer-requested risk evaluation on a chemical included in the *TSCA Work Plan for Chemical Assessments: 2014 Update,* and 100% of the costs of conducting a manufacturer-requested risk evaluation for all other chemicals. EPA is also required in TSCA section 26(b)(4)(F) to review and adjust, as necessary, the fees every three years. EPA is fulfilling that obligation with this rulemaking.

B. History of TSCA Fees

On October 17, 2018, EPA finalized the TSCA Fee Rule (Ref. 2), following the issuance of a proposed Fee Rule on February 26, 2018 and a 60-day comment period. As required by TSCA 26(b)(4)(E), EPA also consulted and met with stakeholders that were potentially subject to fees, including as part of several meetings with individual stakeholders through the development of the final rule.

In the 2018 Fee Rule, EPA established eight distinct fee categories: (1) Test orders, (2) test rules and (3) enforceable consent agreements (ECA), all under TSCA section 4; (4) notices and (5) exemptions, both under TSCA section 5; and (6) EPA-initiated risk evaluations, (7) manufacturer-requested risk evaluations for chemicals on the TSCA Work Plan, and (8) manufacturer-requested risk evaluations for chemicals not on the TSCA Work Plan, all under TSCA section 6. The activities in these categories are fee-triggering events that result in obligations to pay fees.

In addition, EPA established standards for determining which persons qualify as ''small business concerns'' and thus would be subject to lower fee payments. As discussed in the 2018 Fees Rule, EPA adopted an employee-based size standard modeled after the SBA's standards. EPA is not proposing to change the ''small business concerns'' definition in this rule.

EPA calculated fees by estimating the total annual costs of carrying out relevant activities under TSCA sections 4, 5, and 6 (excluding the costs of manufacturer-requested risk evaluations) and conducting relevant information management activities; identifying the full cost amount to be defrayed by fees under TSCA section 26(b) (*i.e.,* 25% of those annual costs); and allocating that amount across the fee-triggering events in TSCA sections 4, 5, and 6, weighted more heavily toward TSCA section 6 based on early industry feedback. EPA afforded small businesses an approximate 80% discount, in accordance with TSCA section 26(b)(4)(A), and established, for the two fee-triggering events where manufacturers would not already be self-identified (TSCA section 4 test rules and TSCA section 6 EPA-initiated risk evaluations), a process to identify manufacturers (including importers) subject to these fees.

At the time of promulgation of the 2018 Fee Rule, EPA had many new responsibilities under amended TSCA and relatively little information and experience to inform assumptions on costs or activity levels. EPA has gained valuable experience over two years of implementing the initial fee structure and has used this initial experience and information gained from tracking actual costs to refine methodologies for calculating fees and to inform the development of proposed revisions to the fee structure. These proposed updates are discussed in Unit III. Additional discussion on the updates to program cost estimates is discussed in Unit II.C.

C. Program Cost Estimates and Activity Assumptions

The estimated annual Agency costs of carrying out relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities are based on cost data from fiscal years 2019 and 2020 which are the first full fiscal years after EPA implemented a time reporting system that tracks employee hours worked on administering TSCA. Total Agency costs of carrying out those relevant activities are estimated at approximately $87.5 million each year. Based on these cost

estimates, EPA anticipates collecting approximately $22 million in fees collected from all fee-triggering events, except manufacturer-requested risk evaluations. In addition, the Agency intends to collect fees to recover 50% or 100% of the actual costs incurred by EPA in conducting chemical risk evaluations requested by manufacturers, depending on whether the chemical substance is included in the TSCA Work Plan. EPA expects the amount collected will be approximately $2.84 million per chemical for chemicals on the TSCA Work Plan and $5.67 million per chemical for chemicals not on the TSCA Work Plan.

EPA determined the anticipated costs associated with relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities, including both direct program costs and indirect costs (see Table 1). For fiscal year 2022 through fiscal year 2024, these costs were estimated to be approximately $87.5 million per year.

TABLE 1—ESTIMATED ANNUAL COSTS TO EPA

[Fiscal year 2022 through fiscal year 2024]

	Annual costs
TSCA section 4	$3,543,000
TSCA section 5	34,713,248
TSCA section 6	41,998,820
TSCA section 8	3,974,522
TSCA section 14	1,873,443
Other sections	1,432,967
Total	87,536,000

Table Note: Numbers may not add due to rounding. The indirect cost rate is estimated at 19.5% for the purposes of this analysis.

After estimating the annual costs of administering relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities, the Agency had to determine how the costs would be allocated over the narrower set of activities under TSCA sections 4, 5 and 6 that trigger a fee. The Agency took an approach to determining fees that tied the payment of fees to individual distinct activity types or ''fee-triggering events''. This allows allocation of costs more equitably among the activity types and their related costs.

1. Program Costs

To determine the program costs for implementing relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities, the Agency accounted for the intramural and extramural costs for those activities.

Intramural costs are those costs related to the efforts exerted by EPA staff and management in operating the program, collecting and processing information and funds, conducting reviews, and related activities. Extramural costs are those costs related to the acquisition of contractors to conduct activities such as analyzing data, developing IT systems and supporting the TSCA Help Desk.

The Agency then added indirect costs to the direct program cost estimates. The Agency used an indirect cost rate of 19.5% to calculate the indirect costs associated with all direct program cost estimates for TSCA sections 4, 5, and 6 and relevant information management activities.

a. TSCA Section 4 Program Costs

TSCA section 4 gives EPA the authority to require (by rule, order, or ECA) manufacturers and processors to conduct testing of identified chemical substances or mixtures. EPA plans to utilize section 4 authorities in connection with the development of section 6(b) risk evaluations which would affect the number of section 4 rules, orders, and ECAs that may be underway at any given time. These activity level assumptions represent EPA's best professional judgment on how the program will be implemented. EPA estimates that, on average, it will undertake work associated with 10 test orders, one test rule and one ECA each year. While EPA expects to work on one test rule and one ECA each year, EPA expects to initiate each of these activities about every other year as it takes approximately two years to complete the work associated with both activities.

EPA estimated TSCA section 4 costs based on prior experience with developing test orders, test rules and ECAs, with consideration given to the information needs under amended TSCA for section 4 activities. Specifically, costs were based on: The Agency's general experience with the rulemaking process; experience with developing an ECA for Octamethylcyclotetrasiloxane (D4); costs associated with reviewing study plans and information received; administration of the High Production Volume Voluntary Testing Program; and information from the development of one test order for pigment violet 29.

EPA's cost estimates included a full suite of activities related to developing and implementing actions under TSCA section 4 authorities including reviewing screening-level hazard and environmental fate information submitted in response to a section 4 rule, order, or ECA, such as tests that provide information on the toxicity of a chemical (*e.g.,* aquatic toxicity, and mammalian toxicity) or occupational monitoring data. EPA also included estimates of the costs of reviewing physical/chemical properties and environmental fate and pathways data and tests.

Based on previous experience and expected work under TSCA as amended, EPA assumes that testing required by test orders is likely to be completed in under a year, and test rules and ECAs are likely to take two years to complete. To estimate the costs of reviewing test data, we assume that, on average, data will be submitted to EPA to conduct 10 test orders per year over the course of a three-year period, with approximately 120 companies potentially subject to the orders.

Unlike activities conducted under sections 5 and 6, EPA does not have enough data on actual implementation costs with which to base future cost estimates. As a result, EPA is relying on the section 4 cost estimate from the 2018 Fees Rule. Based on this approach, the estimated cost to the Agency of each test order is approximately $279,000. Each test rule is estimated to cost approximately $844,000 and each ECA is estimated to cost approximately $652,000. These cost estimates include submission review and are based on projected full-time equivalent (FTE) and extramural support needed for each activity divided by the number of orders, rules and ECAs that EPA assumes will be issued over a three-year period. As noted earlier, several of these activities (rules and ECAs) are expected to span two years, so those estimates are based on the annual estimated costs multiplied by two. The annual cost estimate of administering TSCA section 4 in fiscal year 2022 through fiscal year 2024 is $3,543,000.

b. TSCA Section 5 Program Costs

TSCA section 5 requires that manufacturers and processors provide EPA with notice before initiating the manufacture of a new chemical substance or initiating the manufacturing or processing for a significant new use of a chemical substance. Examples of the notices or other information that manufacturers and processors are required to submit under TSCA section 5 are premanufacture notices (PMNs), significant new use notifications (SNUNs), microbial commercial activity notices (MCANs), and exemption notices and applications including low-volume exemptions (LVEs), test-marketing exemptions (TMEs), low exposure/low release exemptions (LoREXs), TSCA experimental release

applications (TERAs), certain new microorganism (Tier II) exemptions, and film article exemptions. EPA is required to review and make a determination on whether the chemical presents an unreasonable risk of injury to health or the environment and take risk management action, as needed. Recent data on the number of annual submissions is found at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review.*

EPA estimates that it will receive 301 PMNs, SNUNs and MCANs per year, and another 320 exemption notices and applications per year, most of which are LVEs. EPA used the average number of section 5 submissions received in FY2019 and FY 2020 for each category of submission as the estimate of the annual number of submissions per section 5 fee category for the next three years. Cost estimates were developed based on information from the Agency's time reporting system that tracks employee hours and contract expenditures for administering TSCA section 5 in FY 2019 and FY 2020.

EPA's cost estimates for administering TSCA section 5 also include the costs associated with processing and retaining records related to a Notice of Commencement of Manufacture or Import (NOC) submission. NOC costs also include the cost of registering the chemical with the Chemical Abstracts Service. EPA has lumped the costs associated with NOCs with those of PMNs, MCANs, and SNUNs. Estimated costs associated with TSCA section 5 exemption notices and applications include the costs of pre-notice consultations, processing and reviewing applications, retaining records, and related activities. This estimate is based on projected FTE and extramural support needed for these actions divided by the number of submissions the Agency assumes will be received each year.

The annual cost estimate of administering TSCA section 5 in fiscal year 2022 through fiscal year 2024 is $34,713,248 and is attributed to PMNs, SNUNs and MCANs as well as section 5 exemption notices and applications for LVEs, LoREXs, TMEs, TERAs, Tier II exemptions and film article exemptions.

c. TSCA Section 6 Program Costs

TSCA section 6 directs the EPA to establish a process for assessing and managing existing chemical substances under TSCA. TSCA section 6 addresses: (a) Prioritizing chemicals for evaluation; (b) Evaluating risks from chemicals; and (c) Addressing unreasonable risks identified through the risk evaluation. Under TSCA, EPA is required to regularly undertake a risk-based prioritization process to designate existing chemicals on the TSCA Inventory as either high-priority for risk evaluation or low-priority. For chemicals designated as High-Priority Substances, as well as certain chemicals not subject to prioritization, such as those in manufacturer-requested risk evaluations, EPA must evaluate those chemicals to determine whether they present an unreasonable risk of injury to health or the environment under the conditions of use. The first step in the risk evaluation process, as outlined in TSCA, is to issue a scoping document for each chemical substance within six months of initiation of the risk evaluation (*e.g.,* designation of a High-Priority Substance as announced in the **Federal Register**). The scoping document includes information about the chemical substance, such as conditions of use, hazards, exposures, and potentially exposed or susceptible subpopulations that the Agency expects to consider in the risk evaluation. TSCA requires that these chemical risk evaluations be completed within three years of initiation, allowing for a 6-month extension. During the Risk Evaluation scoping process, EPA will identify the ''conditions of use'' that the Agency expects to consider during the evaluation. If EPA determines that a chemical substance presents unreasonable risk under its conditions of use, EPA must proceed to risk management action under TSCA section 6(a). For each risk evaluation that the Agency completes (other than a manufacturer-requested risk evaluation), TSCA requires that EPA identify another High-Priority Substance. The Agency expects to have at least 20 risk evaluations (other than manufacturer-requested risk evaluations) ongoing at any time in any given year at different stages in the evaluation process.

TSCA section 6 cost estimates have been informed: By the Agency's experience conducting and in some cases completing evaluations for the first 10 chemicals undergoing risk evaluation under amended TSCA, which consist of 1,4 dioxane, 1-bromopropane, asbestos, carbon tetrachloride, cyclic aliphatic bromide cluster (HBCD), methylene chloride, N-methylpyrrolidone, pigment violet 29, trichloroethylene, and tetrachloroethylene; by the Agency's experience developing the scope of the risk evaluations of the 20 chemicals designated as high-priority in December 2019; and by the Agency's experience with risk management actions addressing unreasonable risks identified from particular chemical activities. TSCA section 6 risk evaluations include the cost of information gathering (distinct from data collection via section 4), evaluating human and environmental hazards and environmental fate, and conducting exposure assessments. Costs also include the use of the ECOTOX knowledge and Health and Environmental Research Online (HERO) databases, scoping, developing and publishing the draft risk evaluation, conducting and responding to peer review and public comment, and developing the final evaluation, which includes risk determinations.

Under TSCA section 6, the Agency also must take action to address the unreasonable risks identified during risk evaluation. Cost estimates for risk management activities have been informed, in part, by EPA's recent risk management actions on several chemicals, including development of the proposed rules regarding the use of N-methylpyrrolidone and methylene chloride in paint and coating removal, and the use of trichloroethylene in both commercial vapor and aerosol degreasing and for spot cleaning in dry cleaning facilities, and the development of the final rule regarding methylene chloride in consumer paint and coating removal.

The estimated annual cost to EPA of administering relevant activities under TSCA section 6 in fiscal year 2022 through 2024 is $41,998,820. The costs are attributed to risk evaluation work on chemical risk evaluations (other than manufacturer-requested risk evaluations); risk management efforts; support from the Office of Research and Development (ORD) for alternative animal testing and methods development and enhancement, data integration, meta-analysis of studies, and providing access to other models, tools and information already developed by ORD; and the process of prioritizing chemical substances.

d. Costs of Collecting, Processing, Reviewing, and Providing Access to and Protecting From Disclosure as Appropriate Under TSCA Section 14 Information on Chemical Substances

EPA's cost estimates include the costs of information management for sections 4, 5, 6 and 14 but do not include the costs of administering other authorities for collection such as those in TSCA section 8 and 11. EPA does not believe that Congress intended EPA to offset costs associated with administering authorities under these other sections. The statutory text clearly points to the

authorities of TSCA sections 4, 5, 6 and 14. If the costs of administering activities under TSCA sections 8 and 11 were intended to be defrayed with fees, Congress would have specifically included those authorities in the statutory text. Cost estimates in the proposed rule consider costs associated with managing information that, for instance, was received pursuant to a TSCA section 8 rule but not the costs of developing the TSCA section 8 rule.

Specific activities considered when developing this estimate for activities under section 14 include: Prescreening/initial review; substantive review and making final determinations; documents review and sanitization; regulation development; IT systems development; and transparency/communications. Estimates also include Office of General Counsel costs associated with coordinating, reviewing, issuing, and defending TSCA CBI claim final determinations, and supporting guidance, policy and regulation development for TSCA section 14 activities, *e.g.,* implementing the unique identifier provisions, ensuring access to TSCA CBI for emergency personnel, states, tribes and local governments, and developing the TSCA CBI sunset provisions, among others.

Other chemical information management activities included in the analysis are: Costs for implementing the requirements in TSCA section 14(d); costs for implementing the CBI sunset requirements; costs for Notice of Activity chemical identity CBI claim reviews; costs for Freedom of Information Act-Related CBI claim reviews; costs for providing public access to Non-CBI Data; and IT costs for operating and maintaining the CBI Local Area Network (LAN). The annual cost estimate of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate information on chemical substances under section 14 of TSCA, including FTE and extramural costs, from fiscal year 2022 through fiscal year 2024 is $1,873,443 (Ref. 4).

2. Indirect Costs

Indirect costs are the intramural and extramural costs that are not accounted for in the direct program costs, but are important to capture because of their necessary enabling and supporting nature, and so that EPA's proposed fees will accomplish full cost recovery up to that provided by law. Indirect costs typically include such cost items as accounting, budgeting, payroll preparation, personnel services, purchasing, centralized data processing, and rent.

Indirect costs are disparate and more difficult to track than the other cost categories, because they are typically incurred as part of the normal flow of work (*e.g.,* briefings and decision meetings involving upper management) at many offices across the Agency. EPA accounts for some indirect costs in the costs associated with carrying out relevant activities under TSCA sections 4, 5, and 6, and costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances, by the inclusion of an indirect cost factor. This rate is multiplied by and then added to the program costs. An indirect cost rate is determined annually according to EPA's indirect cost methodology and as required by Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts. An indirect cost rate of 19.5% was applied to direct program costs of work conducted by EPA's Office of Chemical Safety and Pollution Prevention, based on FY 2019 data. Some of the direct program costs included in the estimates for TSCA sections 4, 5, and 6 and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances are for work performed in other Agency offices (*e.g.,* the Office of Research and Development and the Office of General Counsel). Appropriate indirect cost rates were applied to those cost estimates and are based on EPA's existing indirect cost methodology. Indirect cost rates are calculated each year and therefore subject to change. Indirect costs were included in the program cost estimates in the previous sections.

3. Total Costs of Fee-Triggering Events

The annual estimated costs for fee categories under TSCA section 4, including both direct and indirect program costs, are shown in Table 2. Note that the costs presented in Tables 2, 3, and 4 include only the costs of fee-triggering events and so do not include costs associated with activities such as CBI reviews, alternative testing methods development, risk management for existing chemicals, or prioritization of existing chemicals. Costs associated with those activities are part of the overall costs of administering relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities and, as such, are included in the overall cost estimates provided previously in Table 1.

TABLE 2—TSCA SECTION 4 COSTS *

Fee category	Estimated number of ongoing actions/year	Estimated cost to Agency/action	Estimated annual cost to Agency
Test Order	10	$279,000	$2,795,000
Test Rule	1	844,000	422,000
Enforceable Consent Agreement	1	652,000	326,000

* **Table Note:** Numbers may not add due to rounding.

The estimated annual costs for fee categories under TSCA section 5, including both direct and indirect program costs are shown in Table 3.

TABLE 3—TSCA SECTION 5 COSTS *

Fee category	Estimated number of ongoing actions/year	Total estimated annual cost to Agency
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN	301	
Bona Fide Notice	207	
Notice of Commencement	175	
LoREX, LVE, TME, Tier II exemption, TERA, Film Article	320	
		$34,713,428

* **Table Note:** Numbers may not add due to rounding. Costs were not broken out and therefore are not shown in the Total estimated annual cost to Agency column.

The estimated annual costs for fee categories under TSCA section 6, including both program and indirect costs are shown in Table 4.

TABLE 4—TSCA SECTION 6 COSTS *

Fee category	Estimated number of ongoing actions/year	Estimated cost to Agency/action	Estimated annual cost to Agency
EPA-initiated risk evaluation	20	$5,671,000	$41,998,820
Manufacturer-requested risk evaluation: Work Plan chemical	2	5,671,000	3,783,000
Manufacturer-requested risk evaluation: Non-Work Plan chemical	3	5,671,000	5,671,000

* **Table Note:** Numbers may not add due to rounding.

III. Overview of the Proposed Rule

A. Regulatory Approach

Pursuant to TSCA section 26(b), EPA is issuing this proposed rule to update and revise the fee collection from manufacturers (including importers) and, in some cases, processors, to defray approximately 25% of the Agency's costs related to relevant activities under TSCA sections 4, 5, and 6, and relevant information management activities. The proposed rule applies to manufacturers and processors who are required to submit information under TSCA section 4, manufacturers and processors who submit certain notices and exemptions under TSCA section 5, and manufacturers who are subject to risk evaluation under TSCA section 6(b), including manufacturers who submit requests for risk evaluation under TSCA section 6(b)(4)(C)(ii).

1. Stakeholder Engagement

Under TSCA section 26(b)(4)(E), EPA is required to consult and meet with parties potentially subject to the fees or their representatives prior to establishment or amendment of TSCA fees. Similarly, under TSCA section 26(b)(4)(F), EPA is required to adjust the fees as necessary every three years after consulting with parties potentially subject to the fees and their representatives. Since the 2018 Fee Rule, EPA has held several outreach meetings with industry stakeholders on implementation issues. All of these outreach meetings are summarized at *https://www.epa.gov/tsca-fees/outreach-materials-tsca-administration-fees-rule.* In fall and winter 2019, EPA held a series of webinars with industry to explain changes to EPA's Central Data Exchange (CDX) and how to pay fees through the system. In December 2019, EPA hosted a conference call to give a brief overview of the fees associated with an EPA-initiated risk evaluation, the creation of the preliminary list that identifies manufacturers and importers subject to fees, and how fees would be divided among the identified businesses. On February 24, 2020, EPA hosted a conference call to review certain provisions of the 2018 Fee Rule. On April 16, 2020, EPA hosted a call to discuss a decision to reduce burden for certain stakeholders subject to TSCA Fee Rule requirements for EPA-initiated risk evaluations via a No Action Assurance for enforcement of certain provisions of the 2018 Fee Rule.

EPA is committed to continued stakeholder outreach and intends to meet with companies, trade associations and consortia that represent affected manufacturers and processors. EPA will also consult with the Small Business Administration regarding engagement with small businesses.

2. Request for Comment on Proposed and Alternative Regulatory Actions

EPA requests comment on all aspects of the proposed and alternative regulatory actions discussed in this unit, including comment on whether the proposed regulatory actions would improve fee collection processes and ensure fair fee distribution among fee payers. EPA is also seeking additional information and data that could facilitate EPA's further evaluation of the potentially affected industries and firms, including data related to potential impacts on those small businesses that would be subject to fees.

B. Methodology for Calculating Fees

1. Description of the Proposed Regulatory Action

EPA does not implement an actual cost approach for TSCA sections 4, 5, and 6 (excluding the costs of manufacturer-requested risk evaluations) fee-triggering events and is not proposing to do so through this proposed rule. EPA does, however, implement an actual cost approach for calculating fees for manufacturer-requested risk evaluations. Specifically, EPA currently requires an initial payment of $1,250,000 (for a chemical on the TSCA Work Plan) or $2,500,000 (for a chemical not on the TSCA Work Plan), and a final invoice to total either 50% or 100% of the remaining actual costs in line with the percentage

requirements in TSCA, or a refund to achieve these requirements, if warranted.

The 2018 Fee Rule established a two-payment approach for manufacture-requested risk evaluations—an initial payment, followed by a final invoice at the conclusion of the risk evaluation for the total remaining due, or a refund to achieve these requirements, if warranted. EPA is proposing a change to this approach by proposing a payment plan that enables entities to pay approximately ⅓ each year with a final invoice at the conclusion of the risk evaluation. Specifically, EPA is proposing to allow an initial payment of $945,000 and a second payment by the end of the second year of $945,000 (for a chemical on the TSCA Work Plan) or an initial payment of $1,890,000 and a second payment of $1,890,000 by the end of the second year (for a chemical not on the TSCA Work Plan), followed by a final invoice at the conclusion of the risk evaluation, or a refund, if warranted.

EPA is proposing this change to allow manufacturers to budget and better prepare for paying the manufacture-requested risk evaluation fees. These fee payments are in line with the estimated cost of a manufacturer-requested risk evaluation of approximately $5,671,000. EPA is requesting comments on the proposed modifications to the payment plan.

EPA is also proposing changes to how EPA would allocate fees for EPA-initiated risk evaluations under TSCA section 6. Specifically, EPA is proposing to reallocate the remaining fee, after allocating the fees for small businesses, across the remaining manufacturers based on their percentage of total volume produced of that chemical minus the amount produced by the small businesses. This differs from the 2018 Fee Rule allocation by considering volume produced. EPA believes this approach for calculating TSCA section 6 fee allocations will result in a more representative distribution of fees and better account for the wide variation in production volume sometimes associated with a particular chemical substance.

In any scenario where there is not a single consortium comprised of all manufacturers of the chemical undergoing the EPA-initiated risk evaluation, EPA would take the following steps to allocate fees:

- Count the total number of manufacturers, including the number of manufacturers within any consortia.
- Divide the total fee amount by the total number of manufacturers to generate a base fee.
- Provide all small businesses who are either (a) not associated with a consortium, or (b) associated with an all-small business consortium, with an 80% discount from the base fee referenced previously.
- Calculate the total fee amount to be split among the total number of small manufacturers and distribute it based on their percentage of the average annual production volume from the four calendar years prior to the year certification was made.
- Calculate the total remaining fee amount to be split among the total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified.
- Reallocate the remaining fee across those remaining manufacturers based on their percentage of average annual production volume from the four calendar years prior to the year certification was made minus the amount produced by the small businesses, counting each manufacturer in a consortium as one person.

EPA is not proposing these calculation and methodology changes for the fee allocations under TSCA section 4 activities. Fees for section 4 activities are significantly lower than those for a risk evaluation and, therefore, less burdensome, obviating the need to allocate the fees based on production volume.

TABLE 5—PROPOSED CHANGES TO TSCA SECTION 6(B) FEE ALLOCATIONS

2018 Fee rule	2020 Proposed fee rule
In any scenario where there is not a single consortium comprised of all manufacturers of the chemical undergoing the EPA-initiated risk evaluation, EPA will take the following steps to allocate fees: • Count the total number of manufacturers, including the number of manufacturers within any consortia. • Divide the total fee amount by the total number of manufacturers and allocate equally on a per capita basis to generate a base fee. • Provide all small businesses who are either (a) not associated with a consortium, or (b) associated with an all-small business consortium with an 80% discount from the base fee referenced previously. • Calculate the total remaining fee and total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified. • Reallocate the remaining fee across those remaining individuals and groups in equal amounts, counting each manufacturer in a consortium as one person.	In any scenario where there is not a single consortium comprised of all manufacturers of the chemical undergoing the EPA-initiated risk evaluation, EPA will take the following steps to allocate fees: • Count the total number of manufacturers, including the number of manufacturers within any consortia. • Divide the total fee amount by the total number of manufacturers to generate a base fee for the purpose of calculating the fee for small businesses. • Provide all small businesses who are either (a) not associated with a consortium, or (b) associated with an all-small business consortium, with an 80% discount from the base fee referenced previously. • Calculate the total fee amount to be split among the total number of small manufacturers and distribute it based on their percentage of the average annual production volume from the four calendar years prior to the year certification was made. • Calculate the total remaining fee amount to be split among the total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified. • Reallocate the remaining fee across those remaining manufacturers based on their percentage of average annual production volume from the four calendar years prior to the year certification was made minus the amount produced by the small businesses, counting each manufacturer in a consortium as one person.

EPA recognizes that the incorporation of production volume into the fee calculation methodologies changes the current relationship between individual small business fees and other manufacturer fees and may even result in some small businesses paying higher fees if they produce significantly more than other manufacturers, dependent on

the number of entities identified per fee-triggering event and their production volume of that chemical substance. EPA is requesting comments on this proposed methodology, how it impacts the small business fee payments, and whether caps for fees for small business entities should be considered.

EPA requests comment on the use of production volume and the methodology used in assigning fee amounts in TSCA section 6 activities. EPA is requesting comment on EPA's proposed calculation using production volume to determine fee allocations (*i.e.,* the average annual production volume from the four calendar years prior to the year certification was made). Additional information on the fee amounts can be found in Unit III.G.

Lastly, EPA is proposing modifications to the time allowed for payment established under the 2018 Fee Rule for EPA-initiated risk evaluation fees, enabling the fee payer to pay in installments. This proposed change includes a two-payment process—first payment of 50% to be due 180 days after EPA publishes the final scope of a chemical risk evaluation and the second payment for the remainder no later than 545 days after EPA publishes the final scope of a chemical risk evaluation. EPA believes that a two-payment process will reduce the burden on fee payers and allow them to have more money on hand for operating and other expenses that are incurred between payments.

2. Description of the Primary Alternative Regulatory Action Considered

EPA is requesting comment on alternative approaches for calculating average volume and assigning fees based on volume produced. For example, EPA could calculate fees based on average volume over the last five years or based on the most recent year of reporting. Alternatively, EPA could use production volume ranges and calculate fees based on those ranges. In addition, EPA has considered caps for fee payers, including those that qualify as a ''small business concern.'' However, EPA believes imposing a cap on fees for individual entities could result in EPA not collecting the full cost associated with that risk evaluation. EPA requests comment on alternative approaches for calculating and assigning fees based on production volume.

C. Fee Categories

EPA has eight distinct fee categories: (1) Test orders, (2) test rules and (3) ECAs, all under TSCA section 4; (4) notices and (5) exemptions, both under TSCA section 5; and (6) EPA-initiated risk evaluations, (7) manufacturer-requested risk evaluations for chemicals on the TSCA Work Plan, and (8) manufacturer- requested risk evaluations for chemicals not on the TSCA Work Plan, all under TSCA section 6. The activities in these categories are fee-triggering events that result in obligations to pay fees under the 2018 Fee Rule. EPA is proposing three additional categories, as discussed in the following subsections of this unit.

If a recipient of a test order fails to follow terms or conditions in the order, including testing protocols outlined in TSCA section 4, EPA may give the test order recipient the option to redo the testing and submit the new data. Under the current rule, the Agency would incur extra costs from reviewing this resubmitted data, costs that would not be accounted for via the original fee payment by the recipient of the test order. To address this, EPA is proposing to create a new fee for test orders payable by recipients that elect to resubmit data per request of the Agency if EPA determines that the recipient did not comply with the terms or conditions of the order, such as the testing protocols, or if a company later determines that data submitted under a testing order is incomplete, inconsistent, or deficient. As presented in the Economic Analysis (Ref. 4), EPA estimated that 10 test orders will be issued annually with one being amended. EPA requests public comment on these estimates. EPA also requests public comment on whether this new fee will incentivize companies to correctly follow section 4 test order guidelines.

Companies that do not comply with section 4 test orders may be subject to enforcement action by EPA. If a company does not comply with the terms or conditions of the test order but subsequently resubmits the data required under the testing order, EPA is proposing to charge a fee associated with the submission of the new testing data. This new fee would be equal to the initial fee levied on the recipient of the initial test order. EPA is proposing changes to the regulations so that any submission of data intended to comport with a test order for which the order recipient was found to be in noncompliance. Additional fees will be levied on companies which subsequently resubmit such data, each time they resubmit the data until EPA determines that the testing is consistent with the requirements of the original test order and the data are acceptable for purposes of the data need identified in the order. Because of the amount of time it takes for a testing order to be issued and implemented (upwards of one year), levying a fee for this purpose would further incentivize companies to fully understand and follow the terms and conditions of the order, including testing guidelines under section 4.

Additionally, EPA is correcting an error with the section 4 fees of the 2018 Fee Rule regulations in which the fees for test orders and test rules were reversed. The amount of the fees that would be charged under section 4 was incorrect in the regulations, making the distinctions between test rule and test order fees unclear. In this proposal, EPA is proposing changes in the regulatory language to reflect the correct fees for test orders and test rules.

Under regulations implementing TSCA section 5, a company that intends to manufacture (including import) a chemical substance not listed by specific chemical name in the public portion of the TSCA Inventory may submit a Bona Fide Intent to Manufacture or Import Notice (''bona fide notice'') to obtain written determination from EPA whether the chemical substance is included in the confidential Inventory (40 CFR 720.25). The costs of the review process for bona fide notices were not recovered under the 2018 Fee Rule. To recover the costs of reviewing bona fide notices, EPA is proposing changes to the regulations to require a fee for bona fide notices. EPA requests public comment on whether these fees for bona fide notices will result in a more equitable allocation of fees.

TSCA section 26(b)(1) states that ''[t]he Administrator may, by rule, require the payment from any person required to submit . . . a notice or other information to be reviewed by the Administrator under section [5], . . . of a fee that is sufficient and not more than reasonably necessary to defray the cost related to such chemical substance of administering section[5] . . .'' Bona fide notices submitted under regulations that are part of EPA's implementation of section 5. EPA is proposing to utilize its authority under section 26(b)(1) to collect section 5 fees for bona fide notices. Assessing a fee for bona fide notices will allow allocation of fees that will more equitably account for the costs of carrying out all relevant section 5 activities. The proposed fee amount for a bona fide notice is $500 and $90 for small businesses.

After PMN review has been completed under TSCA section 5, the submitters of the PMN must provide a Notice of Commencement of Manufacture or Import (NOC) to EPA within 30 calendar days of the date the chemical substance is first manufactured or imported for

nonexempt commercial purposes (40 CFR 720.102). Once a complete NOC is received by EPA, the reported chemical substance is considered to be on the TSCA Inventory and becomes an existing chemical.

As described in Unit II.C., under the 2018 Fee Rule, EPA grouped the costs associated with NOCs with those of PMNs, MCANs, and SNUNs. EPA is proposing changes to the 2018 Fee Rule to include a separate fee for NOC submissions. TSCA section 26(b)(1) states that ''[t]he Administrator may, by rule, require the payment from any person required to submit. . .a notice or other information to be reviewed by the Administrator under section [5], . . . of a fee that is sufficient and not more than reasonably necessary to defray the cost related to such chemical of administering section [5] . . .'' NOC submissions are part of EPA's implementation of section 5; they ensure that chemical substances manufactured after TSCA section 5(a)(3) review appear on the TSCA Inventory. EPA is proposing to utilize its authority under section 26(b)(1) to collect section 5 fees for NOC submissions. NOC fees will help defray the costs of reviewing, processing, and retaining NOC records and the costs of registering the chemical substance with the Chemical Abstract Service. The proposed fee amount for NOC submissions is $500 and $90 for small businesses.

D. Entities Subject to Fees

The 2018 Fee Rule applies to manufacturers and processors who are required to submit information under TSCA section 4, manufacturers and processors who submit certain notices and exemptions under TSCA section 5, and to manufacturers who are subject to risk evaluation under TSCA section 6(b), including manufacturers who submit requests for risk evaluation under TSCA section 6(b)(4)(C)(ii).

EPA is proposing modifications to certain groups of manufacturers subject to TSCA section 6 fee activity requirements; including the addition of manufacturers that exclusively export chemicals subject to EPA-initiated risk evaluations whenever such chemical substances are manufactured, processed, or distributed in commerce (by any other entity) for any purpose other than export from the United States, as well as five additional exclusions to entities subject to the fees for TSCA section 6 activities.

1. Description of the Proposed Regulatory Action

EPA is proposing to add manufacturers that exclusively export chemicals subject to EPA-initiated risk evaluations whenever such chemical substances are manufactured, processed, or distributed in commerce (by any other entity) for any purpose other than export from the United States. This change recognizes that manufactures that exclusively export High-Priority Substances are part of the risk evaluation process and should, therefore, share in defraying the cost of EPA-initiated risk evaluations. This regulatory action remains consistent with TSCA section 12(a)(1).

Specially, TSCA section 12(a)(1) states that except as provided in paragraph (2) and subsections (b) and (c), TSCA (other than TSCA section 8) ''shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and (B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.''

TSCA section 12(a) exempts manufacturers from TSCA coverage only when such substance, mixture, or article is being manufactured, processed, or distributed in commerce solely for export from the United States. EPA does not anticipate that this exemption would generally apply to chemical substances designated as High-Priority Substances for risk evaluation since those chemical substances are anticipated to have a range of conditions of use outside of export-only manufacture, processing, and distribution. EPA acknowledges the ambiguity of this aspect of TSCA section 12(a) and believes the statutory context here (*i.e.,* fee collection for risk evaluations for under TSCA section 6(b)) supports interpreting the export-only exemption narrowly. Therefore, export-only manufacturers of such chemical substances will be subject to fee payment obligations under this proposal.

EPA is also proposing to exclude certain manufacturers from EPA-initiated risk evaluation fee requirements. On January 27, 2020, EPA released the preliminary list of manufacturers subject to fee payments for manufacture of chemicals subject to EPA-initiated risk evaluations and received significant stakeholder feedback regarding the practicalities of self-identifying under the TSCA Fee Rule given its broad definition of ''manufacture.'' As stated in EPA's memorandum issued on March 18, 2020, concerns were raised regarding fee payment obligations for ''importers of articles containing any one of the twenty listed chemicals . . .'' and that these entities ''could potentially be required to test thousands of imported articles and [it]would be difficult if not impossible to complete in the time allotted for self-identification under the TSCA Fee Rule'' (Ref. 3). EPA recognizes that manufacturers of chemicals as byproducts or impurities may face similar challenges to pinpointing and tracking when impurities and byproducts are produced, particularly because the 'manufacture' of even very small amounts of a high-priority chemical triggers the TSCA Fee Rule requirement to self-identify.

In response to these concerns, EPA recognized that the current TSCA Fee Rule may unintentionally impose potentially significant burdens on three categories of manufacturers, causing compliance challenges with self-identification and inconsistencies with other TSCA regulatory contexts (Ref. 3). EPA also announced its plan to consider a proposed rule that would look at potential exemptions to the TSCA Fee Rule in response to stakeholder concerns about implementation challenges. Consequently, EPA proposes to exempt these three categories of manufacturers from EPA-initiated Risk Evaluation fees and associated regulatory requirements: (1) Importers of articles containing a chemical substance subject to an EPA-initiated risk evaluation; (2) manufacturers of a substance subject to an EPA-initiated risk evaluation that is produced as a byproduct; and (3) manufacturers (including importers) of a substance subject to an EPA-initiated risk evaluation that is produced or imported as an impurity. More information on byproducts and impurities can be found here: *https://www.epa.gov/tsca-fees/frequent-questions-about-tsca-fees-epa-initiated-risk-evaluations.*

EPA is also proposing to exempt manufacturers of a substance subject to an EPA-initiated risk evaluation that is produced as a non-isolated intermediate. A non-isolated intermediate, as defined in 40 CFR part 704.3, referenced by 40 CFR part 711.3., is ''any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which

it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture. Mechanical or gravity transfer through a closed system is not considered to be intentional removal, but storage or transfer to shipping containers isolates the substance by removing it from process equipment in which it is manufactured.''

EPA believes exempting manufacturers of substances produced as a non-isolated intermediate is consistent with other TSCA programs, including the Chemical Data Reporting (CDR) described in 40 CFR 711.10(c) and the TSCA section 5 notice requirements described in 40 CFR 720.30.

In addition, EPA is proposing an exemption from EPA-initiated *risk evaluation fees and associated regulatory requirements for manufacturers (including importers)* of small quantities of a chemical solely for research and development, as to be defined in 40 CFR 700.43. Small quantities solely for research and development is defined to mean quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes. This exemption will avoid imposing burdensome costs to those manufacturers of small quantities of a chemical solely for research and development, given the critical importance of this activity to the detection, quantification and control of chemical substances. Manufacturers that meet the research and development exemption must meet it for the five-year period preceding publication of the preliminary list and meet it in the successive five years.

Finally, EPA is proposing an exemption from EPA-initiated risk evaluation fees and associated regulatory requirements for entities that manufacture (including import) a chemical substance in quantities not to exceed 2,500 lbs. This limit is consistent with requirements in the CDR described in 40 CFR 711.8(b) and 40 CFR 711.15, where the reporting threshold is 2,500 lbs. (1,134 kg) for any person who manufactured a chemical substance that is the subject of certain rules, orders, or relief under TSCA section 5, 6, and 7. This exception does not apply if all manufacturers of a chemical substance manufacture that chemical in quantities below a 2,500 lbs. annual production volume. EPA is proposing this exemption to reduce the burden on entities producing small amounts of the chemical substance undergoing an EPA-initiated risk evaluation.

EPA is not proposing a concentration-based exemption. EPA believes the exemption should be based on the amount of a chemical instead of the concentration to ensure that the exemption only applies to the manufacture of small quantities of a chemical. A concentration-based exemption could result in manufacturers of large quantities of chemicals being exempt from fee obligations. For this reason, EPA's proposal contains an exemption based on a volume limit. EPA requests public comment on the previously discussed exemptions, any other exemptions that EPA should consider, and any data related to potential impacts.

Manufacturers of a chemical substance undergoing TSCA section 6 EPA-initiated risk evaluations that would meet one or more of the exemptions previously discussed for the five-year period preceding publication of the preliminary list and would meet one of more of the exemptions in the successive five years would be exempt from fee those payment requirements. This five-year period is consistent with the current criteria under the 2018 TSCA Fees rule for certification of cessation.

2. Description of the Primary Alternative Regulatory Action Considered

EPA has considered an alternative regulatory action of no exemptions and requests comment on this approach. TSCA requires EPA to evaluate chemicals under their conditions of use, and conditions of use evaluated may involve manufacture of chemicals that are exempt under this proposal including impurities or byproducts, chemicals imported in articles, or chemicals in small amounts solely for the purposes of research and development. In addition, EPA does not consider these exemptions in designating chemical substances as high priority substances for risk evaluation, and there may be chemicals designated where that chemical's primary condition of use is covered under one of the five exemptions listed within this Unit, resulting in little to no manufacturers obligated to pay the fee. This could result in higher fees for entities that do not meet the exemption or no fee payments for a chemical substance risk evaluation.

E. Self-Identification

1. Description of the Proposed Regulatory Action

Under the 2018 Fee Rule, after the close of a comment period for the preliminary list of manufacturers subject to a fee obligation for chemicals subject to EPA-initiated risk evaluations, EPA makes any associated updates or corrections, and then publishes a final list of manufacturers. This list indicates if any manufacturers were identified in error, if any additional manufacturers were identified through the comment period and/or reporting form, and if any manufacturers certified that they have already ceased manufacture prior to the applicable cutoff date described in the regulations and will not manufacture the subject chemical substance for five years into the future. The final list is published concurrently with the final scope document for risk evaluations initiated by EPA under TSCA section 6, and with the final test rule under TSCA section 4. Currently, there is no added flexibility to modify the list of fee payers in the event of receipt of additional information after publication of the final list.

EPA is proposing added flexibility to allow for potential changes to the list of fee payers after it is finalized. Specifically, EPA is proposing to allow for modification of the list upon receipt of information indicating that such a change is warranted.

EPA believes that this proposed process is largely consistent with comments on the 2018 Proposed Fee Rule (83 FR 8212) requiring EPA to publish a preliminary list and engage with stakeholders to identify others who may be missing, correct errors, and provide an opportunity for manufacturers to be removed from the list under certain circumstances.

In addition, EPA has received industry stakeholder feedback regarding the identification of manufacturers on the preliminary and final list of manufacturers subject to fees for the 20 high priority substances undergoing TSCA risk evaluations. Stakeholders recommended EPA create an avenue for manufacturers to identify other manufacturers that may be subject to these fees not present on the preliminary list of fee payers. EPA appreciates this feedback but is not proposing changes to the issuance of a preliminary list followed by a public comment period. EPA believes this process (*i.e.,* publication of a preliminary list that identifies manufacturers, a public comment period, and publication of a final list

defining the universe of manufacturers responsible for payment) allows for self-identification, correction of errors, and certification of no-manufacture and no intention to manufacture in the next five years. EPA also plans to continue communication with manufacturers and importers that contact EPA with questions or concerns. Manufacturers may also utilize the existing EPA portal to report a tip or complaint to EPA, found here *https://www.epa.gov/enforcement/report-environmental-violation-general-information,* including to report manufacturers once the final list of manufacturers subject to the fees is published.

EPA is also proposing changes to the submission of self-identification information in 40 CFR 700.45 to accompany the proposed changes to the TSCA section 6 fee activities as well as changes to which types of manufacturers are required to self-identify. These changes include exempting manufacturers that meet the criteria of three of the exemptions discussed in Unit III.D. (*i.e.,* importers of articles containing the chemical substance, manufacturers of the substance that is produced as a byproduct, and manufacturers of the substance that is produced or imported as an impurity) from self-identification. Additionally, EPA is proposing to require manufacturers of small quantities solely for research and development and those that manufacture in quantities not to exceed 2,500 lbs., and manufacturers of chemical substances produced as a non-isolated intermediate to certify that they meet those exemption criteria. EPA is also proposing to require all other non-exempted manufacturers to provide the volume produced by that manufacturer for the subject chemical. More discussion on the use of production volume in the methodology for calculating fees is in Unit III.B. EPA is also proposing to require all manufacturers that self-identify as meeting the production volume exemption of 2,500 lbs. to maintain production volume records related to compliance with the exemption. EPA is also proposing to require those manufacturers of substances produced as a non-isolated intermediate to maintain ordinary business records related to compliance with this exemption criteria. Additionally, EPA is proposing that all manufacturers that self-identify as meeting the research and development exemption maintain ordinary business records related to compliance, such as plans of study, information from research and development notebooks, study reports, or notice solely for research and development use. EPA is proposing that these required records be kept for a period of five years. EPA has authority under section 6 to require reporting and recordkeeping related to the regulatory requirements imposed by EPA under section 6. This is particularly important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule.

2. Description of the Primary Alternative Regulatory Action Considered

EPA has considered an alternative regulatory approach of allowing manufacturers that had previously certified cessation, as described in 40 CFR 700.45 (b)(5)(ii), to then begin manufacturing or importing that chemical within the successive five-year period. Those manufacturers would be required to pay their portion of the fee associated with that chemical substance risk evaluation, but it would occur after the initial invoicing period. EPA believes this would result in a substantial increase in burden to EPA, allowing continued changes to those entities responsible for paying the EPA-initiated risk evaluation fees after the initial invoicing period. In addition, EPA believes this may result in inequity between those manufacturers paying the fees at the time of initial invoicing and those companies being allowed to opt back in any time after that period. Therefore, EPA is not proposing changes to the five-year period associated with the certification of cessation. As currently drafted, a manufacturer may certify cessation if it has ceased manufacturing prior to the certification cutoff dates and will not manufacture the substance again in the successive five years. Manufacturers that have certified cessation for a substance that then manufacture that substance again within the successive five years would be engaging in a prohibited act under TSCA section 15(1) and therefore would be subject to a penalty under TSCA section 16. Nonetheless, EPA is requesting comment on a regulatory approach that would allow manufacturers that previously certified cessation to begin manufacturing or importing the chemical within the successive five-year period. EPA is particularly interested in suggestions for decreasing the burden associated with allowing changes to manufacturing status (including potential recalculation and reimbursement of fees to manufacturers that were subject to initial fee payments) and comments from entities that might be subject to initial payments and therefore potential inequities.

Additionally, alternatives were considered in regard to EPA's authority to collect fees from processors under section 4 and 6 of TSCA. Although EPA has authority to collect fees from both manufacturers and processors of chemical substances, the 2018 Fee Rule and this subsequent update focus fee collection primarily on manufacturers. EPA will collect fees from processors only when processors submit a SNUN or test-marketing exemptions (TME) under section 5, when a section 4 activity is tied to a SNUN submission by a processor, or when a processor voluntarily joins a consortium and therefore agrees to provide payment as part of the consortium. This approach is consistent with most comments received during the 2018 Fee Rule. EPA believes the allocation primarily to manufacturers, and, in limited circumstances, to processors, is an appropriate balance of the authorities provided by TSCA. As stated in past rules and notices, the effort of trying to identify relevant processors for all fee-triggering actions would be overly burdensome and EPA expected that many processors would be missed. Generally limiting fee obligations to manufacturers is the simplest and most straightforward way to assess fees for conducting risk evaluations under TSCA section 6 and most TSCA section 4 testing activities. Furthermore, EPA expects that manufacturers required to pay fees will have a better sense of the universe of processors and will pass some of the costs on to them.

F. Timing

The 2018 Fee Rule generally requires upfront payment of fees (*i.e.,* payment due prior to EPA reviewing a TSCA section 5 notice, within 120 days of publication of final test rule, within 120 days of issuance of a test order, within 120 days of signing an ECA, within 30 days of granting a manufacturer-requested risk evaluation, and within 120 days of publishing the final scope of a risk evaluations). However, for manufacturer-requested risk evaluations, payment is collected in two installments over the course of the activity. EPA is proposing several changes to the timing of specific stages within this fees process. These are summarized in table 6 and discussed in more detail throughout this unit.

TABLE 6—PROPOSED CHANGES TO TIMING WITHIN THE FEE RULE *

Stage in the fees process	Timing under 2018 fee rule	Proposed timing changes
Payment of fees	Initial payment within 30 days of EPA providing notice of granting a manufacturer- requested risk evaluation. Payment is collected in two installments over the course of the activity. For EPA-initiated risk evaluations, payment is collected in one installment 120 days after EPA publishes the final scope of a chemical risk evaluation.	Initial payment within 180 days of EPA providing notice of granting a manufacturer- requested risk evaluation. Payments are collected over three installments. For EPA-initiated risk evaluation, payment is collected over two installments, the first payment of 50% to be due 180 days after EPA publishes the final scope of a chemical risk evaluation and the second payment due not later than 545 days after EPA publishes the final scope of a chemical risk evaluation.
Consortia	60 days to notify EPA of intent to form a consortium from the triggering event.	90 days to notify EPA of intent to form a consortium from the triggering event.

Currently, manufacturers have 60 days to notify EPA of their intent to form a consortium from the triggering event, and 120 days total from the triggering event for payment. EPA is proposing to allow manufacturers subject to test orders, test rules, ECAs and EPA-initiated risk evaluations additional time to associate with a consortium and work out fee payments within that consortium. Specifically, EPA is proposing to extend the amount of time for manufacturers to notify EPA of their intent to form a consortium to 90 days. EPA believes this additional time will be useful for businesses to financially plan for the additional expense.

For EPA-initiated risk evaluations, full payment is currently due within 120 days of EPA publishing the final scope of a chemical risk evaluation. EPA is proposing to extend that first payment timeline to 180 days and to provide for payment to be made in two installments instead of one, as discussed in Unit III.B. EPA is also proposing an extension to the amount of time for these manufacturers to join a consortium, from 60 days to 90 days to notify EPA of their intent. EPA believes this additional time will assist manufacturers with the process of joining a consortium, if they so choose, and deciding on the partial fee payments each member of the consortium will be responsible for. Manufacturers will have ample warning that a risk evaluation is underway, well before the final scope is published in the **Federal Register**. For manufacturer-requested risk evaluations, EPA is proposing that the initial payment be made within 180 days of when EPA grants the request to conduct the evaluation, with the total amount to be paid over a series of three installments as indicated in Unit III.B. of the proposed rule.

G. Fee Amounts

Because the eight existing fee categories and three additional fee categories do not span all of the relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities (*e.g.,* costs of administering TSCA section 14, risk management activities under section 6, prioritization of chemicals for evaluation, support for alternative testing and methods development and enhancement), EPA is proposing fee amounts to ensure these costs would be captured.

As discussed in Unit II, EPA must recover 25% of the costs related to the relevant activities under of TSCA sections 4, 5, 6 and 14. EPA did not propose changes to the fees associated with TSCA section 4 and 5 established under the 2018 Fees Rule. EPA is, however, proposing higher fees for TSCA section 6 activities. The proportion (in percentage) of the estimated cost of the activity is higher for TSCA section 6 fees to ensure EPA is recovering the required 25% of the total cost for implementing the relevant sections of TSCA. Additional justification for each TSCA section is discussed within this Unit. EPA requests public comment on this approach with higher fees for section 6 activities and no changes to section 4 and 5 fees established under the 2018 Fees Rule.

1. Fee Amounts for TSCA Section 4 Activities

EPA issues three fee amounts—one for each of the TSCA section 4 fee categories: Test orders, test rules and ECAs. As proposed, the fees for section 4 activities amount to approximately 4.1% of the total estimated activity cost. The lower fee relative to program costs takes into account that manufacturers will be responsible for paying to develop the test information in addition to paying the TSCA fee and is reflected in assigning lower proposed fee amounts. EPA is not proposing changes to the section 4 fees established under the 2018 Fees Rule at this time. However, EPA may modify these in the future with more implementation experience.

2. Fee Amounts for TSCA Section 5 Activities

EPA currently issues two fee amounts for TSCA section 5 activities—one for notices (PMNs, SNUNs and MCANs), and one for exemptions (LVEs, LoREX, TME, Tier II, TERA and film articles). EPA is proposing two additional fee amounts for bona fide notices and NOCs. As proposed, the fees for section 5 activities amount to approximately 13% of the estimated cost of the activities. EPA is currently working on process improvements for the review of section 5 submissions, which are anticipated to lower agency costs. Since EPA does not want to stifle economic development in the chemical industry, EPA is not proposing changes to the section 5 fees established under the 2018 Fees Rule at this time. However, EPA may modify these in the future with more implementation experience.

3. Fee Amounts for TSCA Section 6 Activities

EPA issues one fee amount for EPA-initiated risk evaluations at approximately 35% of the estimated cost of the activity. EPA takes an actual cost approach for manufacturer-requested risk evaluations, whereby the requesting manufacturer (or requesting consortia of manufacturers) would be obligated to pay either 50% or 100% of the actual costs of the activity, depending on whether or not the chemical was listed on the TSCA Work Plan, respectively.

Due to the increases to TSCA section 6 program cost estimates, decreases in the activity assumptions for TSCA section 5 submissions, early feedback

received from industry stakeholders during the 2018 rulemaking, and to ensure EPA is able to defray 25% of the Agency's costs, EPA is proposing higher fees for TSCA section 6 activities (Ref. 2; Ref. 4).

The proposed fee amounts are described in Table 7. EPA is requesting comment on the changes discussed in Unit II.C.

TABLE 7—PROPOSED CHANGES TO TSCA FEE AMOUNTS

Fee category	2018 fee rule	2020 Proposed fee rule
TSCA section 4:		
Test order	$9,800	$9,800.
Amended test order	$0	$9,800.
Test rule	$29,500	$29,500.
Enforceable consent agreement	$22,800	$22,800.
TSCA section 5:		
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN.	$16,000	$16,000.
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles.	$4,700	$4,700.
Bona Fide Notice	$0	$500.
Notice of Commencement	$0	$500.
TSCA section 6:		
EPA-initiated risk evaluation	$1,350,000	$2,560,000.
Manufacturer-requested risk evaluation on a chemical included in the TSCA Work Plan.	Initial payment of $1.25M, with final invoice to recover 50% of Actual Costs.	Two payments of $945,000, with final invoice to recover 50% of Actual Costs.
Manufacturer-requested risk evaluation on a chemical *not* included in the TSCA Work Plan.	Initial payment of $2.5M, with final invoice to recover 100% of Actual Costs.	Two payments of $1.89M, with final invoice to recover 100% of Actual Costs.

4. Fee Amounts for Small Businesses

The proposed fee amounts for small businesses summarized in Table 8 represent an approximate 80% reduction compared to the proposed base fee for each category. In one case, for TSCA section 5 notices (*i.e.,* PMNs, MCANs and SNUNs), the small business reduction is 82.5%. For all fee categories, the proposed reduced fee is only available when the only entity or entities are small businesses, including when a consortium is paying the fee and all members of that consortium are small businesses. Consistent with the 2018 Fee Rule, reduced fees are not available for small business manufacturers requesting a risk evaluation, as TSCA requires those fees to be set at a specific percentage of the actual costs of the activity.

These discounts were established in the 2018 Fees Rule and were the result of stakeholder input. EPA believes the approximate 80% discount in the 2018 Fee Rule is appropriate and that the discount is generally in line with EPA's discount for small businesses in the pesticides program (*i.e.,* 75%), but slightly higher based on significant stakeholder input regarding the need to minimize impacts on small businesses. EPA is not proposing changes to these discounts.

EPA is requesting comment on the small business discount as it relates to the proposed volume-based fee calculations changes discussed in Unit III.B.

TABLE 8—PROPOSED CHANGES TO TSCA FEE AMOUNTS FOR SMALL BUSINESSES

Fee category	2018 fee rule	2020 Proposed fee rule
TSCA section 4:		
Test order	$1,950	$1,960.
Amended test order	$0	$1,960.
Test rule	$5,900	$5,900.
Enforceable consent agreement	$4,600	$4,600.
TSCA section 5:		
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN.	$2,800	$2,800.
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles.	$940	$940
Bona Fide Notice	$0	$90.
Notice of Commencement	$0	$90.
TSCA section 6:		
EPA-initiated risk evaluation	$270,000	$512,000.
Manufacturer-requested risk evaluation on a chemical included in the TSCA Work Plan..	$1,250,000 initial payment + 50% of total actual costs.	Two payments of $945,000 with final invoice to recover 50% of actual costs.
Manufacturer-requested risk evaluation on a chemical *not* included in the TSCA Work Plan.	$2,500,000 initial payment + 100% of total actual costs.	Two payments of $1.89M with final invoice to recover 100% of actual costs.

5. Description of the Primary Alternative Regulatory Action Considered

EPA has considered an alternative regulatory action where the fees remain unchanged except for an adjustment for inflation. In the absence of any substantive adjustments or updates, the 2018 TSCA Fees Rule provides for adjusting the fee structure of the current period (fiscal years 2019–2021) according to inflation rate, in setting a fee structure for the next period. This adjustment occurs automatically if no other updates are put forth by EPA. EPA has considered this regulatory alternative, but has found it unsuitable, because it would not recoup the statutorily required 25% of estimated EPA costs for TSCA related actions. EPA requests public comment on this approach.

IV. Projected Economic Impacts

EPA has evaluated the potential costs for entities potentially subject to this proposed rule. More details can be found in the Economic Analysis (Ref. 4). For the baseline, EPA used the number of section 5 submissions received in FY2019 and 2020 for each of the types of fee-triggering section 5 categories to estimate the number of submissions per section 5 fee category for the next three years in the absence of the rule. The average numbers of test orders, test rules, and ECAs per year represent an EPA estimate based on previous experience and expected work under TSCA as amended. Amended TSCA specifies the minimum number of risk evaluations that EPA must have ongoing over the next three years. The Agency expects to have between 20 and 30 risk evaluations ongoing in any given year at different stages in the review process, including manufacturer-requested evaluations.

Various alternative fee structures were considered in the original fee rule but are not being revisited in this proposal. This proposed rule would establish a few new fees and would revise existing fee levels based on actual cost information and updated estimates but would not re-open the fee structure. EPA also requests public comment on this approach.

EPA calculated fees by estimating the total annual costs of administering relevant activities under TSCA sections 4, 5, and 6 (excluding the costs of manufacturer-requested risk evaluations) and relevant information management activities; identifying the full amount to be defrayed by fees under TSCA section 26(b) (*i.e.,* 25% of those annual costs); and allocating that amount across the fee-triggering events in sections 4, 5, and 6, weighted more heavily toward section 6 based on industry feedback on the 2018 Fees Rule Proposal. EPA estimates the total fee collection by multiplying the fees with the number of expected fee-triggering events under full implementation for each fee category, for a total of approximately $22 million in average annual fee revenue. This total does not include the fees collected for manufacturer-requested risk evaluations. EPA estimates that section 4 fees account for less than one percent of the total fee collection, section 5 fees for approximately 25 percent, and section 6 fees for approximately 74 percent.

Total annual fee collection for manufacturer-requested risk evaluations is estimated to be $1.9 million for chemicals included in the TSCA Work Plan (based on two requests over the three- year period) and approximately $5.67 million for chemicals not included in the TSCA Work Plan (based on three requests over the three-year period).

For small businesses, EPA estimates that 35 percent of section 5 submissions will be from small businesses that are eligible to pay the small business fee because they are classified as small businesses based on the SBA small business thresholds.

Total annualized fee collection from small businesses submitting notices under section 5 is estimated to be $411,000 (Ref. 4). For sections 4 and 6, reduced fees paid by eligible small businesses and fees paid by non-small businesses may differ because the fee paid by each entity is dependent on the number of entities identified per fee-triggering event. EPA relied on past experience with Test Rules for HPV chemicals under section 4 as well as work to date on the first 10 chemicals to undergo risk evaluation under section 6 to inform its estimates of the average number of small businesses impacted per action. EPA estimates that average annual fee collection from small businesses impacted by section 4 activities would be approximately $8,000, and the average annual fee collection from small businesses impacted by section 6 would be approximately $922,000. For each of the three years covered by this proposed rule, EPA estimates that total fee revenue collected from small businesses will account for about 6 percent of the approximately $22 million total fee collection, for an annual average total of approximately $1.3 million.

This proposed rule would establish fee requirements for affected manufacturers (including importers) and, in some cases, processors of chemical substances. The proposed fees to be paid by industry would defray the cost for EPA to administer relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities. Absent this proposed rule, EPA costs to administer these sections of TSCA would be solely borne by taxpayers through budget appropriations from general revenue. As a result of this proposed rule, 25% of EPA costs to administer relevant activities under TSCA sections 4, 5, and 6 and relevant management activities, and activities paid from general revenue would be transferred to industry via fee payments.

Although these fees may be perceived by industry as direct private costs, from an economic perspective, they are transfer payments from industry to taxpayers rather than real social costs. Therefore, the total social cost of this proposed rule does not include the fees collected from industry by EPA. Rather, it includes the opportunity costs incurred by industry, such as the cost to read and familiarize themselves with the rule; determine their eligibility for paying reduced fees; register for Central Data Exchange (CDX); form, manage and notify EPA of participation in consortia; notify EPA and certify whether they will be subject to the action or not; and arrange to submit fee payments via *Pay.gov.* Total social costs also include the additional costs to EPA to administer fee assessment and collection for relevant activities under TSCA sections 4, 5, and 6, and relevant information management activities. The total additional annualized opportunity cost to industry, relative to the 2018 TSCA Fees Rule, is approximately $12,000. It is estimated that the EPA will incur no additional burden, relative to the 2018 TSCA Fees Rule, as a result of the proposed Fee Rule amendments. Thus, it is estimated that the agency will incur no additional opportunity costs, and that total annual opportunity costs amount to approximately $12,000.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

1. The Frank R. Lautenberg Chemical Safety for the 21st Century Act. June 22, 2016.
2. EPA. Final Rule; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 83 FR 52694, October 17, 2018 (FRL–9984–41).
3. EPA. Request for No Action Assurance Regarding Self-Identification Requirement for Certain ''Manufacturers'' Subject to the TSCA Fees Rule. March 2020. *https://www.epa.gov/sites/production/files/2020-03/documents/tsca_fees_-_naa_request_final.pdf.*
4. EPA. Economic Analysis of the Proposed Rule for Fees for the Administration of the Toxic Substances Control Act. September 2020.
5. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.*
6. EPA. Information Collection Request for the TSCA section 26(b) Proposed Reporting Requirements Associated with the Payment of TSCA Fees (EPA ICR No. 2569.01; OMB Control No. 2070–[NEW]). November 2020.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

EPA prepared an economic analysis of the potential costs and benefits associated with this action (Ref. 4). A copy of this economic analysis is available in the docket and is briefly summarized in Unit IV.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered a regulatory action under Executive Order 13771 (82 FR 9339, February 3, 2017). Details on the estimated costs of this rule can be found in the Economic Analysis (Ref. 4), which briefly summarized in Unit IV.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR No. 2569.03 and OMB Control No. 2070–0208. A copy of the ICR is available in the docket for this proposed rule (Ref. 6), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection activities associated with the rule include familiarization with the regulation; reduced fee eligibility determination; CDX registration; formation, management and notification to EPA of participation in consortia; self-identification and certification; and electronic payment of fees through *Pay.gov.*

Respondents/affected entities: Persons who manufacture, or process a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5, or manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6(b).

Respondent's obligation to respond: Mandatory—TSCA section 26(b).

Estimated number of respondents: 1,348.

Frequency of response: On occasion.

Total estimated burden: 581 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $273,388 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 700 are listed in 40 CFR part 9. Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities expected to be subject to the requirements of this action are small chemical manufacturers and processors, small petroleum refineries, and small chemical and petroleum wholesalers. There may be some potentially affected firms within other sectors, but not all firms within those sectors will be potentially affected firms. 84 small businesses may be affected annually by section 4 actions; 190 small businesses may be affected by section 5 actions; and 24 small businesses may be affected by section 6 actions.

EPA estimates the median annual sales for small businesses likely to be affected by TSCA section 4 and TSCA section 6 actions to be approximately $5,445,000; and $3,475,000 for small businesses likely to be affected by TSCA section 5 actions. The average annual incremental cost per affected small business is expected to be about $150 for section 4; $120 for section 5, and $16,200 for section 6. As a result, EPA estimates that, of the 429 small businesses paying fees every year, all may have annual cost-revenue impacts less than 1%.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and will not significantly or uniquely affect small governments. The rule is not expected to result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, or 205 of UMRA. The total quantified annualized social costs for this proposed rule are approximately $12,000 (at both 3% and 7% discount rate), which does not exceed the inflation-adjusted unfunded mandate threshold of $160 million.

F. Executive Order 13132: Federalism

This action does not have federalism implications because it is not expected to have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications because it is not expected to have substantial direct effects on

tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate environmental health risks or safety risks.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on energy supply, distribution, or use of energy and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards. Therefore, NTTAA section 12(d), 15 U.S.C. 272 *note,* does not apply to this action.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action does not have disproportionately high and adverse health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Economic Analysis (Ref. 4), which is in the public docket for this action.

List of Subjects 40 CFR Part 700

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, User fees.

Andrew Wheeler,

Administrator.

Therefore, for the reasons presented in this document, the Environmental Protection Agency proposes to amend 40 CFR part 700 as follows:

PART 700—GENERAL

■ 1. The authority citation for part 700 is revised to read as follows:

Authority: 15 U.S.C. 2625 and 2665, 44 U.S.C. 3504.

■ 2. Amend Section 700.43 by:
■ a. Adding in alphabetical order a definition for ''Production volume'';
■ b. Revising the definition of ''Section 5 notice''; and
■ c. Adding in alphabetical order a definition for ''Small quantities solely for research and development''.

The additions and revisions read as follows:

§ 700.43 Definitions applicable to this subpart.

* * * * *

Production volume means average annual manufactured (or imported) amount in pounds from the four calendar years prior to the year certification was made.

* * * * *

Section 5 notice means any PMN, consolidated PMN, intermediate PMN, significant new use notice, exemption notice, exemption application, MCAN, consolidated MCAN, *bona fide* intent to manufacture (including import) a chemical substance under § 720.25(b)(2) of this chapter, or notice of commencement of manufacture or import under § 720.102 of this chapter.

* * * * *

Small quantities solely for research and development (or ''small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product'') means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

* * * * *

■ 3. Amend § 700.45 by:
■ a. Revising paragraph (a)(3);
■ b. Revising the paragraph (b) subject heading and paragraphs (b)(5)(ii) and (iii):
■ c. Adding paragraphs (b)(5)(iv) through (vi);
■ d. Revising paragraph (b)(7);
■ e. Revising the paragraph (c) subject heading and paragraphs (c)(1)(i) and (c)(1)(vi) through (viii);
■ f. Adding paragraphs (c)(1)(ix) and (x);
■ g. Revising paragraphs (c)(2)(vi) through (xi);
■ h. Adding paragraphs (c)(2)(xii) through (xiv);
■ i. Revising paragraphs (d), (f)(2)(i), (f)(3)(i), (f)(4), (f)(5)(iv), (g)(3)(iv), and (g)(5)(ii);
■ j. Adding paragraphs (g)(5)(v) and (vi);
■ k. Revising paragraph (g)(6)(ii); and
■ l. Adding paragraphs (g)(6)(v) and (vi).

The revisions and additions read as follows:

§ 700.45 Fee payments.

(a) * * *

(3) Manufacturers of a chemical substance that is subject to a risk evaluation under section 6(b) of the Act, shall remit for each such chemical risk evaluation the applicable fee identified in paragraph (c) of this section in accordance with the procedures in paragraphs (f) and (g) of this section. For the purposes of this section, entities that manufacture a chemical substance subject to a risk evaluation under section 6(b) of the Act solely for export are subject to fee requirements in this section whenever such substance is manufactured, processed, or distributed in commerce by any other entity for any purpose other than export from the United States. Manufacturers of a chemical substance subject to risk evaluation under section 6(b) of the Act are exempted from fee payment requirements in this section, if they meet one or more of the exemptions under paragraphs (a)(3)(i) through (v) of this section for the five-year period preceding publication of the preliminary list and will meet one of more of the exemptions in paragraph (a)(3)(i) through (v) in the successive five years. Those manufacturers are excluded from fee payment requirements in this section, if they exclusively:

(i) Import articles containing that chemical substance;

(ii) Produce that chemical substance as a byproduct;

(iii) Manufacture (including import) that chemical substance as an impurity;

(iv) Manufacture that chemical substance as a non-isolated intermediate as defined in § § 704.3

(v) Manufacture (including import) small quantities of that chemical

substance solely for research and development, as defined in § 700.43; and/or

(vi) Manufacture (including import) that chemical substance in quantities below a 2,500 lbs. annual production volume as described in § 700.43, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 2,500 lbs. annual production volume as described in § 700.43, in which case this exemption is not applicable.

* * * * *

(b) *Identifying manufacturers subject to fees for section 4 test rules and section 6 EPA-initiated risk evaluations*

* * * * *

(5) *Self-identification.* All manufacturers other than those listed in paragraph (a)(3)(i) through (iii) of this section who have manufactured or imported the chemical substance in the previous five years must submit notice to EPA, irrespective of whether they are included in the preliminary list specified in paragraph (b)(3) of this section. The notice must be submitted electronically via EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal, using the Chemical Information Submission System (CISS) reporting tool, and must contain the following information:

* * * * *

(ii) *Certification of cessation.* If a manufacturer has manufactured in the five-year period preceding publication of the preliminary list, but has ceased manufacture prior to the certification cutoff dates identified in paragraph (b)(6) of this section and will not manufacture the substance again in the successive five years, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) and will not be obligated to pay the fee under this section.

(iii) *Certification of no manufacture.* If a manufacturer is identified on the preliminary list but has not manufactured the chemical in the five-year period preceding publication of the preliminary list, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) and will not be obligated to pay the fee under this section.

(iv) *Certification of meeting exemption.* If a manufacturer is identified on the preliminary list and meets one or more of the exemptions in paragraphs (a)(3)(i) through (vi) of this section for the five-year period preceding publication of the preliminary list and will meet one of more of the exemptions in paragraphs (a)(3)(i) through (vi) in the successive five years, the manufacturer must submit a certification statement attesting to these facts in order to not be included in the final list of manufacturers described in paragraph (b)(7) of this section and to not be obligated to pay the fee under this section. If a manufacturer is not on a preliminary list and meets one or more of the exemptions in paragraphs (a)(3)(i) through (vi) for the five-year period preceding publication of the preliminary list and will meet one of more of the exemptions in paragraphs (a)(3)(i) through (vi) in the successive five years, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) and will not be obligated to pay the fee under this section.

(v) *Recordkeeping.* After [DATE 60 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE]:

(A) All manufacturers other than those listed in paragraphs (a)(3)(i) through (vi) of this section must maintain production volume records related to compliance with paragraph (vi) of this section. These records must be maintained for a period of five years from the date notice is submitted pursuant to paragraph (b)(5) of this section.

(B) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(3)(vi) of this section must maintain production volume records related to compliance with the exemption criteria described in paragraph (a)(3)(vi). These records must be maintained for a period of five years from the date the exemption is claimed.

(C) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(3)(v) of this section must maintain ordinary business records related to compliance with the exemption criteria described in paragraph (a)(3)(v), such as plans of study, information from research and development notebooks, study reports, or notice solely for research and development use. These records must be maintained for a period of five years from the date the record is generated.

(D) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(3)(iv) of this section must maintain ordinary business records related to compliance with the exemption criteria described in paragraph (a)(3)(iv). These records must be maintained for a period of five years from the date the record is generated.

(vi) *Production volume.* A manufacturer submitting notice to EPA under paragraph (b)(5) of this section, other than those manufacturers listed in paragraphs (a)(3)(i) through (v) of this section, must submit to EPA its production volume as defined in § 700.43 for the applicable chemical substance.

* * * * *

(7) *Publication of final list.* EPA will publish a final list of manufacturers to identify the specific manufacturers subject to the applicable fee. This list will indicate if additional manufacturers self-identified pursuant to paragraph (b)(5) of this section, if other manufacturers were identified through credible public comment, and if manufacturers submitted certification of cessation or no manufacture pursuant to paragraph (b)(5)(ii) or (iii). The final list will be published no later than concurrently with the final scope document for risk evaluations initiated by EPA under section 6, and with the final test rule for test rules under section 4. EPA may modify the list after the publication of the final list.

* * * * *

(c) *Fees for the 2022, 2023, and 2024 fiscal years.* Persons shall remit fee payments to EPA as follows:

(1) * * *

(i) *Premanufacture notice and consolidated premanufacture notice.* Persons shall remit a fee totaling $2,800 for each premanufacture notice (PMN) or consolidated PMN submitted in accordance with part 720 of this chapter.

* * * * *

(vi) *Bona fide intent to manufacture (including import) a chemical substance.* Persons shall remit a fee totaling $90 for each *bona fide* intent to manufacture (including import) submitted in accordance with § 720.25 of this chapter.

(vii) *Notice of commencement of manufacture or import.* Persons shall remit a fee totaling $90 for each notice of commencement of manufacture or import submitted in accordance with § 720.102 of this chapter.

(viii) Persons shall remit a total of twenty percent of the applicable fee under paragraph (c)(2)(viii), (ix) or (x) of

this section for a test rule, test order, or enforceable consent agreement.

(ix) Persons shall remit a total fee of twenty percent of the applicable fee under paragraphs (c)(2)(xii) of this section for an EPA-initiated risk evaluation.

(x) Persons shall remit the total fee under paragraph (c)(2)(xiii) or (xiv) of this section, as applicable, for a manufacturer-requested risk evaluation.

(2) * * * :

(vi) *Bona fide intent to manufacture (including import) a chemical substance.* Persons shall remit a fee totaling $500 for each *bona fide* intent to manufacture (including import) submitted in accordance with § 720.25 of this chapter.

(vii) *Notice of commencement of manufacture or import.* Persons shall remit a fee totaling $500 for each notice of commencement of manufacture or import submitted in accordance with § 720.102 of this chapter.

(viii) *Test rule.* Persons shall remit a fee totaling $29,500 for each test rule.

(ix) *Test order.* Persons shall remit a fee totaling $9,800 for each test order.

(x) *Resubmitted data.* Persons shall remit a fee totaling $9,800 for data submitted following submission of deficient data in response to a test order.

(xi) *Enforceable consent agreement.* Persons shall remit a fee totaling $22,800 for each enforceable consent agreement.

(xii) *EPA-initiated chemical risk evaluation.* Persons shall remit a fee totaling $2,560,000.

(xiii) *Manufacturer-requested risk evaluation of a Work Plan Chemical.* Persons shall remit an initial fee of $945,000, a second payment of $945,000 and final payment to total 50% of the actual costs of this activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and EPA will issue an invoice to the requesting manufacturer.

(xiv) *Manufacturer-requested risk evaluation of a non-work plan chemical.* Persons shall remit an initial fee of $1,890,000, a second payment of $1,890,000, and final payment to total 100% of the actual costs of the activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and EPA will issue an invoice to the requesting manufacturer.

* * * * *

(d) *Fees for 2025 fiscal year and beyond.* (1) Fees for the 2025 and later fiscal years will be adjusted on a three-year cycle by multiplying the fees in paragraph (c) of this section by the current PPI index value with a base year of 2022 using the following formula:

$$FA = F \times I$$

Where:

FA = the inflation-adjusted future year fee amount.

F = the fee specified in paragraph (c) of this section.

I = Producer Price Index for Chemicals and Allied Products inflation value with 2022 as a base year.

(2) Updated fee amounts for PMNs, SNUNs, MCANs, exemption notices, exemption applications, *bona fide* intent to manufacture (including import) a chemical substance, notice of commencement of manufacture or import, and manufacturer-requested chemical risk evaluation requests apply to submissions received by the Agency on or after October 1 of every three-year fee adjustment cycle beginning in fiscal year 2022 (October 1, 2021). Updated fee amounts also apply to test rules, test orders, enforceable consent agreements and EPA-initiated chemical evaluations that are ''noticed'' on or after October 1 of every three-year fee adjustment cycle, beginning in fiscal 2022.

(3) The Agency will initiate public consultation through notice-and-comment rulemaking prior to making fee adjustments beyond inflation. If it is determined that no additional adjustment is necessary beyond for inflation, EPA will provide public notice of the inflation-adjusted fee amounts most likely through posting to the Agency's web page by the beginning of each three-year fee adjustment cycle (October 1, 2024, October 1, 2027, etc.). If the Agency determines that adjustments beyond inflation are necessary, EPA will provide public notice of that determination and the process to be followed to make those adjustments.

* * * * *

(f) * * *

(2) * * *

(i) The consortium must identify a principal sponsor and provide notification to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication date of a test rule under section 4 of the Act, or within 90 days of the issuance of a test order under Section 4 of the Act, or within 90 days of the signing of an enforceable consent agreement under section 4 of the Act. EPA may permit additional entities to join an existing consortium prior to the expiration of the notification period if the principal sponsor provides updated notification.

* * * * *

(3) * * *

(i) Notification must be provided to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication of the final scope of a chemical risk evaluation under section 6(b)(4)(D) of the Act or within 90 days of EPA providing notification to a manufacturer that a manufacturer-requested risk evaluation has been granted.

* * * * *

(4)(i) If multiple persons are subject to fees triggered by section 4 or 6(b) of the Act and no consortium is formed, EPA will determine the portion of the total applicable fee to be remitted by each person subject to the requirement. Each person's share of the applicable fees triggered by section 4 of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers and/or processors of the chemical substance, with lower fees for small businesses:

$$P_s = 0.2 \times \left[\frac{F}{M_t}\right]$$

$$P_o = \frac{F - \left[0.2 \times \left[\frac{F}{M_t}\right] \times M_s\right]}{(M_t - M_s)}$$

(ii) Each person's share of the applicable fees triggered by section 6(b) of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers of the chemical substance, with lower fees for small businesses:

$$F_s = 0.2 \text{ x } \left[\frac{F}{M_t}\right] \text{ x } M_s$$

$$F_o = F - [0.2 \text{ x } \left[\frac{F}{M_t}\right] \text{ x } M_s]$$

$$P_s = F_s \text{ x } V_s$$

$$P_o = F_o \text{ x } V_o$$

Where:

F_s = the total fee required under paragraph (c) of this section by a person(s) who qualifies as a small business concern under § 700.43 of this chapter.

F_o = the total fee required under paragraph (c) of this section by person(s) other than a small business concern.

V_s = the production volume of a person who qualifies as a small business concern under paragraph (c) as a percentage of the total production volume as defined in § 700.43 of person(s) who qualify as a small business concern under paragraph (c) of this section.

V_o = the production volume of a person other than a small business concern as a percentage of the total production volume as defined in § 700.43 of person(s) other than a small business concern.

P_s = the portion of the fee under paragraph (c) of this section that is owed by a person who qualifies as a small business concern under § 700.43 of this chapter.
P_o = the portion of the fee owed by a person other than a small business concern.
F = the total fee required under paragraph (c) of this section.
M_t = the total number of persons subject to the fee requirement.
M_s = the number of persons subject to the fee requirement who qualify as a small business concern.

(5) * * *

(iv) Reallocate the remaining fee across those remaining individuals and groups based on the portion of total production volume as defined in § 700.43, considering the production volume of each manufacturer not in a consortium and the total production volume of the manufacturers in a consortium; and

* * * * *

(g) * * *

(3) * * *

(iv) *Risk evaluations.* (A) For EPA-initiated risk evaluations, the applicable fee specified in paragraph (c) of this section shall be paid in two installments, with the first payment of 50% due 180 days after publishing the final scope of a risk evaluation and the second payment for the remainder of the fee due 545 days after publishing the final scope of a risk evaluation under section 6(b)(4)(D) of the Act.

(B) * * *

(*1*) The applicable fee specified in paragraph (c) of this section shall be paid in three installments. The first payment shall be due no later than 180 days after EPA provides the submitting manufacture(s) notice that it has granted the request.

(2) The second payment shall be due no later than 545 days after EPA provides the submitting manufacturer(s) notice that it has granted the request.

(*3*) The final payment shall be due no later than 30 days after EPA publishes the final risk evaluation.

* * * * *

(5) * * *

(ii) Each person who remits the fee identified in paragraph (c)(1) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under § 700.43 and has remitted a fee of $940 in accordance with § 700.45(c).'' in the exemption application.

* * * * *

(v) Each person who remits the fee identified in paragraph (c)(1) of this section for a *bona fide* intent to manufacture (including import) a chemical substance shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under § 700.43 and has remitted a fee of $90 in accordance with § 700.45(c).'' when submitting a request in accordance with § 720.25(b)(2) of this chapter.

(vi) Each person who remits the fee identified in paragraph (c)(1) of this section for a notice of commencement of manufacture or import shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under § 700.43 and has remitted a fee of $90 in accordance with § 700.45(c).'' when submitting a notice in accordance with § 720.102(d)(2) of this chapter.

(6) * * *

(ii) Each person who remits a fee identified in paragraph (c)(2) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $4,700 specified in § 700.45(c).'' in the exemption application.

* * * * *

(v) Each person who remits the fee identified in paragraph (c)(2) of this section for a *bona fide* intent to manufacture (including import) a chemical substance shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $500 in accordance with § 700.45(c).'' when submitting a request in accordance with § 720.25(b)(2) of this chapter.

(vi) Each person who remits the fee identified in paragraph (c)(2) of this section for a notice of commencement of manufacture or import shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $500 in accordance with § 700.45(c).'' when submitting a notice in accordance with § 720.102(d)(2) of this chapter.

* * * * *

[FR Doc. 2020–28585 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket Nos. 20–401, 17–105; RM–11854; FCC 20–166; FRS 17341]

FM Broadcast Booster Stations; Modernization of Media Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Federal Communications Commission proposes to amend its rules to enable FM broadcasters to use FM booster stations to air geo-targeted content (*e.g.,* news, weather, and advertisements) independent of the signals of its primary station within different portions of the primary station's protected service contour for a limited period of time during the broadcast hour.

DATES: Comments may be filed on or before February 10, 2021 and reply comments may be filed on or before March 12, 2021.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–401, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS) at: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - ○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - ○ Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional

docket or rulemaking number; an original and one copy are sufficient.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Audio Division, Media Bureau at *Albert.Shuldiner@fcc.gov* or 418–2721, or James Bradshaw, Audio Division, Media Bureau at *James.Bradshaw@fcc.gov* or (202) 418–2739. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking (*NPRM*), MB Docket Nos. 20–401, 17–105; RM–11854; FCC 20–166, adopted on November 20, 2020, and released on December 1, 2020. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* in document FCC 20–166 seeks comment on whether the Commission should adopt new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis of Notice of Proposed Rulemaking

1. Traditionally, an FM broadcast station transmits its signal from a single, elevated transmission site central to its protected service contour. The FM booster service—a low power secondary service in the FM broadcast band—was created in 1970 to allow FM stations to improve signal strength within their authorized service contour. Booster stations were designed to address gaps in coverage, such as those caused by distance or terrain shielding. FM booster stations are only licensed to the licensee of the primary station, must operate on the same frequency as the primary station, and are limited to rebroadcasting the signal of the primary station (*i.e.,* no transmission of original content). As a secondary service, FM booster stations are not permitted to cause adjacent-channel interference to other primary services or previously-authorized secondary stations. The Commission's rules also address interference to the primary station caused by the booster station.

2. *Petition for Rulemaking.* On March 13, 2020, GeoBroadcast filed a petition for rulemaking seeking to amend § 74.1231(i) of the Commission's rules to permit FM booster stations to transmit original content for a limited period during the broadcast hour. This ''geo-targeted'' content would only be available in the specific part of the primary station's protected service contour served by the booster station; outside of the permitted transmission periods, the booster would continue to retransmit the primary station's signal. Under the proposal, the booster station's programming would have to be ''substantially similar'' to the primary station's programming. Petitioner clarified that in order to be substantially similar, the booster station would be required to retransmit the same content as the primary station except for advertisements, promotions for upcoming programs, and enhanced capabilities including hyper-localized content, and to limit transmission of such original content to 5 percent of the broadcast hour. Petitioner asserts that this proposal would not cause adjacent-channel interference and that technology has developed such that FM booster stations can be sufficiently synchronized with the primary station to avoid harmful self-interference. Petitioner claims that only a targeted change to § 74.1231(i) is necessary to facilitate this proposal—which does not seek any changes to the rules regarding primary stations or FM translators—and that the proposed booster station operation is compatible with all existing interference rules.

3. On April 2, 2020, the Consumer and Governmental Affairs Bureau issued a public notice seeking comment on the Petition. The Petition garnered significant public participation.

4. Most commenters supported the Petition, although some raise concerns that they assert should be addressed in this proceeding. For example, commenters raised concerns about potential interference and limitations to the proposed technology (*i.e.,* the Petitioner's geo-targeting technology currently only works with analog FM service and may disrupt digital audio broadcasting). Other commenters stated that they support the Petition because it would permit minority-owned stations to better serve their communities. Other commenters raised concerns with the lack of real-world testing, stating that the existing testing is insufficient to prove that geo-targeted programming does not cause self-interference and would not cause confusion among radio listeners, and cautioning the Commission not to rush forward.

5. In its reply, Petitioner asserted that its existing testing regime provides a sufficient basis upon which to proceed to a NPRM. Petitioner also notes the level of support from radio broadcasters, notwithstanding some objections, and highlights the potential public interest benefits of the proposed rule change, including advancing localism, supporting minority-owned broadcasters, providing emergency alert capability, and helping radio broadcasters compete in the current challenging environment.

6. *Discussion.* The Commission seeks comment on whether—and if so, how—to change the FM booster station rules to permit FM boosters to transmit original geo-targeted content. First, the Commission seeks comment on technical issues, such as whether permitting FM boosters to transmit original geo-targeted content may result in self-interference that would be disruptive to listeners and whether there are alternatives to the Petitioner's proposal, including conforming changes to other Commission rules, that the Commission should consider. Second, the Commission seeks comment on whether to require programming originated by the FM booster station to be ''substantially similar'' to the primary station's programming, and how to define this term. Finally, the Commission seeks comment on potential public interest implications if it permits FM boosters to transmit original geo-targeted content, including the impact, if any, on localism,

diversity, and competition in the media marketplace, and any attendant costs and benefits. The Commission also asks for comment on the effect of these proposals on small entities and seeks comment as to alternatives that would minimize burdens on such small entities.

7. *Technical Operation—Interference Issues.* The Commission seeks comment on whether permitting FM boosters to transmit original geo-targeted content would result in additional interference, either to the primary station or to other broadcast stations serving the same area. The Petition asserts that the only interference-related impact of its proposed rule change would be self-interference with the primary station where the FM booster station and the primary station contours meet, rather than adjacent-channel interference between broadcasters and therefore, it would be incumbent upon the stations using FM booster stations to originate programming to manage the self-interference to ensure that service to its community was not degraded. The NPRM asks if this assessment is accurate? Is it reasonable to expect stations to adequately manage self-interference without additional guidance or mandates, and what is the likely financial impact of managing any self-interference? The Commission's existing rules do not require FM booster stations to protect second adjacent stations from interference. Should the Commission impose second adjacent channel interference protection requirements for FM booster stations? What would be the correct protection requirements to impose? Should second adjacent channel interference protection requirements apply to all FM booster stations or only those using multiple boosters to provide geo-targeted content? To the extent FM booster stations result in interference to other stations, are the Commission's existing rules and procedures able to sufficiently address the interference? Do the proposed booster operations pose a distinct threat to other types of stations, such as LPFM or HD Radio broadcasters?

8. Should FM stations utilizing booster stations for geo-targeted programming be required to provide notice to other local broadcasters and/or the public to help identify potential sources of interference? If so, how should the Commission structure the notice? Should other stations or listeners be permitted to raise concerns immediately based on the potential for interference or must they wait and only report actual interference? What are the costs and benefits associated with any proposed notice requirement?

9. Petitioner acknowledges that, while an FM booster station is broadcasting different content from its primary station, self-interference is possible. The NPRM asks what is the likely impact of self-interference on listeners? Could such interference significantly degrade the quality of service on the FM band? What would the listener experience as they moved between zones broadcasting different content or if they otherwise were located near the boundary between two zones? Could there be circumstances in which a listener travelling in an automobile moves from a booster zone to the primary zone and then to another booster zone in quick succession? How would these sudden, repeated changes impact the listening experience? Should the Commission restrict the protected service contour, size, or proximity of booster ''zones'' to address self-interference concerns? What impact could any increase in self-interference have on emergency broadcasts being transmitted from the primary station? Will broadcasters be sufficiently incentivized to address self-interference concerns if it means potentially forfeiting additional revenue from geo-targeted advertising or should the Commission consider additional interference restrictions?

10. To help prevent potential self-interference, should the Commission place a limit on the number of FM boosters that can be associated with a primary station for purposes of geo-targeted programming? If so, the Commission seeks comment on the appropriate cap and the reasoning supporting any such cap. Should certain types of stations be exempt from the restriction, and, if so, how should the Commission determine which stations are exempt? Should the Commission consider changes to § 74.1204(i) to better protect first-adjacent channel stations? Also, does the likely increase in the number of authorized FM booster stations warrant a new rule that provides predicted protections for co-channel stations?

11. Should the Commission adopt any additional rules or guidelines to address instances of self-interference? For example, should a station be required to shut down a booster station offering geo-targeted programming upon the filing of an interference complaint until the station can prove it has eliminated the interference? How many separate interference complaints should be filed before resolution is required? What should be included in these complaints? The Commission seeks comment generally on how to structure such a complaint process.

12. From a consumer electronics standpoint, will the impact of self-interference be the same for all radios? The Commission seeks comment from receiver manufacturers, retailers, and/or auto manufacturers regarding the extent to which they are concerned about consumer confusion and whether such confusion is likely to result in warranty claims and/or equipment returns.

13. Finally, have the previous experimental operations provided the Commission with enough information upon which to identify and address interference concerns? If not, what additional information or testing is necessary? The Commission seeks comment generally on these issues.

14. *FM Booster Station Rules.* Consistent with the proposal in the Petition, the Commission seeks comment on whether to change § 74.1231(i) of the Commission's rules, which applies to both commercial and noncommercial educational (NCE) FM stations. If the Commission were to modify that rule, would any conforming changes be needed to other Commission rules? For example, would § 74.1201(f) need to be revised to reflect the fact that FM booster stations would no longer be limited to retransmitting the signal of the primary station? Are there any changes to power limitations under § 74.1235 that we should consider for booster stations that will air geo-targeted content? Should any changes be made to the FM booster station application process under § 74.1233 for boosters that will air geo-targeted content? How should we deal with mutually exclusive FM booster station applications (*e.g.,* two proposed booster stations that are short-spaced under § 74.1204(g))? Additionally, as noted above, the proposed rule change to § 74.1231(i) would apply to commercial and NCE FM stations. The NPRM asks if there is any reason to restrict the ability to offer geo-targeted programming to commercial stations? Conversely, should we also permit LPFM stations to offer geo-targeted programming via FM booster stations? What rules would need to be revised to facilitate this change?

15. How might permitting FM boosters to transmit original geo-targeted content impact demand for FM booster stations? What variables influence the number of boosters necessary to support geo-targeted programming? Will an increase in FM booster stations result in an increase to the noise floor in the FM band that would be detrimental to the quality of the FM service? Should the Commission limit the number of FM boosters that

can be used for geo-targeted programming in order to address noise-floor issues? Should such limits apply as an aggregate cap across all FM licensees in a market and/or a limit on the number of booster stations that can be associated with a primary station? If the Commission adopts any such limitation, what measures should it take to ensure that broadcasters that do not currently have FM booster stations, especially small, independent, women, and minority station owners, have a meaningful opportunity to provide geo-targeted programming?

16. At present, FM booster station applications can be filed at any time, without limitation on the number of boosters associated with a primary station. If the Commission permits FM boosters to transmit original geo-targeted content, should the Commission consider one or more special filing windows for certain types of stations to ensure equitable and timely access to FM booster station licenses? Is the anticipated demand for additional booster stations such that the Commission's existing processing capabilities would be insufficient to meet demand? If so, which stations should be able to participate in these early filing windows? How should the Commission assess which stations may need and benefit from such a process? The Commission seeks comment generally on these issues.

17. The Petition focuses on geo-targeted programming on FM radio based on FM booster station technology developed by Petitioner. Would the proposed rule change limit other companies from developing similar geo-targeting technology using FM booster stations? If so, what changes would be necessary to ensure competition in the delivery of such geo-targeting solutions?

18. The Commission notes that the FM booster station rules were originally adopted to address signal quality issues caused by distance from the main transmitter site and/or terrain shielding. The proposed use of boosters to provide geo-targeted programming would not be based on such considerations, however. How should this impact the Commission's assessment of the proposal?

19. *HD Radio.* It is the Commission's understanding that, at present, geo-targeting technology is only compatible with analog broadcasts; accordingly, the Commission lacks any testing data on the operation of geo-targeted programming by HD Radio broadcast stations. If the intent is to expand this service offering to HD Radio stations, what is the impact of the change in programming on the advanced features of the HD Radio signal? Would the booster station only replace the content on the HD1 channel or would it also (and simultaneously) change programming on the HD2/HD3/HD4 channels? How does this impact the scrolling information the receiver displays? Is the expense associated with an HD Radio system similar to the analog equipment? The Commission acknowledges that there may be insufficient information upon which to address these questions at this time. How should the Commission address potential HD Radio operation in the absence of such information? What other issues should we consider in this context?

20. *Substantially Similar Programming.* For purposes of determining whether a booster may originate programming, the Commission seeks comment on whether to require the FM booster station to air content that is ''substantially similar'' to the content on the primary channel. What would the purpose of such a requirement be and what would be the consequences of not adopting such a requirement? Should ''substantially similar'' mean that the programming must be the same except for advertisements, promotions for upcoming programs, and enhanced capabilities including hyper-localized content? Do licensees need additional guidance as to the types of original programming that are permitted within the categories of ''advertisements, promotions for upcoming programs, and enhanced capabilities?'' Should the Commission expand or contract on these categories? Is it necessary to include any other aspects of the substantially similar requirement in the ATSC 3.0 context, such as that any programming required to be retransmitted from the primary station must be aired at the same time to satisfy the rule?

21. The Commission also seeks comment on whether there should be any differences in the definition of substantially similar programming as between commercial and NCE FM stations, in particular in the categories of original programming that are permitted.

22. For purposes of determining whether an FM booster station's programming is substantially similar to its primary station, GeoBroadcast recommended a time limit for original programming of 5 percent of the broadcast hour (*i.e.,* three minutes). The Commission seeks comment on whether to adopt the 5 percent limitation. Are there other alternatives should be considered? The Commission encourages parties addressing the time limit to discuss the potential impact of content origination on the existing rules and policies for licensing new stations. If any such limitation is generally appropriate, should the Commission provide for exceptions in emergency situations, where additional local information may be particularly valuable to listeners? What are the costs and benefits associated with any proposed time limits?

23. *Public Interest Benefits.* The Commission seeks comment on whether, and if so how, revising the FM booster station rules to permit original geo-targeted content would benefit listeners and broadcasters and otherwise serve the public interest. For example, the Petition claims that the rule change would promote localism by allowing FM radio stations to provide hyper-local news and alerts, weather, traffic, and advertising that would be particularly relevant to certain sectors of their protected service contour. The Commission seeks comment on these potential benefits and whether such services are consistent with the Commission's localism goals. To the extent targeted advertising includes political content, how would that impact the primary station's political file requirements, or any other requirements related to political advertisements?

24. The Petition also asserts that it would benefit small businesses and other local advertisers who may not be able to afford or be interested in buying advertisements to air in the station's entire market but who could be interested in more targeted ads. While not typically part of the Commission's public interest assessment, should it take into account the impact on small businesses and local advertisers in assessing the public interest benefits of the proposal? Would national advertisers also benefit from geo-targeted programming? The Petition further asserts that the proposal would generate additional economic opportunity for broadcasters at a time when many FM broadcasters are facing financial hardship. The Commission seeks comment on these issues, in particular on any economic benefits that small, independent, minority, and women owned FM station owners could derive from increased advertising opportunities.

25. The Commission seeks comment on whether the proposal is likely to have any impact on diversity, in particular on FM station ownership by minorities, women, and small businesses. Would the ability to geo-target content increase ownership

opportunities for these underrepresented and diverse station owners in the FM service? What other specific opportunities would small, independent, minority, and women owned FM station owners gain if we authorize geo-targeting?

26. How would the proposed rule change affect competition among existing FM station owners, in particular those who currently operate FM booster stations and those who would need to secure a new FM booster license to implement geo-targeting? Does the voluntary nature of the proposed change, coupled with the availability of vendor financing for the transmission equipment necessary to implement geo-targeting, increase the likelihood that small, independent, or diverse station owners that seek to gain access to this technology will be able to do so? Does vendor financing of the transmission equipment raise any public interest concerns or otherwise impact the existing rules? Are the costs associated with the proposal such that smaller broadcasters would be unable to deploy the technology absent vendor financing? Should cost concerns impact the Commission's decision whether to permit geo-targeted programming? Are there any special considerations for stations that are being operated pursuant to a sharing agreement (*e.g.,* local marketing agreement)?

27. The Commission also seeks comment on whether the proposal could have a negative impact on listeners. For example, could interference issues reduce the effectiveness of emergency alerts? Could certain parts of the local market be ignored in favor of population clusters deemed more valuable to advertisers? What impact would geo-targeted programming have on underserved populations? How should the Commission balance any potential public interest benefits against any identified public interest harms and/or technical concerns?

Procedural Matters

28. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

29. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

30. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

31. *People With Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

32. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Initial Regulatory Flexibility Analysis.

33. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the notice of proposed rulemaking (NPRM). Written public comments are requested on this

IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

34. The NPRM seeks comment on changes to the Commission's rules governing the use of FM booster stations by FM radio broadcasters. Traditionally, an FM broadcast station transmits its signal from a single, elevated transmission site central to its protected service contour. This results in a stronger signal near the transmitter and a weaker signal as the distance from the transmitter increases. Intervening terrain can also reduce signal strength, regardless of the distance from the transmitter. The FM booster service—a low power secondary service on the FM broadcast band—was created in 1970 to allow FM stations to improve signal strength within their authorized service contour. FM booster stations are only licensed to the licensee of the primary station, must operate on the same frequency as the primary station, and are limited to rebroadcasting the signal of the primary station (*i.e.,* no transmission of original content). As a secondary service, FM booster stations are not permitted to cause adjacent-channel interference to other primary services or previously-authorized secondary stations. The Commission's rules also address interference to the primary station caused by the booster station. Many of the current FM booster station rules have not been significantly updated since the 1980s.

35. On March 13, 2020, GeoBroadcast Solutions LLC (GeoBroadcast or Petitioner) filed a petition for rulemaking seeking to amend § 74.1231(i) of the Commission's rules to permit FM booster stations to transmit original content for a limited period of time during the broadcast hour. This ''geo-targeted'' content would only be available in the specific part of the primary station's protected service contour served by the booster station; outside of these periods, the booster would continue to retransmit the primary station's signal. Under the proposal, the content aired by the boosters must be ''substantially similar'' to the content aired by the primary station. The NPRM preliminarily defines ''substantially similar'' as programming must that is the same except for advertisements, promotions for upcoming programs, and enhanced capabilities including hyper-localized content (*e.g.,* geo-targeted weather, targeted emergency alerts, and hyper-local news). Petitioner asserts that this proposal would not cause adjacent-channel interference and that technology has developed such that FM booster stations can be sufficiently synchronized with the primary station to avoid harmful self-interference. Petitioner claims that only a targeted change to § 74.1231(i) is necessary to facilitate this proposal—which does not seek any changes to the rules regarding primary stations or FM translators—and that the operation is compatible with all existing interference rules.

36. The NPRM seeks comment on whether to change the Commission's FM booster station rules consistent with the proposal set forth in the Petition. We also seek comment on alternative approaches to permitting FM boosters to transmit original geo-targeted content. First, the NPRM seeks comment on technological issues, such as whether permitting FM boosters to transmit original geo-targeted content may result in self-interference that would be disruptive to listeners, degrade the quality of service on the FM band, cause interreference and a distinct threat to particular types of stations, such as LPFM or HD Radio broadcasters stations, and whether there are alternatives to the Petitioner's proposal, including conforming changes to other Commission rules, that the Commission should consider. Second, the NPRM seeks comment on whether geo-targeted content should be substantially similar to the primary station's content, and how to define this term. Finally, the NPRM seeks comment on potential public interest benefits, including the impact, if any, on ownership diversity. Petitioner asserts that its proposal would benefit small businesses and other local advertisers who may not be able to afford or be interested in buying advertisements to air in the station's entire market but who could be interested in more targeted ads. The NPRM asks whether the Commission should take into account the impact on small businesses and local advertisers in assessing the public interest benefits of the proposal. Further the NPRM seeks comment on the costs associated with the proposal, such that smaller broadcasters would be unable to deploy the technology absent vendor financing, and whether such cost concerns should impact our decision.

B. Legal Basis

37. The proposed action is authorized pursuant to sections 1, 4, 7, 301, 302, 303, 307, 308, 309, 316, 319, and 324, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, and 324.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

38. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

39. *Radio Broadcasting.* Given the potential impact of the proposal to allow FM boosters to transmit original geo-targeted content, radio broadcasting stations may be affected by rule changes.

40. The U.S. Economic Census radio broadcasting category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for this category: those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, 17 with annual receipts between $24,999,999 and $50 million, and 26 with annual receipts of $50 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

41. Apart from the U.S. Census, the Commission has estimated the number

of licensed AM radio stations to be 4,560 and the number of commercial FM radio stations to be 6,704, along with 8,339 FM translator and booster stations. Based on 2019 revenue data, 4,263 a.m. stations and 6,731 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has determined the number of noncommercial educational (NCE) FM radio stations to be 4,196. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

42. *Low Power FM Stations.* The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: those having $41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,143. Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, we will presume that these licensees qualify as small entities under the SBA definition.

43. We note again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the rule revisions discussed in the NPRM includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

44. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees, and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

45. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements. As discussed above, the NPRM seeks comment on changes to the Commission's rules governing the use of FM booster stations by FM radio broadcasters. Providing geo-targeted programming as proposed in the NPRM would be voluntary. The NPRM does not propose any new mandatory reporting, recordkeeping, or compliance requirements for small entities, unless such entities, *i.e.,* licensees, choose to use FM booster stations to provide geo-targeted programming. We note that the adoption of the proposed rule may require modification of current requirements and processes for entities that choose to provide geo-targeted programming, such as modification of FCC forms, including but not limited to, FCC Form 2100, Schedules 349 and 350. The NPRM thus will not impose additional obligations or expenditure of resources on small businesses unless they choose to acquire FM booster stations.

46. *Reporting Requirements.* The NPRM does not propose to adopt new reporting requirements.

47. *Recordkeeping Requirements.* The NPRM does not propose to adopt new recordkeeping requirements.

48. *Other Compliance Requirements.* The NPRM seeks comment on whether stations utilizing booster stations for geo-targeted programming should be required to provide notice to other local broadcasters and/or the public to help identify potential sources of interference. The NPRM seeks comment on the structure of such a notice, timeframe for providing such notice, if/how stations or listeners should be permitted to raise concerns, and the costs and benefits associated with any proposed notice requirement.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

49. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

50. The NPRM seeks comment on a voluntary process by which FM broadcasters could utilize FM booster stations to offer geo-targeted content that may be of particular interest to listeners in certain areas within the station's service contour. Petitioner asserts that this would benefit broadcasters (large and small) and listeners alike, by promoting localism through hyper-local news and alerts, weather, traffic, and advertising that would be particularly relevant to certain sectors of their protected service contour. The Petition also asserts that it would not only generate additional economic opportunity for broadcasters at a time when many FM broadcasters are facing financial hardship, but also benefit small businesses and other local advertisers who may not be able to afford or be interested in buying advertisements to air in the station's entire market but who could be interested in more targeted ads.

51. The Commission considers in the NPRM specific steps it could take and significant alternatives to the proposed rules that could minimize potential economic impact on small entities that could be affected by the rule change proposed in the NPRM, as well as any other rule changes that may be required. Potential economic costs and burdens that could impact small businesses include, for example, interference arising from geo-targeted programming. Specifically, the Bureau considers as an alternative the possibility that the proposed operation may not result in interference to other broadcasters and

has also considered the possibility that existing rules are able to address such circumstances. The Bureau also considers ways to assist small entities that wish to engage in geo-targeted broadcasting, such as whether to open special filing windows for FM booster applications and, to the extent the Commission limits the number of booster stations a primary station may license, whether to exempt certain types of broadcasters from these limits.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

52. None.

Ordering Clauses

53. Accordingly, *it is ordered* that, pursuant to the authority contained in § 1.407 of the Commission's rules, 47 CFR 1.407, the Petition for Rulemaking of GeoBroadcast Solutions LLC *is granted* to the extent specified herein and the Petition for Rulemaking in RM–11659 *is dismissed*.

54. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4, 7, 301, 302, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, and 324, this notice of proposed rulemaking *is adopted*.

55. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the notice of proposed rulemaking in MB Docket No. 20–166 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (60) days after publication in the **Federal Register**.

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–28784 Filed 1–8–21; 8:45 am]

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Notices

Federal Register

Vol. 86, No. 6

Monday, January 11, 2021

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

January 6, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 10, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Animals and Poultry, Animal and Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Control Number: 0579–0040.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintain a healthy animal population and enhancing APHIS' ability to compete globally in animal and animal product trade. APHIS' Veterinary Services (VS) unit is responsible for, among other things, preventing the introduction of foreign or certain other communicable animal diseases into the United States; and for rapidly identifying, containing, eradicating, or otherwise mitigating such diseases when feasible. In connection with this mission, APHIS collects information from individuals, businesses, and farms who are involved with importation of animals or poultry, animal or poultry products, or animal germplasm (semen, ooycysts, and embryos, including eggs for hatching) into the United States as well as from foreign countries and States to support these imports.

Need and Use of the Information: APHIS will collect information from foreign animal health authorities as well as U.S. importers; foreign exporters; veterinarians and animal health technicians in other countries; State animal health authorities; shippers; owners and operators of foreign processing plants and farms; USDA-approved zoos, laboratories, and feedlots; private quarantine facilities; and other entities involved (directly or indirectly) in the importation of animal and poultry, animals and poultry products, zoological animals, and animal germplasm.

Information Collection Activities Include: Agreements; permits; application and space reservation requests; inspections; registers; declarations of importation; requests for hearings; daily logs; additional requirements; application for permits; export health certificates; letters; written notices; daily record of horse activities; written requests; opportunities to present views; reporting; applications for approval of facilities; certifications; arrival notices; on-hold shipment notifications; reports; affidavits; animal identification; written plans; checklists; specimen submissions; emergency action notifications; refusal of entry and order to dispose of fish; premises information; recordkeeping; application of seals; reports; testing submission forms; summaries; identification and certification; and notices. APHIS needs this information to help ensure that these imports do not introduce foreign animal diseases into the United States.

Description of Respondents: Foreign federal governments; state, local, and tribal governments; business or other for-profit and not-for-profits; farms; and individuals and households.

Number of Respondents: 12,864.

Frequency of Responses: Reporting: On occasion; Recordkeeping.

Total Burden Hours: 462,503.

Animal and Plant Health Inspection Service

Title: Bees and Related Articles.

OMB Control Number: 0579–0207.

Summary of Collection: The Plant Protection Act (APA) (7 U.S.C. 7701 *et seq.*), authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species and subspecies of honeybees. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), is responsible for implementing the intent of these Acts, and does so through the enforcement of its pollinator and bee regulations.

Need and Use of the Information: APHIS collects information from a variety of individuals who are involved

in breeding, exporting, importing, and containing bees and related articles. The information APHIS collects serves as the supporting documentation needed to issue required PPQ forms and documents that allow importation of bees and related articles or authorizes the release of bees. This documentation is vital to helping APHIS ensure that exotic bee diseases and parasites, and undesirable species and subspecies of honeybees, do not spread into or within the United States. Without the information, APHIS could not verify that imported bees and related articles do not present a significant risk of introducing exotic bee disease, parasites, and undesirable species and subspecies of honeybees.

Description of Respondents: Businesses or other-for-profit; Foreign Federal Government.

Number of Respondents: 18.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 54.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–00229 Filed 1–8–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RBS–20–BUSINESS–0040]

Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2021

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Agriculture Act of 2018 (2018 Farm Bill) re-authorized the Strategic Economic and Community Development (SECD) priority with some modifications. Section 6401 of the 2018 Farm Bill enables the Secretary of Agriculture to prioritize projects that support multi-jurisdictional and multi-sectoral strategic community investment plans, recently included in the existing regulation In Fiscal Year (FY) 2021, the Agency implements SECD through reserving funds from covered program's appropriations. The purpose of this notice is to provide requirements to applicants submitting applications for the covered programs' reserved funds and to establish the above mentioned priority.

DATES: To apply for SECD priority points and funding in FY 2021, applicants must submit Form RD 1980–88, ''Strategic Economic and Community Development (Section 6401),'' to the appropriate covered program by the deadline established for receipt of applications within individual covered programs as established on the Agency website or in the program's **Federal Register** Notice. All applicants are responsible for any additional expenses incurred in preparing and submitting applications.

ADDRESSES: Submit applications to the USDA Rural Development Office servicing the area where the project is located. A list of the USDA Rural Development Offices can be found listed by state at: *http://www.rd.usda.gov/contact-us/state-offices*. If you have been assigned a OneRD Loan Guarantee Initiative Customer Relationship Manager (CRM), please submit applications to them.

FOR FURTHER INFORMATION CONTACT: For more information, please contact your respective Rural Development State Office listed here: *http://www.rd.usda.gov/browse-state*.

Or if you have been assigned a OneRD Loan Guarantee Initiative CRM, please contact them.

For all other inquiries, contact: Greg Batson, Rural Development Innovation Center, U.S. Department of Agriculture, Stop 0793, 1400 Independence Avenue SW, Washington, DC 20250–0783, Telephone: (573) 239–2945. Email: *gregory.batson@usda.gov*.

A checklist of all required application information for regional planning priority can be found at: *https://www.rd.usda.gov/programs-services/strategic-economic-and-community-development*.

SUPPLEMENTARY INFORMATION: The Agriculture Act of 2018 (2018 Farm Bill) re-authorized the Strategic Economic and Community Development (SECD) priority with some modifications. Section 6401 of the 2018 Farm Bill enables the Secretary of Agriculture to prioritize projects that support multi-jurisdictional and multi-sectoral strategic community investment plans. These changes were implemented in a recent amendment to 7 CFR 1980 subpart K, which was published in the **Federal Register** on September 22, 2020. In FY 2021, the Agency implements SECD through reserving funds from covered programs' appropriations. This notice provides requirements to applicants submitting applications for the covered programs' reserved funds and establishes the above-mentioned priority effective upon the publication of this notice.

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at: *www.usda.gov/ruralprosperity*. Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the State and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce, and quality of life, the Agency encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment, and/or recovery at the community, county, State, and/or regional levels. See *https://www.cdc.gov/pwid/vulnerable-counties-data.html*.

Key strategies include:

- Prevention: Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;

- Treatment: Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and
- Recovery: Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments to areas for the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts.

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

I. Background

Section 6401 of the 2018 Farm Bill re-authorized Section 6025 of the Agricultural Act of 2014 (2014 Farm Bill) with some modifications. The provision provides priority to projects that support multi-jurisdictional and multi-sectoral strategic community investment plans when applying for program funds under the rural development mission area. These changes were implemented in a recent amendment to 7 CFR 1980 subpart K, which was published in the **Federal Register** on September 22, 2020. In FY 2021, the Agency will reserve funds from the covered programs, using SECD regulation 7 CFR part 1980, subpart K. This notice provides applicants with eligible projects the opportunity to apply for reserve funding in FY 2021.

A. Statutory Authority

This priority is authorized under Section 6401 of the 2018 Farm Bill.

B. Programs

Section 6401 of the 2018 Farm Bill authorizes any program under the Consolidated Farm and Rural Development Act (7 U.S.C. 2008v), as determined by the Secretary, to give priority to applications that support the implementation of multi-jurisdictional and multi-sectoral strategic community investment plans. In FY 2021, the Agency implements SECD through reserving funds from the covered programs, using SECD regulation 7 CFR part 1980, subpart K.

Accordingly, the Agency is giving priority to projects implementing strategic community investment plans through the following Rural Development programs:

- Community Facility Loans; see 7 CFR part 1942, subpart A.
- Community Facilities Grants; see 7 CFR part 3570, subpart B.
- Community Programs Guaranteed Loans; see 7 CFR part 3575.
- Water and Waste Disposal Programs Guaranteed Loans; see 7 CFR part 1779.
- Water and Waste Loans and Grants; see 7 CFR part 1780.
- Business and Industry Guaranteed Loans; see 7 CFR part 4279, subparts A and B; 7 CFR part 4287, subpart B.
- Rural Business Development Grants; see 7 CFR part 4280, subpart E.
- Community Connect Grant; see 7 CFR part 1739.

II. Award Information

Type of Awards: Guaranteed loans, direct loans and grants.

Fiscal Year Funds: FY 2021 appropriated funds.

Available Funds: The amount of funds available will depend on the amount of funds the covered programs have available during the fiscal year.

Regional Planning Priority

For FY 2021 applications, the following table specifies the percentage of funds being reserved:

Program	Percentage of funds reserved for SECD
Community Facility Loans	10
Community Facilities Grant Program	10
Community Programs Guaranteed Loans	10
Water and Waste Disposal Programs Guaranteed Loans	10
Water and Waste Loans	5
Water and Waste Grants	3
Business and Industry Guaranteed Loan	5
Rural Business Development Grants	5
Community Connect	10

Award Amounts: Guaranteed loans, direct loans and grants will be awarded in amounts consistent with each applicable covered program.

Award Dates: Awards for SECD applications submitted in FY 2021 to the Business and Industry (B&I) Guaranteed Loan Program, Community Connect Grant Program, Community Facilities (CF) Program and Water and Environmental Program (WEP) will be obligated on or before June 30, 2021. For SECD applications submitted to the Rural Business Development Grant (RBDG) Program, awards will be obligated on or before July 31, 2021. The agency will return any reserved funds that are not obligated by the covered program's obligation deadlines to the covered program's regular funding account for obligation of all eligible projects in that program.

III. Eligibility Information

A. Eligible Requirements

To be considered for SECD reserved funds, both the applicant and project must meet the eligibility requirements of the covered program. These requirements vary among the covered programs and applicants should refer to the regulations for those programs, which are referenced in I. A. of this notice.

The agency supports community and regional planning through the SECD regulation without making any changes to the applicant eligibility requirements of the covered programs. The SECD regulation includes three criteria that a project must meet in order to be considered for the SECD reserve funding (see 7 CFR 1980.1010):

The first criterion, as noted above, is that the project meets the applicable eligibility requirements of the covered program for which the applicant is applying.

The second criterion is that the project is ''carried out in a rural area'' as defined in 7 CFR 1980.1005. As defined, this means either the entire project is physically located in a rural area or all the beneficiaries of the service(s) provided through the project must either reside in or be located in a rural area. Note that the definition of ''rural'' varies among the covered programs and the Section 6401 regulation does not change those definitions, therefore, the applicable program regulations as outlined in I.A. should be reviewed as necessary.

The third criterion is that the project supports the implementation of a strategic community investment plan on a multi-jurisdictional and multi-sectoral basis as defined in 7 CFR 1980.1005.

In order to be considered for the reserved funds from covered programs in FY 2021, applicants must (1) meet all requirements of the covered program; (2) meet all requirements in accordance with 7 CFR part 1980, subpart K (see7 CFR 1980.1010); and (3) submit Form RD 1980–88 and supporting documentation. Form RD 1980–88 requests such information as (see 7 CFR 1980.1015):

- Identification of the applicant; *i.e.,* a State, county, municipal, or tribal government or non-profit entity, council of government, school district or special district;
- Identification by name of the plan being supported by the project, the date the plan became effective and is to remain in effect, and a detailed description of how the project directly supports one or more of the plan's objectives;

• Sufficient information to show that the project will be carried out in a rural area; and

• Identification of any current or previous applications the applicant has submitted for funds from the covered programs.

B. Cost Sharing or Matching

Any and all cost sharing, matching, and cost participation requirements of the applicable covered program apply to projects seeking SECD reserved funds. The Section 6401 regulation does not change such requirements.

C. Other Eligibility Requirements

Any and all other eligibility requirements (beyond those identified in III.A of this notice) found in the covered programs applying to applicants, their projects, and the beneficiaries of those projects are unchanged by either this notice or the Section 6401 regulation.

IV. Application Evaluation and Selection for Covered Programs Funds

A. Scoring of Applications

All FY 2021 applications for covered programs will be reviewed, evaluated, and scored based on the covered program's scoring criteria. This notice does not affect that process. This notice only affects the scoring of SECD applications competing for a covered program's SECD reserve funds.

For applicants wishing to be considered for the reserved funds in FY 2021, the Agency will review, evaluate, and score each Form RD 1980–88, based on the criteria specified in 7 CFR 1980.1020, to award the SECD reserved funds.

B. Selection Process

The Agency will prioritize applications competing for a covered program's reserved funds based on the covered program's awarded points plus the SECD earned points to determine which projects receive reserved funds.

VI. Award Administration Information

A. Award Notices

The Agency will notify SECD applicants who receive funding in a manner consistent with award notifications for the covered program.

B. Administrative and National Policy Requirements

Any and all additional requirements of the applicable covered programs apply to projects receiving funding in response to this notice. Please see the regulations for the applicable covered underlying program.

C. Reporting Requirements

Any and all post-award reporting requirements contained in the covered program apply to all projects receiving funding in response to this notice.

VII. Additional Information

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in 7 CFR part 1980, subpart K, have been approved by Office of Management and Budget (OMB) under OMB Control Number 0570–0068.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Similarly, all grant applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov/SAM.* All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (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). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;, *Fax:* (202) 690–7442; or, *Email: program.intake@usda.gov.*

Bette Brand,

Deputy Under Secretary, Rural Development.

[FR Doc. 2021–00234 Filed 1–8–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–21–CF–0001]

Community Facilities Technical Assistance and Training Grant for Fiscal Year 2021

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Solicitation of Applications.

SUMMARY: This Notice announces that the Rural Housing Service (Agency) is accepting Fiscal Year (FY) 2021 applications for the Community Facilities Technical Assistance and Training (TAT) Grant program. The Agency will publish the amount of funding received in the final appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Awards will be made from available

funding on or before September 15, 2021.

DATES: The Agency must receive applications in paper postmarked and mailed, shipped, or sent overnight by 4:00 p.m. local time on March 29, 2021. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on March 22, 2021. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to March 17, 2021. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: Applications will be submitted to the USDA Rural Development State Office in the state where the applicant's headquarters is located. A listing of each State Office can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* If you want to submit an electronic application, follow the instructions for the TAT funding announcement on *http://www.grants.gov.* For those applicants located in the District of Columbia, applications will be submitted to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Washington, DC 20250. Electronic applications will be submitted via http://www.*grants.gov.* All applicants can access application materials at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: The Rural Development office in which the applicant is located. A list of the Rural Development State Office contacts can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* Applicants located in Washington, DC can contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Agency encourages applications that will help improve life in rural America. (See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.*) Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, county, state, and/or regional levels. See *https://www.cdc.gov/pwid/vulnerable-counties-data.html.* Key strategies include:

- *Prevention:* reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures, such as the strategic placement of overdose reversing devices;
- *Treatment:* implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse), such as medication-assisted treatment (MAT); and
- *Recovery:* expanding peer recovery and treatment options that help people start and stay in recovery.

State Director and Administrator discretionary points will be awarded to applications that address these Agency Goals.

Paperwork Reduction Act

The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0198.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Community Facilities Technical Assistance and Training Grant.

Announcement Type: Notice of Solicitation of Applications (NOSA).

Catalog of Federal Domestic Assistance Number: 10.766.

Dates: To apply for funds, the Agency must receive mailed-in applications by 4:00 p.m. local time on March 29, 2021. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on March 22, 2021. The Agency will not consider any application received after this deadline. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to March 17, 2021. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Availability of Notice: This Notice is available through the USDA Rural Development site at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

I. Funding Opportunity Description

A. Purpose

Congress authorized the Community Facilities Technical Assistance and Training Grant program in Title VI, Section 6006 of the Agricultural Act of 2014 (Pub. L. 113–79). Program regulations can be found at 7 CFR part 3570, subpart F, referenced in this Notice. The purpose of this Notice is to seek applications from entities that will provide technical assistance and/or training with respect to essential community facilities programs. It is the intent of this program to assist entities in rural areas in accessing funding under the Rural Housing Service's Community Facilities Programs in accordance with 7 CFR part 3570, subpart F. Funding priority will be made to private, nonprofit or public organizations that have experience in providing technical assistance and training to rural entities.

II. Award Information

Type of Awards: Grants will be made to eligible entities who will then provide technical assistance and/or training to eligible ultimate recipients.

Fiscal Year Funds: FY 2021 Technical Assistance Training (TAT) Grant funds.

Available Funds: The Agency is publishing the amount of funding received in the appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Up to ten percent of the available funds may be awarded to

the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70.

Award Amounts: Grant awards for Technical Assistance Providers assisting Ultimate Recipients within one state may not exceed $150,000. Grant awards made to Ultimate Recipients will not exceed $50,000. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Award Dates: Awards will be made from available funding on or before September 15, 2021.

III. Eligibility Information

Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262. Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264. Restrictions substantially similar to Sections 744 and 745 outlined in Division C, Title VII, ''General Provisions—Government-Wide'' of the Consolidated Appropriations Act, 2020 (Pub. L. 116–93) will apply unless noted on the Rural Development website (*https://www.rd.usda.gov/programs-services/community-facilities-technical-assistance-and-training-grant*).

Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months; or has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; is not eligible for financial assistance provided with full-year appropriated funds, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

IV. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.267. All Applicants can access application materials at *http://www.grants.gov.* Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications will be submitted to the State Office in which the applicant is headquartered. Electronic submissions should be submitted at *http://www.grants.gov.* A listing of the Rural Development State Offices may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For applicants whose headquarters are in the District of Columbia, they will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged. An applicant can only submit one application for funding.

Application information for electronic submissions may be found at *http://www.grants.gov.*

Applications will not be accepted via FAX or electronic email.

V. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

VI. Application Processing

Applications will be processed and scored in accordance with this NOSA and 7 CFR 3570.273. Those applications receiving the highest points using the scoring factors found at 7 CFR 3570.273 will be selected for funding. Up to 10% of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. In the case of a tie, the first tie breaker will go to the applicant who scores the highest on matching funds. If two or more applications are still tied after using this tie breaker, the next tie breaker will go to the applicant who scores the highest in the multi-jurisdictional category.

Once the successful applicants are announced, the State Office will be responsible for obligating the grant funds, executing all obligation documents, and the grant agreement, as provided by the agency.

VII. Federal Award Administration Information

1. Federal Award Notice. Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice and the grant regulation 7 CFR 3570, subpart F.

Successful applicants will receive a letter in the mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful and ineligible applicants will receive written notification of their review and appeal rights.

2. Administrative and National Policy Requirements. Grantees will be required to do the following:

(a) Execute a Grant Agreement.

(b) Execute Form RD 1940–1.

(c) Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursement. Provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports as set forth at 7 CFR 3570.276.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing CF TAT grant funds and any matching funds, if applicable. Receipts for expenditures will be included in this documentation.

(g) Provide audits or financial information as set forth in 7 CFR 3570.277.

(h) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(i) Provide a final performance report as set forth at 7 CFR 3570.276(a)(7).

(j) Identify and report any association or relationship with Rural Development employees.

(k) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

3. Reporting

Reporting requirements for this grant as set forth at 7 CFR 3570.276.

VIII. Federal Awarding Agency Contact

Contact the Rural Development state office in the state where the applicant's headquarters is located. A list of Rural Development State Offices can be found at: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For Applicants located in Washington, DC, please contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov.*

IX. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (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). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021–00290 Filed 1–8–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–21–CF–0002]

Rural Community Development Initiative (RCDI) for Fiscal Year 2021

AGENCY: Rural Housing Service, Department of Agriculture.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Housing Service (Agency), an Agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Rural Community Development Initiative (RCDI) program for fiscal year (FY) 2021. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development that will support the community. Applicants must provide matching funds in an amount at least equal to the Federal grant. Successful applications will be selected by the

Agency for funding and subsequently awarded from funds appropriated for the RCDI program. The Agency will publish the amount of funding on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

DATES: Completed applications must be submitted on paper or electronically according to the following deadlines:

The Agency must receive a paper application by 4:00 p.m. local time, March 29, 2021. Electronic applications must be submitted via *Grants.gov* by Midnight Eastern time on March 22, 2021. The application dates and times are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted.

ADDRESSES: Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI website: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

Application information for electronic submissions may be found at *http://www.Grants.gov.*

Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development State offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

FOR FURTHER INFORMATION CONTACT: The Rural Development office for the state in which the applicant is located. A list of Rural Development State Office contacts is provided at the following link: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, awards for financial and technical assistance under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

The Agency encourages applications that will support the Agency's overall goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address one or more of the following focus areas at the community, county, state, and/or regional levels:

- Prevention: reducing the occurrence of Substance Use Disorder (including opioid misuse) among new and at-risk users as well as fatal substance-related overdoses through community and provider education, and harm reduction measures including the strategic placement of overdose reversing devices, such as naloxone;
- Treatment: implementing or expanding access to evidence-based practices for Substance Use Disorder (including opioid misuse) treatment such as medication-assisted treatment (MAT); and
- Recovery: expanding peer recovery and treatment options that help people start and stay in recovery.

Administrator discretionary points will be awarded to applications that address this Agency Goal.

The Agency encourages applications that will help improve life in rural America. (See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.)* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Notice of Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Dates: The deadline for receipt of a paper application is 4 p.m. local time, March 29, 2021. The deadline for receipt of an electronic applications via *Grants.gov* is Midnight Eastern time on March 22, 2021. The application dates and times are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail and postage due applications will not be accepted. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to March 17, 2021. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

A. Program Description

Congress first authorized the RCDI in 1999 (Pub.L. 106–78, which was amended most recently by the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and federally recognized Native American Tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries).

B. Federal Award Information

The Agency will publish the amount of funding received in the FY 2021 Appropriations Act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Qualified private organizations, nonprofit organizations and public (including tribal) intermediary organizations proposing to carry out

financial and technical assistance programs will be eligible to receive the grant funding.

The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant.

A grant will be the type of assistance instrument awarded to successful applications.

The respective minimum and maximum grant amount per intermediary is $50,000 and $250,000.

Grant funds must be utilized within 3 years from date of the award.

A grantee that has an outstanding RCDI grant over 3 years old, as of the application due date in this Notice, is not eligible to apply for this round of funding.

The intermediary must provide a program of financial and technical assistance to one or more of the following: a private, nonprofit community-based housing and development organization, a low-income rural community or a federally recognized tribe.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements by the application deadline. Applications which fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further and will not receive a Federal award.

1. Eligible Applicants

(a) Qualified private organizations, nonprofit organizations (including faith-based and community organizations and philanthropic foundations), in accordance with 7 CFR part 16, and public (including tribal) intermediary organizations are eligible applicants. Definitions that describe eligible organizations and other key terms are listed below.

(b) The recipient must be a nonprofit community-based housing and development organization, low-income rural community, or federally recognized tribe based on the RCDI definitions of these groups.

(c) Private nonprofit, faith or community-based organizations must provide a certificate of incorporation and good standing from the Secretary of the State of incorporation, or other similar and valid documentation of current nonprofit status. For low-income rural community recipients, the Agency requires evidence that the entity is a public body and census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income, whichever is higher. For federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes in this Notice for details on this list).

(d) Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months; or has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; is not eligible for financial assistance provided with full-year appropriated funds in accordance with restrictions substantially similar Sections 744 and 745 outlined in Division C, Title VII, ''General Provisions—Government-Wide'' of the Consolidated Appropriations Act, 2020 (Pub. L. 116–93), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

2. Cost Sharing or Matching

There is a matching requirement of at least equal to the amount of the grant. If this matching fund requirement is not met, the application will be deemed ineligible. See section D, Application and Submission Information, for required pre-award and post award matching funds documentation submission.

Matching funds are cash or confirmed funding commitments that must be at least equal to the grant amount and committed for a period of not less than the grant performance period. These funds can only be used for eligible RCDI activities and must be used to support the overall purpose of the RCDI program.

In-kind contributions such as salaries, donated time and effort, real and nonexpendable personal property and goods and services cannot be used as matching funds.

Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item.

The request for advance or reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used.

Grant funds will be disbursed pursuant to relevant provisions of 2 CFR parts 200 and 400. See Section D, Application and Submission Information, for matching funds documentation and pre-award requirements.

The intermediary is responsible for demonstrating that matching funds are available and committed for a period of not less than the grant performance period to the RCDI proposal. Matching funds may be provided by the intermediary or a third party. Other Federal funds may be used as matching funds if authorized by statute and the purpose of the funds is an eligible RCDI purpose.

RCDI funds will be disbursed on an advance or reimbursement basis. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement.

3. Other Program Requirements

(a) The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The physical location of the recipient's office that will be receiving the financial and technical assistance must be in an eligible rural area. If the recipient is a low-income community, the median household income of the area where the office is located must be at or below 80 percent of the State or national median household income, whichever is higher. The applicable Rural Development State Office can assist in determining the eligibility of an area.

A listing of Rural Development State Office contacts can be found at the following link: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* A map showing eligible rural areas can be found at the following link: *http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=RBSmenu&NavKey=property@13.*

(b) RCDI grantees that have an outstanding grant over 3 years old, as of the application due date in this Notice, will not be eligible to apply for this round of funding. Grant and matching funds must be utilized in a timely manner to ensure that the goals and objectives of the program are met.

(c) Individuals cannot be recipients.

(d) The intermediary must provide a program of financial and technical assistance to the recipient.

(e) The intermediary organization must have been legally organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based

housing and development organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

(f) Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

(g) Each applicant, whether singularly or jointly, may only submit one application for RCDI funds under this Notice. This restriction does not preclude the applicant from providing matching funds for other applications.

(h) Recipients can benefit from more than one RCDI application; however, after grant selections are made, the recipient can only benefit from multiple RCDI grants if the type of financial and technical assistance the recipient will receive is not duplicative. The services described in multiple RCDI grant applications must have separate and identifiable accounts for compliance purposes.

(i) The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient, provided the relationship does not create a Conflict of Interest that cannot be resolved to Rural Development's satisfaction.

(j) If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.,* town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

4. Eligible Grant Purposes

Fund uses must be consistent with the RCDI purpose. A nonexclusive list of eligible grant uses includes the following:

(a) Provide technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, *e.g.,* the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the technical assistance provided by the intermediary.

(b) Develop the capacity of recipients to conduct community development programs, *e.g.,* homeownership education or training for business entrepreneurs.

(c) Develop the capacity of recipients to conduct development initiatives, *e.g.,* programs that support micro-enterprise and sustainable development.

(d) Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

(e) Develop the capacity of recipients to provide the technical assistance component for essential community facilities projects.

(f) Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.,* architectural, engineering, or legal.

(g) Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

(h) Purchase of computers, software, and printers, limited to $10,000 per award, at the recipient level when directly related to the technical assistance program being undertaken by the intermediary.

(i) Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

5. Ineligible Fund Uses

The following is a list of ineligible grant uses:

(a) Pass-through grants, and any funds provided to the recipient in a lump sum that are not reimbursements.

(b) Funding a revolving loan fund (RLF).

(c) Construction (in any form).

(d) Salaries for positions involved in construction, renovations, rehabilitation, and any oversight of these types of activities.

(e) Intermediary preparation of strategic plans for recipients.

(f) Funding prostitution, gambling, or any illegal activities.

(g) Grants to individuals.

(h) Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

(i) Paying obligations incurred before the beginning date without prior Agency approval or after the ending date of the grant agreement.

(j) Purchasing real estate.

(k) Improvement or renovation of the grantee's or recipient's office space or for the repair or maintenance of privately-owned vehicles.

(l) Any purpose prohibited in 2 CFR part 200 or 400.

(m) Using funds for recipient's general operating costs.

(n) Using grant or matching funds for Individual Development Accounts.

(o) Purchasing vehicles.

6. Program Examples and Restrictions

The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objectives of the RCDI program and meet the criteria outlined in this Notice will be considered eligible.)

(a) The intermediary must work directly with the recipient, not the ultimate beneficiaries. For example:

The intermediary provides training and technical assistance to the recipients on developing and updating materials related to the prevention, treatment and recovery activities for opioid use disorder and ensures that high-quality training is provided to communities affected by the opioid epidemic.

(b) The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public.

This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

(c) If the intermediary is working with a low-income community as the recipient, the intermediary must provide the technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council.

If the intermediary provides technical assistance to the Board of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose.

The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

(d) The intermediary may provide technical assistance to the recipient on

how to create and operate a revolving loan fund. The intermediary may not monitor or operate the revolving loan fund. RCDI funds, including matching funds, cannot be used to fund revolving loan funds.

(e) The intermediary may work with recipients in building their capacity to provide planning and leadership development training. The recipients of this training would be expected to assume leadership roles in the development and execution of regional strategic plans. The intermediary would work with multiple recipients in helping communities recognize their connections to the greater regional and national economies.

(f) The intermediary could provide training and technical assistance to the recipients on developing emergency shelter and feeding, short-term housing, search and rescue, and environmental accident, prevention, and cleanup program plans. For longer term disaster and economic crisis responses, the intermediary could work with the recipients to develop job placement and training programs and develop coordinated transit systems for displaced workers.

D. Application and Submission Information

1. Address To Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI website: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

Application information for electronic submissions may be found at *http://www.Grants.gov.*

Applicants may also request paper application packages from the Rural Development office in their state. A list of Rural Development State office contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* You may also obtain a copy by calling 202–205–9685.

2. Content and Form of Application Submission

If the applicant is ineligible or the application is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

A complete application for RCDI funds must include the following:

(a) A summary page, double-spaced between items, listing the following: (This information should not be presented in narrative form.)

(1) Applicant's name,

(2) Applicant's address,

(3) Applicant's telephone number,

(4) Name of applicant's contact person, email address and telephone number,

(5) County where applicant is located,

(6) Congressional district number where applicant is located,

(7) Amount of grant request, and

(8) Number of recipients.

(b) A detailed Table of Contents containing page numbers for each component of the application.

(c) A project overview, no longer than one page, including the following items, which will also be addressed separately and in detail under ''Building Capacity and Expertise'' of the ''Evaluation Criteria.''

(1) The type of technical assistance to be provided to the recipients and how it will be implemented.

(2) How the capacity and ability of the recipients will be improved.

(3) The overall goals to be accomplished.

(4) The benchmarks to be used to measure the success of the program. Benchmarks should be specific and quantifiable.

(d) Organizational documents, such as a certificate of incorporation and a current good standing certification from the Secretary of State where the applicant is incorporated and other similar and valid documentation of current non-profit status, from the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

(e) Verification of source and amount of matching funds, *e.g.,* a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source.

The verification must show that matching funds are available for the duration of the grant performance period. The verification of matching funds must be submitted with the application or the application will be considered incomplete.

The applicant will be contacted by the Agency prior to grant award to verify that the matching funds provided with the application continue to be available. The applicant will have 15 days from the date contacted to submit verification that matching funds continue to be available.

If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible. The applicant must maintain bank statements on file or other documentation for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved.

(f) The following information for each recipient:

(1) Recipient's entity name,

(2) Complete address (mailing and physical location, if different),

(3) County where located,

(4) Number of Congressional district where recipient is located,

(5) Contact person's name, email address and telephone number and,

(6) Form RD 400–4, ''Assurance Agreement.'' If the Form RD 400–4 is not submitted for each recipient, the recipient will be considered ineligible. No information pertaining to that recipient will be included in the income or population scoring criteria and the requested funding may be adjusted due to the deletion of the recipient.

(g) Submit evidence that each recipient entity is eligible. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient:

(1) Nonprofits—provide a current valid letter confirming non-profit status from the Secretary of the State of incorporation, a current good standing certification from the Secretary of the State of incorporation, or other valid documentation of current nonprofit status of each recipient.

A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

(2) Low-income rural community—provide evidence the entity is a public body (copy of Charter, relevant Acts of Assembly, relevant court orders (if created judicially) or other valid documentation), a copy of the 2010 census data to verify the population, and 2010 American Community Survey (ACS) 5-year estimates (2006—2010 data set) data as evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data and printouts from *https://data.census.gov/cedsci/.*

(3) Federally recognized tribes—provide the page listing their name from the **Federal Register** list of tribal entities published most recently by the Bureau of Indian Affairs. The 2020 list is available at 85 FR 5462 pages 5462–5467 and *https://www.govinfo.gov/content/pkg/FR-2020-01-30/pdf/2020-01707.pdf.* For Tribes that received federal recognition after the most recent

publication, statutory citations and additional documentation may suffice.

(h) Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Narrative (not including attachments) must be limited to five pages per criterion. The ''Population and Income'' criteria for recipient locations can be provided in the form of a list; however, the source of the data must be included on the page(s).

(i) A timeline identifying specific activities and proposed dates for completion.

(j) A detailed project budget that includes the RCDI grant amount and matching funds. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included. The budget should be dated: year 1, year 2, and year 3, as applicable.

(k) The indirect cost category in the project budget should be used only when a grant applicant has a federally negotiated indirect cost rate. A copy of the current rate agreement must be provided with the application. Non-federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200-States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (d)(1)(B), may use the de minimis rate of 10 percent of modified total direct costs (MTDC).

(l) Form SF–424, ''Application for Federal Assistance.''

(Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in Letter (j) of this section.)

(m) Certification of Non-Lobbying Activities.

(n) Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

Applicants must collect and maintain data provided by recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(o) Identify and report any association or relationship with Rural Development employees. (A statement acknowledging whether or not a relationship exists is required.)

3. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency (RHS) may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.Grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding. The required forms and certifications can be downloaded from the RCDI website at: *http://www.rd.usda.gov/programs-services/rural-community-development-initiative-grants.*

4. Submission Dates and Times

The deadline for receipt of a paper application is 4 p.m. local time, March 29, 2021. The deadline for electronic applications via *Grants.gov* is Midnight Eastern time on March 22, 2021. The application dates and times are firm. The Agency will not consider any application received after the deadline. You may submit your application in paper form or electronically through *Grants.gov.* Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted.

To submit a paper application, the original application package must be submitted to the Rural Development State Office where the applicant's headquarters is located.

A listing of Rural Development State Offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

Applications will not be accepted via FAX or electronic mail.

Applicants may file an electronic application at *http://www.Grants.gov. Grants.gov* contains full instructions on all required passwords, credentialing, and software. Follow the instructions at *Grants.gov* for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the *Grants.gov* website.

Technical difficulties submitting an application through *Grants.gov* will not be a reason to extend the application deadline. If an application is unable to be submitted through *Grants.gov*, a paper application must be received in the appropriate Rural Development State Office by the deadline noted previously.

First time *Grants.gov* users should carefully read and follow the registration steps listed on the website. These steps need to be initiated early in the application process to avoid delays in submitting your application online.

In order to register with System for Award Management (SAM), your organization will need a DUNS number. Be sure to complete the Marketing Partner ID (MPID) and Electronic Business Primary Point of Contact fields during the SAM registration process.

These are mandatory fields that are required when submitting grant applications through *Grants.gov*. Additional application instructions for submitting an electronic application can be found by selecting this funding opportunity on *Grants.gov*.

5. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may, however, be used to pay for these expenses.

RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting.

RCDI funds cannot be used for meetings; they can, however, be used for travel, transportation, or subsistence expenses for program-related training and technical assistance purposes. Any training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses (including meals and incidental expenses) will be allowed in accordance with 2 CFR parts 200 and 400.

E. Application Review Information

1. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

(a) Building Capacity and Expertise—Maximum 40 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes.

Capacity-building financial and technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. Capacity-building financial and technical assistance may include, but is not limited to: training to conduct community development programs, *e.g.,* homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.,* assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.,* hiring a person at intermediary or recipient level to provide technical assistance to recipients.

The program of financial and technical assistance that is to be provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application.

All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest.

The narrative response must contain the following items. This list also contains the points for each item.

(1) Describe the nature of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the technical assistance; (10 Points)

(2) Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively; (7 Points)

(3) Identify which RCDI purpose areas will be addressed with this assistance: Housing, community facilities, or community and economic development; (3 Points)

(4) Describe how the results of the technical assistance will be measured. What benchmarks will be used to measure effectiveness? Benchmarks should be specific and quantifiable; (5 Points)

(5) Demonstrate that the applicant/intermediary has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. (10 Points)

(6) Provide in a chart or excel spreadsheet, the organization name, point of contact, address, phone number, email address, and the type and amount of the financial and technical assistance the applicant organization has provided to the following for the last 3 years: (5 Points)

(i) Nonprofit organizations in rural areas.

(ii) Low-income communities in rural areas (also include the type of entity, *e.g.,* city government, town council, or village board).

(iii) Federally recognized tribes or any other culturally diverse organizations.

(b) Soundness of Approach—Maximum 15 Points

The applicant can receive up to 15 points for soundness of approach. The overall proposal will be considered under this criterion.

The maximum 15 points for this criterion will be based on the following:

(1) The proposal fits the objectives for which applications were invited, is clearly stated, and the applicant has defined how this proposal will be implemented. (7 Points)

(2) The ability to provide the proposed financial and technical assistance based on prior accomplishments. (6 Points)

(3) Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level. (2 Points)

(c) Population and Income—Maximum 15 Points

Population is based on the average population from the 2010 census data for the communities in which the recipients are located. The physical address, not mailing address, for each recipient must be used for this criterion. Community is defined for scoring purposes as a city, town, village, county, parish, borough, Indian reservation or census-designated place where the recipient's office is physically located.

The applicant must submit the census data from the following website in the form of a printout to verify the population figures used for each recipient. The data can be accessed on the internet at *https://data.census.gov/cedsci/* . Enter location, P1 (*i.e.* Parma, Idaho, P1) and click ''search''; the name and population data for each recipient location must be listed in this section.

The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
10,000 or less	5
10,001 to 20,000	4
20,001 to 30,000	3
30,001 to 40,000	2
40,001 to 50,000	1

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. The physical address, not mailing address, for each recipient must be used for this criterion. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $51,914.

The applicant must submit the income data in the form of a printout of the applicable information from the following website to verify the income for each recipient. The data being used is from the 2010 American Community Survey (ACS) 5-year estimates (2006—2010 data set). The data can be accessed on the internet at *https://data.census.gov/cedsci/;* enter location, S1903 (*i.e.* Parma, Idaho, S1903),click on ''Search, ''click the drop down button and select the 2010 ACS–5 year estimates table the name and income data for each recipient location must be listed in this section (use the Household and Median Income column). Points will be awarded as follows:

Average recipient median income	Scoring (points)
Less than or equal to 70 percent of state or national median household income	10
Greater than 70, but less than or equal to 80 percent of state or national median household income	5
In excess of 80 percent of state or national median household income	0

(d) State Director's Points Based on Project Merit—Maximum 10 Points

(1) This criterion will be addressed by the Agency, not the applicant.

(2) Up to 10 points may be awarded by the Rural Development State Director to any application(s) that benefits their State regardless of whether the applicant is headquartered in their State. The total points awarded under this criterion, to all applications, will not exceed 10.

(3) When an intermediary submits an application that will benefit a State that is not the same as the State in which the intermediary is headquartered, it is the intermediary's responsibility to notify the State Director of the State which is receiving the benefit of their application. In such cases, State Directors awarding points to applications benefiting their state must notify the reviewing State in writing.

(4) Assignment of any points under this criterion requires a written justification and must be tied to and awarded based on how closely the application aligns with the Rural Development State Office's strategic goals.

(e) Administrator Discretionary Points—Maximum 20 Points

The Administrator may award up to 20 discretionary points for projects to address items such as geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary.

The Administrator will award points to any application that supports the Agency's overall goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address one or more of the following focus areas at the community, county, state, and/or regional levels: 1. Prevention: Reducing the occurrence of Substance Use Disorder (including opioid misuse) among new and at-risk users as well as fatal substance-related overdoses through community and provider education, and harm reduction measures including the strategic placement of overdose reversing devices, such as naloxone; 2. Treatment: Implementing or expanding access to evidence-based practices for Substance Use Disorder (including opioid misuse) treatment such as medication-assisted treatment (MAT); and 3. Recovery: Expanding peer recovery and treatment options that help people start and stay in recovery.

2. Review and Selection Process

(a) Rating and ranking.

Applications will be rated and ranked on a national basis by a review panel based on the ''Evaluation Criteria'' contained in this Notice.

If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity and Expertise'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity and Expertise'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

(b) Initial screening.

The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are examples of reasons for rejection from previous funding rounds. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

(1) Recipients were not located in eligible rural areas based on the definition in this Notice.

(2) Applicants failed to provide evidence of recipient's status, *i.e.,* documentation supporting nonprofit evidence of organization.

(3) Applicants failed to provide evidence of committed matching funds or matching funds were not committed for a period at least equal to the grant performance period.

(4) Application did not follow the RCDI structure with an intermediary and recipients.

(5) Recipients were not identified in the application.

(6) Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

(7) Applicants failed to address the ''Evaluation Criteria.''

(8) The purpose of the proposal did not qualify as an eligible RCDI purpose.

(9) Inappropriate use of funds (*e.g.,* construction or renovations).

(10) The applicant proposed providing financial and technical assistance directly to individuals.

(11) The application package was not received by closing date and time.

F. Federal Award Administration Information

1. Federal Award Notice

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice.

Successful applicants will receive a selection letter by mail containing instructions on requirements necessary to proceed with execution and performance of the award.

This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award obligation date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful applicants will receive notification including appeal rights by mail.

2. Administrative and National Policy Requirements

Grantees will be required to do the following:

(a) Execute a Rural Community Development Initiative Grant Agreement.

(b) Execute Form RD 1940–1, ''Request for Obligation of Funds.''

(c) Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements. Provide receipts for expenditures, timesheets and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

(g) Provide annual audits or management reports on Form RD 442–2, ''Statement of Budget, Income and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

(h) Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(i) Provide a final project performance report.

(j) Identify and report any association or relationship with Rural Development employees.

(k) The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 12250, Age Act of 1975, Executive Order 13166 Limited English Proficiency, and 7 CFR part 1901, subpart E.

(l) The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(i) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards).

(ii) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

3. Reporting

After grant approval and through grant completion, you will be required to provide the following, as indicated in the Grant Agreement:

(a) SF–425, ''Federal Financial Report'' and SF–PPR, ''Performance Progress Report'' will be required on a quarterly basis (due 30 working days after each calendar quarter). The Performance Progress Report shall include the elements described in the grant agreement.

(b) Final financial and performance reports will be due 90 calendar days after the period of performance end date.

(c) A summary at the end of the final report with elements as described in the grant agreement to assist in documenting the annual performance goals of the RCDI program for Congress.

G. Federal Awarding Agency Contact

Contact the Rural Development office in the State where the applicant's headquarters is located. A list of Rural Development State Offices contacts can be found via *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

H. Other Information

Survey on Ensuring Equal Opportunity for Applicants, OMB No. 1894–0010 (applies to nonprofit applicants only—submission is optional).

No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the intermediary is a non-profit or educational entity and has requested and received written Agency approval of the costs prior to the actual expenditure.

This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement.

The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

Program Definitions

Agency—The Rural Housing Service or its successor.

Beneficiary—Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—The ability of a recipient to implement housing, community facilities, or community and economic development projects.

Conflict of interest -– A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of conflict of interest occurs when the grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Federally recognized tribes—Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the most recent notice in the **Federal Register** published by the Bureau of Indian Affairs and Tribes that received federal recognition after the most recent publication. Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds, not to exceed $10,000 per award, used by the intermediary to purchase supplies and equipment to build the recipient's capacity.

Funds—The RCDI grant and matching money.

Intermediary—A qualified private organization, nonprofit organization (including faith-based and community organizations and philanthropic organizations), or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—An authority, district, economic development authority, regional council, federally recognized tribe, or unit of government representing an incorporated city, town, village, county, township, parish, Indian reservation or borough whose income is at or below 80 percent of either the state or national Median Household Income as measured by the 2010 Census.

Matching funds—Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount and committed for a period of not less than the grant performance period.

Recipient—-The entity that receives the financial and technical assistance from the Intermediary. The recipient must be a nonprofit community-based housing and development organization, a low-income rural community or a federally recognized Tribe.

Rural and rural area—Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

Technical assistance—Skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development.

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (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). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) By mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Persons with Disabilities

Individuals who are deaf, hard of hearing, or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email.

If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse decision.

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Elizabeth Green,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021–00289 Filed 1–8–21; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–20–ELECTRIC–0049]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of Rural Utilities Service (RUS) to request an extension to a currently approved information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 12, 2021 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Robert Coates, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250, Telephone: (202) 260–5415, Email: *Robert.Coates@usda.gov*.

SUPPLEMENTARY INFORMATION: The OMB regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an existing information collection that the Agency is submitting to OMB for extension. 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 will 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 those who are to respond, including

the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent through the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search'' box, enter the Docket ID No ''RUS–20–ELECTRIC–0049'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''Help'' button at the top of the page.

Title: Assistance to High Energy Cost Rural Communities.

OMB Number: 0572–0136.

Expiration Date of Approval: June 30, 2021.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) was mended in November 2000 to create a new program to help rural communities with extremely high energy costs (Pub. L. 106–472). Under the new section 19 of the RE Act (7 U.S.C. 918a), the Secretary of Agriculture through RUS, is authorized to provide financial assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.4 hours per response.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local, or Tribal Government.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 344

Estimated Number of Responses per Respondent: 5.73.

Estimated Total Annual Burden on Respondents: 1,172.

Copies of this information collection can be obtained from Kimble Brown, Management Analyst, Innovation Center, Regulations Management Division, at (202) 720–6780. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2021–00291 Filed 1–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–120]

Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and/or exporters of certain vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China).

DATES: Applicable January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are the Coalition of American Vertical Engine Producers and its individual members.[1] In addition to the Government of China, the mandatory respondents in this investigation are Loncin Motor Co. (Loncin) and Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen).

On June 19, 2020, Commerce published in the **Federal Register** the *Preliminary Determination* of this investigation.[2] On November 4, 2020, Commerce issued a Post-Preliminary Analysis.[3] For a complete description of the events that followed the *Preliminary Determination* of this investigation, *see* the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are certain vertical shaft engines from China. For a complete description of the scope of this investigation, *see* Appendix I.

Period of Investigation

The period of investigation is January 1, 2019 through December 31, 2019.

Use of Adverse Facts Available

In making this final determination, Commerce is relying on facts otherwise available, including adverse facts available (AFA), pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). For a full discussion of our application of AFA, *see* the *Preliminary Determination.*[5]

Analysis of Comments Received

In the Issues and Decision Memorandum, we address all issues raised in parties' case and rebuttal briefs. A list of the issues that parties raised, and to which we responded, is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made changes to Loncin and Zongshen's subsidy rate calculations. For a discussion of the changes, *see* the Issues and Decision Memorandum.[6]

[1] Individual members are Kohler Co. and Briggs & Stratton Corporation.

[2] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 85 FR 37061 (June 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Memorandum, ''Post-Preliminary Analysis of Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China,'' dated June 4, 2020.

[4] *See* Memorandum, ''Decision Memorandum for the Final Affirmative Determination and Final Negative Critical Circumstances Determination in the Countervailing Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] We are making no changes to our application of AFA, and thus incorporate by reference our discussion from the *Preliminary Determination. See* PDM at ''Use of Facts Otherwise Available and Adverse Inferences.''

[6] *See* Issues and Decision Memorandum at ''Analysis of Programs.''

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce calculated a countervailable subsidy rate for the individually investigated exporters/producers of the subject merchandise. Consistent with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, Commerce also calculated an estimated all-others rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act provides that the all-others rate shall be an amount equal to the weighted-average of the countervailable subsidy rates established for individually investigated exporters and producers, excluding any rates that are zero or *de minimis* or any rates determined entirely under section 776 of the Act. In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Loncin and Zongshen that are not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[7]

Final Negative Determination of Critical Circumstances

Commerce determines that critical circumstances do not exist within the meaning of 703(e)(1) of the Act. For further information, *see* Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established individual estimated countervailable subsidy rates for Loncin, and Zongshen. Commerce determines the total estimated net countervailable subsidy rates to be the following:

Producers/exporters	Subsidy rate (percent)
Loncin Motor Co.	17.75
Chongqing Zongshen General Power Machine Co.	19.29
All Others	18.72

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from China that were entered or withdrawn from warehouse, for consumption, on or after June 19, 2020, the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 17, 2020, but to continue the suspension of liquidation of all entries from June 19, 2020 through October 16, 2020.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of countervailable subsidies. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain vertical shaft engines from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: January 4, 2021.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines

[7] With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please see the All-Others Rate Calculation Memorandum dated concurrently with this determination.

with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a thirdcountry does not remove the engine from the scope.

The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Decision Memorandum

I. Summary
II. Background
III. Final Negative Determination of Critical Circumstances
IV. Scope Comments
V. Scope of the Investigation
VI. Subsidies Valuation
VII. Analysis of Programs
General Issues
Comment 1: Export Buyer's Credit Program
Comment 2: Policy Loans to the VSE Industry
Comment 3: Electricity for LTAR Program
Comment 4: Whether Input Suppliers are Authorities
Comment 5: Income Tax Deduction for R&D Expenses
Comment 6: Uncreditworthiness Findings
Comment 7: Benchmark for Unwrought Aluminum
Comment 8: Inland Freight Rates for the Unwrought Aluminum Benchmark
Comment 9: Critical Circumstances
Issues Related to Zongshen
Comment 10: Denominators and Attribution of Subsidies for Zongshen Affiliates
Comment 11: Alleged Error in Zongshen's Policy Lending Calculations
Comment 12: Zongshen Power's Electricity Calculations
Comment 13: Minor Corrections for Export Seller's Credits and Policy Loans to the VSE Industry Programs
Comment 14: Alleged Error in Zongshen's Export Seller's Credits Program Calculations
Comment 15: Zongshen's Land-Use Rights for LTAR
Comment 16: Zongshen's Consolidated Sales Denominators
Issues Related to Loncin
Comment 17: Income Tax Deduction for R&D Expenses Program
Comment 18: Whether Loans Received by Loncin Group and Loncin Holdings are Policy Loans to the VSE Industry
Comment 19: Loncin's Loan Calculations
Comment 20: Loncin's Unwrought Aluminum Calculations
Comment 21: Loncin's Other Subsidies
Comment 22: Loncin's Policy Loans
Comment 23: Loans from DBS Bank China
Comment 24: Alleged Errors in Loncin's Electricity for LTAR Calculations
Comment 25: Loncin's Sales Denominators
Comment 26: Loncin's Land-Use Rights for LTAR Calculations
VIII. Analysis of Comments
IX. Recommendation

[FR Doc. 2021–00212 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–844]

Cold-Rolled Steel Flat Products From Brazil: Rescission of Countervailing Duty Administrative Review; 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the countervailing duty (CVD) order on cold-rolled steel flat products (CRS flat products) from Brazil for the period of review (POR) January 1, 2019, through December 31, 2019.

DATES: Applicable January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Alex Wood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1959.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on CRS flat products from Brazil for the POR.[1] Commerce received a timely request from Nucor Corporation and United States Steel Corporation (the petitioners), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b) to conduct an administrative review of this CVD order with respect to ten companies.[2]

On October 30, 2020, Commerce published in the **Federal Register** a notice of initiation with respect to these companies.[3] On December 17, 2020, the petitioners timely withdrew their request for an administrative review with respect to all ten companies.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioners withdrew their request for review before the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the CVD order on CRS flat products from Brazil covering the period January 1, 2019, through December 31, 2019, in its entirety.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 54350 (September 1, 2020).

[2] *See* Petitioners' Letter, ''Cold-Rolled Steel Flat Products from Brazil: Errata to September 30, 2020 Request for Administrative Review of Countervailing Duty Order to Correct Case Number Typographical Error,'' dated October 1, 2020 (requesting for review of Aperam Inox America do Sul S.A.; ArcelorMittal Brasil S.A.; Armco do Brasil S.A.; Arvedi Metalfer do Brasil; Companhia Siderurgica Nacional; NVent do Brasil Eletrometalurgica; Signode Brasileira Ltda.; Usinas Siderurgicas de Minas Gerais (Usiminas); Villares Metals S.A.; Waelzholz Brasmetal Laminacao Ltda.); and Memorandum, ''Acceptance of Review Request as Timely Filed,'' dated October 2, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68845 (October 30, 2020).

[4] *See* Petitioners' Letter, ''Cold-Rolled Steel Flat Products from Brazil: Withdrawal of Request for Administrative Review of Countervailing Duty Order,'' dated December 17, 2020.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed at rates equal to the cash deposit of estimated countervailing 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 directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice serves as the only 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 published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 5, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–00272 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain vertical shaft engines between 225cc and 999cc, and parts thereof (vertical shaft engines) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019 through December 31, 2019.

DATES: Applicable January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Leo Ayala and Jacqueline Arrowsmith, AD/CVD Operations, Office VII, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945 and (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2020, Commerce published its *Preliminary Determination* of sales at LTFV of from China.[1] For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[2] A list of topics included in the Issues and Decision Memorandum is included as Appendix II to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

Scope Comments

On September 18, 2020, the Toro Company/Toro Purchasing Company (Toro) submitted scope comments.[3] On September 25, 2020, Kohler Co. (Kohler) filed rebuttal scope comments.[4] Commerce addressed these comments in its Final Scope Determination Memorandum.[5] We have not changed the scope of the investigation.

Scope of the Investigation

The products covered by this investigation are vertical shaft engines from China. For a complete description of the scope of the investigation, *see* Appendix I.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Affirmative Determination of Critical Circumstances

We find that critical circumstances exist for imports of vertical shaft engines from China for Loncin Motor Co., Ltd. (Loncin), Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen), all non-individually investigated companies, and the China-wide entity pursuant to sections 735(a)(3)(A) and (B) of the Act and 19 CFR 351.206.[6]

Separate Rate Companies

For this *Final Determination,* we determine that the evidence placed on the record of this investigation by Loncin, Zongshen, Chongqing Rato Technology Co., Ltd., Jialing-Honda Motors Co., Ltd., and Yamaha Motor Powered Products demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide.*[7] Accordingly, Commerce

[1] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 85 FR 51015 (August 19, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Toro's Letter, ''Certain Vertical Shaft Engines from the People's Republic of China: Letter in Lieu of Brief on Scope Issues,'' dated September 18, 2020.

[4] *See* Kohler's Letter, ''Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Letter in Lieu of Scope Rebuttal Brief,'' dated September 25, 2020.

[5] *See* Memorandum, ''Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China:

Final Scope Decision Memorandum,'' dated concurrently with this final determination.

[6] *See* Issues and Decision Memorandum at 7 and Comment 16.

[7] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

continues to grant separate rates to each of these companies.

China-Wide Rate

In selecting the adverse facts available (AFA) rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[8] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or (b) the highest calculated dumping margin of any respondent in the investigation.[9]

In the *Preliminary Determination,* we relied on AFA in determining the dumping margin for the China-wide entity.[10] As explained in the *Preliminary Determination,* Zhejiang Xingyu Industry Trade, Suzhou Honbase MAC, and Wenling Jennfeng Industries Inc. did not respond to our requests for information.[11] We have relied on AFA to determine the dumping margin of 468.33 percent for the China-wide entity for this final determination.[12]

Combination Rates

In the *Initiation Notice,* Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation.[13] Accordingly, we have assigned combination rates to certain companies, as provided in the ''Final Determination'' section below.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset) (percent)
Loncin Motor Co., Ltd	Loncin Motor Co. Ltd	177.65	165.42
Chongqing Zongshen General Power Machine Co., Ltd.	Chongqing Zongshen General Power Machine Co., Ltd.	336.26	324.93
Chongqing Rato Technology Co., Ltd	Chongqing Rato Technology Co., Ltd	270.95	259.17
Jialing-Honda Motors Co., Ltd	Jialing-Honda Motors Co., Ltd	270.95	259.17
Yamaha Motor Powered Products Jiangsu Co., Ltd	Yamaha Motor Powered Products Jiangsu Co., Ltd	270.95	259.17
China-Wide Entity		468.33	457.00

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of vertical shaft engines from China, as described in the appendix to this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 19, 2019, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

Section 735(c)(4) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As discussed in the Issues and Decision Memorandum, Commerce finds that critical circumstances exist for Loncin, Zongshen, all non-individually investigated companies, and the China-wide entity. In accordance with section 733(c)(4) of the Act, the suspension of liquidation shall continue to apply to all unliquidated entries of merchandise from Loncin, all non-individually investigated companies, and the China-wide entity that were entered, or withdrawn from warehouse, for consumption on or after May 21, 2020, which is 90 days before the publication of the *Preliminary Determination.* In addition, based on our final affirmative critical circumstances determination for Zongshen,[14] suspension of liquidation shall apply to all unliquidated entries of merchandise from Zongshen, that were entered, or withdrawn from warehouse, for consumption on or after May 21, 2020, which is 90 days before the publication of the *Preliminary Determination.*

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl Cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[9] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

[10] *See* Preliminary Decision Memorandum at 15–18.

[11] *Id.*

[12] *See* Memorandum, ''Corroboration of the Adverse Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China,'' dated concurrently with this notice.

[13] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 85 FR 8809 (February 18, 2020) (*Initiation Notice*).

[14] *See* Issues and Decision Memorandum at 38–39.

makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rates. Commerce continues to find that neither Zongshen nor Loncin qualifies for a double-remedy adjustment.[15] However, we have continued to adjust the cash deposit rates for Loncin, Zongshen, all non-individually-examined companies, and the China-wide entity for export subsidies in the companion CVD investigation by the appropriate export subsidy rates [16] as indicated in the above chart. However, suspension of liquidation of provisional measures in the companion CVD case has been discontinued effective October 17, 2020; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies at this time.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) For all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (2) for all non-Chinese exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of vertical shaft engines from China before the later of 120 days after our preliminary determination or 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an 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 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 violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: January 4, 2021.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Changes Since the Preliminary Determination
VII. China-Wide Entity and the Use of Facts Available and Adverse Inferences
VIII. Affirmative Determination of Critical Circumstances
IX. Discussion of Issues
  Comment 1: Whether Commerce Should Change the Surrogate Value for the Composite Magnetic Flywheel Input
  Comment 2: Whether Commerce Should Change the Surrogate Value for Polypropylene Plastic Material
  Comment 3: Whether Commerce Should Change the Surrogate Value for Cast Aluminum Crankcases
  Comment 4: Whether Commerce Should Change the Surrogate Value for Ignition Coils

[15] *Id.* at 37.

[16] *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* dated concurrently with this notice.

Comment 5: Whether Commerce Should Change the Surrogate Value for Balance Shafts
Comment 6: Whether Commerce Should Change the Surrogate Values for Guide Hoods, Engine Shrouds, and Throttle Governors
Comment 7: Whether Commerce Should Change the Surrogate Value for Cylinder Liners
Comment 8: Whether Commerce Should Change the Surrogate Value for Governor Gears
Comment 9: Whether Commerce Should Change the Surrogate Values for Throttle Linkages, Throttle Linkage Clamps, Cotter Pins, and Certain Other Inputs
Comment 10: Whether Commerce should Continue to use the Financial Statements of Alarko Carrier Sanayi ve Ticaret A.S. to Calculate Surrogate Financial Ratios
Comment 11: Whether Commerce Should Change the Surrogate Value for U.S. Inland Freight
Comment 12: Whether Commerce Should Change the Surrogate Value for U.S. Rail Freight
Comment 13: Whether Commerce Should Change the Surrogate Value for U.S. Brokerage
Comment 14: Whether Commerce Should Change the Surrogate Value for Ocean Freight
Comment 15: Whether Commerce Should Make a Double Remedy Pass-Through Adjustment
Comment 16: Whether Commerce Should Limit its Massive Surge Analysis to a Three-Month Relatively Short Period

X. Recommendation

[FR Doc. 2021–00213 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA757]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet February 1, 2021 through February 12, 2021.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 1, 2021 and continue through Friday, February 5, 2021. The Council's Advisory Panel (AP) will begin at 8 a.m. on Monday, February 1, 2021 and continue through Friday, February 5, 2021. The Council will meet on Friday, February 5, 2021, from 8 a.m. to 5 p.m.; and from 8 a.m. to 5 p.m. on Monday, February 8, 2021 through Friday, February 12, 2021. All times listed are Alaska Standard Time.

ADDRESSES: The meetings will be by webconference. Join online through the links at *https://www.npfmc.org/upcoming-council-meetings.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via webconference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809 and email: *diana.evans@noaa.gov.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, February 1, 2021 Through Friday, February 5, 2021

The SSC agenda will include the following issues:

(1) Crab PSC Limit Reductions—Preliminary/Initial Review
(2) BSAI Crab—Norton Sound red king crab specifications, Plan Team/Workshop report
(3) Small Sablefish Release—Initial Review
(4) Marine mammal status—Review
(5) Bering Sea Fishery Ecosystem Plan: (a) FEP Team report, (b) FEP Taskforce on Climate Change workplan, (c) FEP Taskforce on Local Knowledge/Traditional Knowledge/Subsistence update, (d) Ecosystem Committee report
(6) Groundfish and Crab Economic SAFE reports—Review
(7) EFP Applications and Reports (a) Review halibut excluder application, (b) Review NBS application (T), (c) Receive report on AI pollock EFP
(8) SSC prioritization and planning
(9) SSC Workshop to review the groundfish specifications risk table

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1852* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Monday, February 1, 2021 Through Friday, February 5, 2021

The Advisory Panel agenda will include the following issues:

(1) Small Sablefish Release—Initial Review
(2) BSAI Pacific cod Pot Catcher Processor LLP License Endorsements—Final Action
(3) Standardized Bycatch Reporting Methodology—Initial/Final Action
(4) Crab PSC Limit Reductions—Preliminary/Initial Review
(5) BSAI Crab—Norton Sound red king crab specifications, Plan Team/Workshop report
(6) Community Engagement Committee Final Recommendations—Review
(7) EFP Applications and Reports (a) Review halibut excluder application, (b) Review NBS application (T)
(8) Bering Sea Fishery Ecosystem Plan: (a) FEP Team report, (b) FEP Taskforce on Climate Change workplan, (c) FEP Taskforce on Local Knowledge/Traditional Knowledge/Subsistence update, (d) Ecosystem Committee report
(9) Staff Tasking

Friday, February 5, 2021

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) All B Reports (Executive Director, NMFS Management, NOAA GC, NOAA GC, AFSC, ADF&G, USCG, USFWS, Protective Species Report)
(2) BSAI Pacific cod Pot Catcher Processor LLP License Endorsements—Final Action
(3) Standardized Bycatch Reporting Methodology—Initial/Final Action

Monday, February 8, 2021 Through Friday, February 12, 2021

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(4) AP Report
(5) IPHC Report
(6) Standardized Bycatch Reporting Methodology Continued—Initial/Final Action
(7) Community Engagement Committee Final Recommendations—Review
(8) Small Sablefish Release—Initial Review
(9) Crab PSC Limit Reductions—Preliminary/Initial Review
(10) SSC Report

(11) BSAI crab—Norton Sound red king crab specifications, Plan Team and workshop report
(12) EFP Applications and Reports (a) Review halibut excluder application, (b) Review NBS application (T)
(13) Bering Sea Fishery Ecosystem Plan (a) FEP Team report, (b) FEP Taskforce on Climate Change workplan, (c) FEP Taskforce on Local Knowledge/Traditional Knowledge/Subsistence update, (d) Ecosystem Committee report
(14) Staff Tasking

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/upcoming-council-meetings.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The deadline for written comments is January 29, 2021, at 5 p.m. Alaska Time.

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00279 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Cooperative Game Fish Tagging Report

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 12, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0247 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Eric Orbesen, Research Fish Biologist, NOAA Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149, ((305) 261–4253), *Eric.Orbesen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The Cooperative Game Fish Tagging Program was initiated in 1971 as part of a comprehensive research program resulting from passage of Public Law 86–359, Study of Migratory Game Fish, and other legislative acts under which the National Marine Fisheries Service (NMFS) operates. The Cooperative Tagging Center attempts to determine the migration patterns of, and other biological information for, billfish, tunas, and swordfish. The Fish Tag Issue Report card is a necessary part of the tagging program. Fishermen volunteer to tag and release their catch. When requested, NMFS provides the volunteers with fish tags for their use when they release their fish. Usually a group of five tags is sent at one time, each attached to a Report card, which is pre-printed with the first and last tag numbers received, and has spaces for the respondent's name, address, date, and club affiliation (if applicable). He/she fills out the card with information when a fish is tagged and mails it to NMFS.

Information on each species is used by NMFS to determine migratory patterns, distance traveled, stock boundaries, age, and growth. These data are necessary input for developing management criteria by regional fishery management councils, states, and NMFS. The tag report cards are necessary to provide tags to the volunteer angler, record when and where the fish was tagged, the species, its estimated length and weight, tag number, and information on the tagger for follow-ups if the tagged fish is recovered. Failure to obtain these data would make management decisions very difficult and would be contrary to the NMFS Marine Recreational Fishing policy objectives. Anglers are made aware of the tagging program through several forms of media: newspaper and magazine articles, through both The Billfish Foundation and the Southeast Fisheries Science Center websites, peer review papers, and by word of mouth.

II. Method of Collection

Information is submitted by mail, and occasionally, international anglers scan the report cards and submit them via email to *tagging@noaa.gov.*

III. Data

OMB Control Number: 0648–0247.
Form Number(s): NOAA form 88–162.
Type of Review: Regular submission, extension of a current information collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 12,000.
Estimated Time per Response: 2 minutes.
Estimated Total Annual Burden Hours: 400 hours.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Voluntary.
Legal Authority: U.S. Code: 16 U.S.C. 760e Name of Law: Study of Migratory Game Fish.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of

public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–00286 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA746]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a webconference.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) Ecosystem Committee will meet January 26, 2021.

DATES: The meeting will be held on Tuesday, January 26, 2021, from 9 a.m. to 3 p.m., Alaska time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1848.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, Council staff; phone: (907) 271–2809 and email: *steve.maclean@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 26, 2021

The Ecosystem Committee agenda items include an update on the Bering Sea Fishery Ecosystem Plan and Climate Change Taskforce, the implementation plan for deep-sea coral research in Alaska, Ecosystem-Based Fisheries Management (EBFM) operationalization at the Alaska Fisheries Science Center, best practices to reduce risks of marine invasive species, planning for the Council's next ecosystem workshop, and planning for future ecosystem committee meetings. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1848* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1848.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1848.*

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00273 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA749]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a webconference.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Legislative Committee will meet January 29, 2021.

DATES: The meeting will be held on Friday, January 29, 2021, from 1 p.m. to 5 p.m., Alaska time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1850.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: David Witherell, Executive Director; phone: (907) 271–2809 and email: *david.witherell@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Friday, January 29, 2021

The Legislative Committee agenda will include a discussion of draft legislation H.R. 8632 ''Ocean Climate Action: Solutions to the Climate Crisis'' and evaluation of its potential impacts to the Council's ability to meet its conservation and management goals under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable law. The committee will review Congressman Huffman Discussion Draft for MSA Reauthorization and other MSA Issues. The Committee may address a Congressional request to review potential MSA revisions to address the need for federal conservation and management relative to recent Council action on Cook Inlet salmon management. The committee may also address other items of business as necessary. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1850* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1850.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1850.*

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00274 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA750]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a webconference.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Enforcement Committee will meet January 28, 2021.

DATES: The meeting will be held on Thursday, January 28, 2021, from 1 p.m. to

3 p.m., Alaska time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/1849.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Jon McCracken, Council staff; phone; (907) 271–2809 and email: *jon.mccracken@noaa.gov.* For technical support please contact administrative Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, January 28, 2021

The Enforcement Committee will review a Council action to eliminate the prohibition on discarding sablefish that is currently in regulation for the IFQ sablefish fishery. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1849* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/1849.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/1849.*

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00275 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA754]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings pertaining to Amendment 10 to the Dolphin Wahoo Fishery Management Plan of the Atlantic. The amendment addresses proposed management measures for the dolphin and wahoo fisheries.

DATES: The public hearings will be held via webinar on January 26, 27, and 28, 2021.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

The public hearings will be conducted via webinar and begin at 6 p.m. each day. Registration for the webinars is required. Registration information will be posted on the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. A public hearing document will be posted two weeks prior to the hearings. An online public comment form will also be provided. Written comments may also be submitted to the Council (see **ADDRESSES**). Public comments are due by February 5, 2021.

Amendment 10 to the Dolphin Wahoo Fishery Management Plan

The draft amendment would revise catch levels and annual catch limits for both Dolphin and Wahoo, modify allocations between recreational and commercial sectors, and modify recreational accountability measures designed to help prevent exceeding annual catch limits. These measures are proposed in response to revised recreational data estimates from the NOAA Fisheries Marine Recreational Information Program (MRIP) and recalibration of numbers used to establish Acceptable Biological Catches for each species.

The amendment also includes management alternatives to reduce recreational retention limits for dolphin and wahoo, eliminate a requirement for Operator Cards in the for-hire and commercial fisheries, address retention of dolphin and wahoo onboard permitted commercial vessels with specified prohibited gears onboard, and allow filleting of Dolphin at sea on board charter or headboat vessels in waters north of the Virginia/North Carolina line.

During the public hearings, Council staff will present an overview of the amendment via webinar and answer clarifying questions relevant to the proposed actions. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the public hearings.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00277 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; U.S. Pacific Highly Migratory Hook and Line Logbook

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice and request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 12, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov*. Please reference OMB Control Number 0648–0223 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Micayla Kiepert, National Marine Fisheries Service (NMFS), West Coast Region (WCR) Long Beach Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, (562) 980–4081, and *Micayla.Kiepert@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Fishery Management Plan for United States (U.S.) West Coast Fisheries for Highly Migratory Species (HMS) U.S. fishermen participating in the Pacific hook-and-line (also known as the albacore troll and poll-and-line), coastal purse seine (vessels less than 400 st carrying capacity), large-mesh drift gillnet, and swordfish harpoon fisheries are required to obtain an HMS permit. Permit holders are also required to complete and submit logbooks documenting their daily fishing activities, including catch and effort for each fishing trip. Logbook forms must be completed within 24 hours of the completion of each fishing day and submitted to the Southwest Fisheries Science Center (SWFSC) within 30 days of the end of each trip. Federal regulations allow the use of state logbooks to fulfill this requirement; for example, Washington commercial passenger fishing vessels have fulfilled this requirement to date for HMS fisheries. These data and associated analyses help the SWFSC provide critical HMS fisheries information to researchers, fisheries managers, and the needed management advice to the U.S. in its negotiations with foreign fishing nations that fish for HMS.

II. Method of Collection

Respondents have a choice of either electronic data submission or paper forms for hook-and-line logbooks. Currently, purse seine, drift gillnet, and harpoon are only collected in paper form. Fillable pdf forms are available for hook-and-line logbooks. Methods of submittal include secure electronic transmission and mailing of paper forms.

III. Data

OMB Control Number: 0648–0223.

Form Number(s): NOAA Form 88–197.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business of other for-profit.

Estimated Number of Respondents: 1,700.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,400.

Estimated Total Annual Cost to Public: $1,110 in recordkeeping/reporting costs.

Respondent's Obligation: Required

Legal Authority: Magnuson-Stevens Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–00298 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Commercial Operator's Annual Report (COAR)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice. Request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 12, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov*. Please reference OMB Control Number 0648–0428 in the subject line of your comments. Do not submit Confidential

Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of the currently approved information collection for the Commercial Operator's Annual Report (COAR).

The COAR is a State of Alaska report that is required to be completed and submitted by direct marketers, catcher processors, catcher exporters, buyer exporters, shore-based processors, and floating processor permit holders pursuant to Alaska Administrative Code (5 AAC 39.130) and 50 CFR 679. Under 50 CFR 679.5(p), NMFS requires motherships and catcher processors that are issued a Federal fisheries permit to annually complete and submit the appropriate sections of the COAR.

The COAR is used to gather statewide fish and shellfish information describing buying (ex-vessel) and production (wholesale or retail) activities. The information collected in the COAR is used to determine the value of Alaska's fisheries resources and products. NMFS uses the COAR database in annual Federal publications on the value of U.S. commercial fisheries, in the annual NMFS Stock Assessment and Fishery Evaluation reports for the groundfish fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska, and in periodic reports that describe the fisheries and that serve as reference documents to management agencies, the industry, and others.

The mothership and catcher processor data, when added to the COAR information collected from shoreside processors and stationary floating processors required under State of Alaska requirements, yield a complete database of equivalent annual product value information for all respective processing sectors. The information also provides a consistent time series according to which groundfish resources may be managed more efficiently. Use of the information generated by the COAR is coordinated between NMFS and the Alaska Department of Fish and Game (ADF&G).

The COAR must be submitted by April 1 to the ADF&G for the previous year's activity for all operations that are required to submit a COAR. NMFS requires the owner of a mothership or catcher processor to annually complete and submit the appropriate forms of the COAR, whether the processor operated that year or not. If no receipt or production took place for that year, the owner submits only the COAR certification page.

The COAR requires submission of information on seafood purchasing, production, and both ex-vessel and wholesale values of seafood products. The buying information is reported by species, area of purchase, condition of fisheries resources at the time of purchase, type of gear used in the harvest, pounds purchased, and ex-vessel value. The ex-vessel value includes any post-season adjustments or bonuses paid after the fish was purchased. The production information is reported by species, area of processing, process type (*e.g.,* frozen, canned, smoked), product type (*e.g.,* fillets, surimi, sections), net weight of the processed product, and the first wholesale value.

II. Method of Collection

The COAR is available in fillable PDF, Microsoft Word, and Microsoft Excel formats on the ADF&G Commercial Fish Reporting web page at *http://www.adfg.alaska.gov/index.cfm?adfg=fishlicense.coar* and may be emailed or printed and mailed to the ADF&G.

There is also a mechanism in eLandings (*elandings.alaska.gov*) that enables authorized users to generate a spreadsheet of data that includes their production information along with COAR reporting areas. This information can be used to verify production information that needs to be entered in the COAR, but is not a substitute for it. Instructions on how to generate COAR data from eLandings can be found on the same web page as the COAR form.

III. Data

OMB Control Number: 0648–0428.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 98.

Estimated Time per Response: Commercial Operator's Annual Report: 8 hours.

Estimated Total Annual Burden Hours: 784 hours.

Estimated Total Annual Cost to Public: $392.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–00301 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA751]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Law Enforcement Advisory Panel to obtain feedback and recommendations on items related to

enforcement of fisheries regulations and proposed changes.

DATES: The Law Enforcement Advisory Panel will meet on February 1, 2021, from 9 a.m. to 4 p.m. The meeting will be held via webinar.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

The Law Enforcement Advisory Panel (AP) meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information, a public comment form, and other meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/* as it becomes available.

The meeting agenda includes updates on amendments under development and possible related changes to regulations, including modifications to the Wreckfish Individual Transferable Quota Program, management of dolphin and wahoo along the Atlantic coast, and possibly allowing rock shrimp trawling along the eastern edge of the northern extension of the Oculina Bank Habitat Area of Particular Concern, an area where the fishery operated historically. The AP will also discuss enforcement issues relative to for-hire electronic reporting and best fishing practices requirements. Additionally, the AP will make recommendations on possible changes to how the AP is structured and discuss other topics of interest to the Council.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 6, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00276 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA785]

Endangered Species; File No. 21516

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

ACTION: Notice; Issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an Incidental Take Permit (ITP) (No. 21516) to Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) associated with the otherwise lawful operation of the Dominion Chesterfield Power Station (CPS) in Chesterfield, VA. The permit is issued for a duration of 5 years.

ADDRESSES: The incidental take permit, final Environmental Assessment (EA), and other related documents are available on the NMFS Office of Protected Resources website at *https://www.fisheries.noaa.gov/action/incidental-take-permit-virginia-electric-and-power-company-dba-dominion-virginia-power.*

FOR FURTHER INFORMATION CONTACT: Julie Crocker, (978) 282–8480 or email, *Julie.Crocker@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits the ''taking'' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species when the takes are incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

The power-generating units at CPS utilize a once-through cooling water system that withdraws water from the James River, Virginia, through cooling water intake structures (CWIS). The openings of all the intake pipes associated with the CWISs are constantly submerged and aligned flush with and parallel to the river's axis.

In 2015, two Atlantic sturgeon larvae belonging to the Chesapeake Bay distinct population segment (DPS) of Atlantic sturgeon were found in entrainment samples collected at CPS. These were the first known takes of Atlantic sturgeon larvae at CPS despite previous entrainment sampling. Dominion anticipates that takes will occur in the future because it is required to conduct additional entrainment sampling to complete the Clean Water Act (CWA) 316(b) studies for the facility, and Dominion will continue to operate CPS for power generation, which requires withdrawing water through the CWIS. Dominion, therefore, applied for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

Dominion submitted a complete ITP application and habitat conservation plan (HCP) to us on April 10, 2017. We prepared a draft EA in accordance with the National Environmental Policy Act (NEPA), and published notice in the **Federal Register** announcing the availability of the EA, the ITP application and HCP for public comment (82 FR 37849; August 14, 2017). We received 37 comments during the public comment period. Most of the comments requested that we not issue the permit to Dominion based on the need to protect sturgeon or until Dominion had submitted a better plan for minimizing and mitigating the impacts of the taking. In addition to these, Dominion provided comments in support of its application while Southern Environmental Law Center (SELC), on behalf of the James Riverkeeper Association, provided a report from a sturgeon expert questioning several aspects of the ITP application, including the amount of take anticipated and Atlantic sturgeon spawning success in the James River.

Dominion revised sections of their ITP application and HCP and submitted those to us on October 16, 2019, in response to the comments received as well as in response to new information regarding dispersal of Atlantic sturgeon in the James River, the risk of impingement for adult Atlantic sturgeon at CPS, and the operation of the generating units at CPS. All other parts of the ITP application and HCP that Dominion submitted to us on April 10, 2017, were incorporated by reference. We considered this application complete and published notice in the **Federal Register** of the revised application and HCP, and the availability of the draft revised EA for public comment (85 FR 36563; June 17, 2020). The comment period ended on July 17, 2020. We received comments

only from Dominion and the SELC, on behalf of the James Riverkeeper Association. Dominion provided several clarifying comments for statements in the draft EA. NMFS has addressed these comments in the EA. The SELC submitted comments supporting aspects of the HPC but contend that the HPC measures do not minimize and mitigate the impacts of the taking to the maximum extent practicable. Further, they contend that NMFS failed to consider a full range of reasonable alternatives and therefore, the EA fails to satisfy the requirements of NEPA. We reviewed and considered the information provided by Dominion, the expert opinion submitted by SELC with its comments, and other available information (*e.g.,* published literature). We concluded that, based on the best information available, Dominion has demonstrated that implementing the HPC measures will minimize and mitigate the effects of the taking to the maximum extent practicable. Based on SELC's comments, NMFS also reviewed its decision to reject a third alternative that, if selected as the preferred, would have meant issuing an ITP requiring Dominion to suspend cooling water intake at CPS from August through October each year, other than when Dominion was completing sampling for its CWA 316(b) studies. After considering the comments, we determined that SELC did not provide new information on this issue that would cause us to change our decision to reject this alternative. However, we did include more information in the final EA to explain why we rejected this alternative.

Habitat Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The HCP prepared by Dominion describes measures to monitor, minimize, and mitigate the impacts of incidental takes of

Atlantic sturgeon belonging to the Chesapeake Bay DPS. Dominion's initial ITP application requested take of Atlantic sturgeon larvae that was expected to occur as a result of entrainment at CPS, and take of adult Atlantic sturgeon that was expected to occur as a result of impingement at CPS. Dominion's HCP, therefore, addresses minimization, mitigation, and monitoring of the take of Atlantic sturgeon as a result of entrainment and impingement at CPS.

During the application process, following an Atlantic sturgeon impingement event, Dominion repaired and replaced all of the CWIS intake guards. Grid openings of the guards were reduced to prevent the smallest adult Atlantic sturgeon in the James River from entering the intake structure. In addition, the intake opening for two of the intake units was expanded to reduce water velocity. Until recently, there was limited available information for swimming speed of Atlantic sturgeon (Hilton *et al.* 2016). Dominion, therefore, used swim speed of juvenile white and juvenile green sturgeon as a proxy and concluded that adult Atlantic sturgeon would not be overcome by the CPS intake velocities and would not be impinged. New information became available recently, and it demonstrates that the average swim speed for fall spawning Atlantic sturgeon migrating past CPS to and from the spawning grounds exceeds the CPS intake velocities (Balazik *et al.* 2020). Therefore, the best available information, which includes scientific data, supports that adult Atlantic sturgeon will not be impinged at CPS even when the fish are moving downriver after spawning. Based on this comparison, we agreed with Dominion's conclusion that impingement of adult Atlantic sturgeon is not reasonably likely to occur in the future. These changes to the intake guards are part of the minimization measures of the HCP.

The HCP also includes measures to mitigate for the anticipated take by entrainment of Atlantic sturgeon larvae at CPS and to provide information that can better inform additional measures to minimize take of the larvae. Dominion proposes to partner with Virginia Commonwealth University (VCU) which will provide Dominion access to VCU's tracking data for acoustically-tagged sturgeon that move upriver of CPS to spawn. In addition, Dominion will contract with VCU to deploy and maintain additional, new receivers downstream of CPS to better inform when spawning Atlantic sturgeon are in the vicinity of CPS. The information acquired is expected to help inform when sturgeon larvae may be present in the vicinity of CPS. The information can be used by Dominion for timing its remaining sampling to complete the required CWA 316(b) studies (*e.g.,* sampling at times when larvae are not likely to be near CPS). Knowing when spawning adults move past CPS or how long they are present in the vicinity of CPS will provide information necessary to better assess the risk of CPS operations (*e.g.,* intake flows) and to develop site-specific management actions to minimize take (*e.g.,* planning and implementing routine maintenance outages, when practicable, to coincide with peak spawning movements).

Dominion is also proposing to implement a pilot study that tests a new approach for identifying and counting Atlantic sturgeon larvae at CPS. Since this is a pilot study, the goal is to determine whether the technique can reliably detect Atlantic sturgeon larvae and if the data are sufficient to determine abundance. It is unknown whether digital holography will prove successful for detecting Atlantic sturgeon larvae or other early life stages. However, there are currently no other successful methods for detecting these other than entrainment sampling. Therefore, the pilot study could provide new information, which would otherwise not be collected. If effective, this approach would provide information to inform minimization measures for Atlantic sturgeon larvae and will provide a new tool that has many beneficial applications for recovery of the Atlantic sturgeon DPS (*e.g.,* abundance or distribution surveys of Atlantic sturgeon early life stages).

The HPC must also address monitoring for take. Dominion's monitoring protocol is focused on entrainment of Atlantic sturgeon larvae and, therefore, differs from their protocol to complete the CWA 316(b) studies. Dominion also revised their monitoring approach from the 2017 ITP application by increasing the frequency of sampling during the targeted months of September and October, when the fall spawning period for Atlantic sturgeon in the James River typically occurs, and for the full permit duration. Dominion is no longer proposing to monitor for entrainment of Atlantic sturgeon larvae in the spring since larvae from spring spawning would only occur downriver of CPS and, therefore, would not be susceptible to entrainment at CPS.

Entrainment samples for monitoring take of Atlantic sturgeon will be sorted on site. Although free-floating Atlantic sturgeon eggs are generally considered non-viable, Dominion's entrainment monitoring methodology includes sorting for and retaining any suspected Atlantic sturgeon eggs. All Atlantic sturgeon eggs and larvae will be appropriately preserved. As explained by Dominion in their August 31, 2018, letter to us, entrainment samples for monitoring will not be collected at all of the intake units because it is unsafe and impractical given discharge or the elevation of the intake units relative to the river.

As described above, take of adult Atlantic sturgeon by impingement at the trash racks is not expected to occur because of the changes made to the

intake guards that would prevent the sturgeon from accessing the area where the trash racks are located. The HCP does, however, include monitoring of the trash racks for sturgeon. Dominion will continue to inspect trash rack debris at the water surface, and debris removed from the trash racks, for sturgeon. Dominion has sturgeon handling procedures in the event a living or dead sturgeon is found among the debris floating in the water or in the debris removed from the trash racks. Monitoring will not, however, occur at the intake guards because it is not feasible due to the turbidity of the river and the safety risk for personnel.

We conducted intra-agency section 7 consultation to ensure that issuing the permit would comply with the ESA. The Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division issued a Biological Opinion on November 10, 2020, that considered the effects of the activities covered by this ITP as well as the effects to other ESA-listed species from the other activities reasonably expected to occur at CPS during the 5 year duration of the permit. Those other activities include the discharge of heated effluent and other pollutants resulting from CPS operations, and the barge traffic that is associated with deliveries of materials to and from CPS.

The Biological Opinion concluded that activities covered by this ITP (*i.e.,* entrainment of larval Atlantic sturgeon during CPS operations and entrainment/collection during required sampling) may adversely affect but are not likely to jeopardize the continued existence of the Chesapeake Bay DPS of Atlantic sturgeon. We also concluded that this action is not likely to adversely affect designated critical habitat for the DPS, or shortnose sturgeon, the Gulf of Maine, New York Bight, Carolina, and South Atlantic DPSs of Atlantic sturgeon, North Atlantic DPS green turtle, Kemp's ridley turtle, leatherback turtle, and Northwest Atlantic Ocean DPS of loggerhead turtle.

With respect to the other CPS activities and other ESA-listed species in the James River, the only activity that may affect other listed species is the shipment of materials to and from CPS by barge within the James River. In the Biological Opinion we concluded that the effects of those activities on shortnose sturgeon, the four other DPSs of Atlantic sturgeon, and leatherback, Kemp's ridley, green, and loggerhead sea turtles would be insignificant or extremely unlikely to occur and that, therefore, this action was not likely to adversely affect any of these species. Dominion has not indicated any plans to conduct dredging or shoreline maintenance during the 5 year duration of the ITP. Therefore, effects to ESA listed species and critical habitat in the action area from dredging and shoreline maintenance activities are not reasonably certain to occur and do not meet the definition of ''effects of the action.'' As a result, these activities were not considered further in the consultation. If Dominion applied for any Federal permits or authorizations for any future dredging or shoreline maintenance, ESA section 7 consultation would be necessary for any of those activities that may affect listed species or critical habitat. The full section 7 evaluation can be found in the Biological Opinion.

Permit 21516

NMFS authorizes the following lethal take for the Chesapeake Bay DPS of Atlantic sturgeon.

Entrainment: up to 54,745 larvae, total, for the 5-year duration of the permit with an anticipated average annual take of 10,949 per year during normal operation of CPS, and 1 larvae over the 5-year duration of the permit during sampling to complete CWA section 316(b) sampling.

Impingement: There is no authorized or anticipated incidental take by impingement based on the already implemented minimization measures.

The first 3 years of monitoring data collected under the permit will be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through monitoring, NMFS may amend the permit to reflect any changes in the take estimate, if appropriate.

The permit requires Dominion to prepare a report, due to NMFS within 90 days of issuance of the ITP, which details how observed take of Atlantic sturgeon will be extrapolated to generate an accurate and reliable estimate of total annual take at the facility. Dominion must also submit reports of any observed take of Atlantic sturgeon to NMFS within seven days, and must prepare an annual report detailing all observed takes of Atlantic sturgeon at CPS. NMFS review of the annual report provides an opportunity to monitor the ongoing amount of take at CPS and detect any trends that may indicate a potential exceedance of the anticipated take before such an event occurs.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with NEPA (42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6A, Compliance with the NEPA (2016). NMFS prepared an EA to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from the authorization of this permit. NMFS found that issuing the ITP would have no significant impacts on the quality of the environment.

Authority: This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: January 6, 2021.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–00303 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Vessel Monitoring System Requirement in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice. Request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 12, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov*. Please reference OMB Control Number 0648–0573 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

specific questions related to collection activities should be directed to Keeley Kent, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206–247–8252, and *keeley.kent@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a revision and extension of a currently approved information collection. The National Marine Fisheries Service (NMFS) implemented a Vessel Monitoring Program in 2004, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). Under this program described at 50 CFR 660.13 and 660.14, all commercial fishing vessels fishing in the exclusive economic zone off the West Coast that take and retain groundfish in federal waters, or transit through federal waters with groundfish on board, are required to have a working vessel monitoring system (VMS). To support the VMS monitoring program, the following information must be submitted to NMFS: (1) VMS installation/activation certification reports, (2) position reports, (3) exemption reports, and (4) declaration reports. The VMS, along with the fishing declaration reporting requirements, allows for monitoring and enforcement of areas closed to fishing by gear type as traditional enforcement methods (such as aerial surveillance, boarding at sea via patrol boats, landing inspections and documentary investigation) are especially difficult to use when the closed areas are large-scale and the lines defining the areas are irregular.

The collection is being revised to remove the position report from the collection with regard to burden. The position reports are automatically transmitted location signals from the VMS unit that do not require any action on the part of the captain or crew.

II. Method of Collection

Affected commercial fishing vessel owners must submit VMS installation/activation certification reports, the VMS systems send automatic position updates, affected vessels captains must submit declarations reports via phone.

III. Data

OMB Control Number: 0648–0573.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 5 hours to install and activate a VMS unit; 1 hour per year to maintain a VMS; 0 seconds for an automated position report; 5 minutes to complete and fax a check-in report or to complete an exemption report; 4 minutes for a declaration report.

Estimated Total Annual Burden Hours: 6,999.99.

Estimated Total Annual Cost to Public: $97,035.30.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 660.13 and 660.14.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–00296 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA755]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day webinar meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The webinar will convene Monday, January 25 through Thursday, January 28, 2021; 9 a.m. until 5 p.m. EST.

ADDRESSES: The meeting will take place via webinar; you may access the log-on information at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, January 25, 2021; 9 a.m.–5 p.m.

The meeting will begin with the Administrative/Budget Committee discussing the reappointment of the Reef Fish and Shrimp Advisory Panels due in 2021; review 2020 Budget and Expenditures; discuss logistics and estimated costs of conducting a Gulf-wide Fishery-Independent Offshore Abundance Study on Red Drum and an Independent Stock Assessment (*i.e.,* outside SEDAR) Process for Gray Triggerfish; and, review of 2021 Projected Budget and Activities.

Sustainable Fisheries Committee will review Final Action Amendment Reef Fish 48/Red Drum 5: Status Determination Criteria and Optimum Yield for Reef Fish and Red Drum, SSC Recommendations on Interim Analyses Species and Timing, and Standardized Bycatch Reporting Methodology for the Gulf of Mexico and Joint Fishery Management Plans.

Outreach and Education Committee will receive a presentation on Communication Analytics; review 2021

Council Communications Plan; discuss Fish Science Pages and State Data Collection Infographics; receive a presentation on the Next O&E Projects; Update on Fish Rules Commercial; and receive a meeting summary report from Outreach and Education Technical Committee.

Mackerel Committee will receive an update on Coastal Migratory Pelagics Landings; review Draft Document: Coastal Migratory Pelagics Amendment 32; discuss Gulf of Mexico King Mackerel.

Tuesday, January 26, 2021; 9 a.m.–5 p.m.

Reef Fish Committee will review Reef Fish and Individual Fishing Quota (IFQ) Program Landings, Implementation of National Environment Protection Act (NEPA Modernization, review Final Action items Framework Action: Modification of Gray Triggerfish Catch Limits, Framework Action: Modification of the Gulf of Mexico Lane Snapper Catch Limits and Accountability Measures, and Framework Action: Adjust State Recreational Red Snapper Catch Limits.

The Reef Fish Committee will review SEDAR 70–Gulf of Mexico Greater Amberjack Stock Assessment and a White Paper on Sector Separation for Four Reef Fish Species.

The Gulf of Mexico Fishery Management Council and National Oceanic and Atmospheric Administration/National Marine Fisheries Service (NOAA/NMFS) will hold an informal Question and Answer session immediately following the Reef Fish Committee.

Wednesday, January 27, 2021; 9 a.m.–5 p.m.

Reef Fish Committee will reconvene to review SEDAR 64—Stock Assessment Report and SSC Recommendations on Southeastern U.S. Yellowtail Snapper, Public Hearing Draft Amendment 53: Red Grouper Allocations and Annual Catch Level and Catch Targets, and discuss any remaining items from SSC Summary Report.

After lunch, Full Council Session will convene with a Call to Order, Announcements, Introductions and a Presentation of the 2019 Law Enforcement Officer of the Year Award. The Council will continue with Adoption of Agenda, Approval of Minutes; and receive a presentation on Deepwater Horizon Open Ocean Fish Restoration and an update on Southeast For-hire Electronic Reporting (SEFHIER) Program.

The Council will hold public testimony beginning at approximately 2:30 p.m.–5:00 p.m., **EST** for comments on Final Action Amendment Reef Fish 48/Red Drum 5: Status Determination Criteria and Optimum Yield for Reef Fish and Red Drum; Final Action: Framework Action: Adjust State Recreational Red Snapper Catch Limits; Final Action: Framework Action: Modification of Gray Triggerfish Catch Limits; and, Final Action: Framework Action: Modification of the Gulf of Mexico Lane Snapper Catch Limits and Accountability Measures; and, and open testimony on other fishery issues or concerns. Public comment may begin earlier than 2:30 p.m. EST but will not conclude before that time. Persons wishing to give public testimony must follow the instructions on the Council website before the start of the public comment period at 2:30 p.m. EST.

Thursday, January 28, 2021; 9 a.m.–4 p.m.

The Council will receive committee reports from Administrative/Budget, Outreach and Education, Mackerel, Sustainable Fisheries, and Reef Fish Committees.

The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE); Louisiana Law Enforcement Efforts; Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will receive then discuss any Other Business items.

— Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

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

Dated: January 5, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–00211 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 210105–0001]

RIN 0660–XC049

5G Challenge Notice of Inquiry

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: Through this Notice of Inquiry, the National Telecommunications and Information Administration, under sponsorship of and in collaboration with the Department of Defense 5G Initiative, is seeking comments and recommendations from all interested stakeholders to explore the creation of a 5G Challenge that would accelerate the development of the open 5G stack ecosystem in support of Department of Defense missions.

DATES: Comments are due on or before 5 p.m. Eastern Time on February 10, 2021.

ADDRESSES: Written comments may be submitted by email to *5GChallengeNOI@ntia.gov.* Comments submitted by email should be machine-readable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 325 Broadway, Attn: Rebecca Dorch, Boulder, CO 80305. For more detailed instructions about submitting comments, see the ''Instructions for Commenters'' section in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rebecca Dorch, National Telecommunications and Information Administration, U.S. Department of Commerce, 325 Broadway, Boulder, CO 80305; telephone (720) 215–6145; email *rdorch@ntia.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002, or at *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of fifth-generation (5G) wireless communications to U.S. economic and security interests, the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce has made it a top priority to engage in 5G across a broad spectrum of topics. Commensurably, the Department of Defense (DoD) in 2019 established its 5G Initiative as a key modernization priority with the goal to advance U.S. and partner capabilities to fully leverage 5G technologies for military networking needs. A key innovation in 5G that is becoming more pervasive in the larger 5G ecosystem is the trend toward ''open 5G'' architectures that emphasize open interfaces in the network stack. NTIA, under sponsorship of and in collaboration with the DoD 5G Initiative, is seeking comments and recommendations from all interested stakeholders to explore the creation of a 5G Challenge that would accelerate the development of the open 5G stack ecosystem in support of DoD missions.

Background: NTIA is the Executive Branch agency responsible for advising the President on telecommunications and information policy.[1] NTIA was established in 1978 in response to the growing national consensus that ''telecommunications and information are vital to the public welfare, national security, and competitiveness of the United States,'' and that, ''rapid technological advances being made in the telecommunications and information fields make it imperative that the United States maintain effective national and international policies and programs capable of taking advantage of continued advancements.'' [2] In the more than 40 years since its inception, NTIA has made growth and innovation in communications technologies—most recently 5G and beyond wireless communications—a cornerstone of its mission. The Administration's 2020 5G Strategy reaffirmed that ''the United States Government will work with the private sector, academia, and international government partners to adopt policies, standards, guidelines, and procurement strategies that reinforce 5G vendor diversity to foster market competition.'' [3]

NTIA's Institute for Telecommunication Sciences: The Institute for Telecommunication Sciences (ITS) is NTIA's spectrum and communications laboratory. It plays a central role in informing the formulation of the U.S. Government's information and communications technology policies and additionally works on behalf of other U.S. Government departments and agencies in need of telecommunications engineering expertise. ITS works across a diverse telecommunications ecosystem with a primary focus on 5G communications.

Technical Motivation for Challenge: Many innovations are being explored in the greater 5G economy. One movement that appears to be gaining traction across the ecosystem is the use of open-source implementations for various components of a 5G system. Among those components is the 5G protocol stack. The open 5G stack community is diverse, with a wide variety of organizations in academia, government, and private industry. Additionally, different open 5G stack organizations are focused on different portions of the stack, with no clear division among the multiple implementations currently available. And the various implementations are often created with the intention to be used with code sourced from a single organization, where interoperability among the community's implementations is not guaranteed.

Request for Comments:

Through this Notice, NTIA is soliciting comments and recommendations from stakeholders on how a Challenge to accelerate the development of the open 5G stack ecosystem in order to support DoD missions could be constructed. These comments will help NTIA and the U.S. Government identify and mitigate the challenges in creating and executing a competition. They will also help NTIA leverage its engineering expertise to construct a Challenge that maximizes the benefit to both the open 5G stack market and the DoD on an accelerated schedule.

For the purposes of this Notice, NTIA has organized these questions into three broad categories: (1) Challenge structure and goals; (2) incentives and scope; and (3) timeframe and infrastructure support. NTIA seeks public input on any and/or all of these three categories.

Instructions for Commenters: NTIA invites comments on the full range of questions presented by this Notice, including issues that are not specifically raised. Commenters are encouraged to address any or all of the following questions. Comments that contain references to specific studies and/or research should include copies of the referenced materials with the submitted comments. Comments submitted by email should be machine-readable and should not be copy-protected. Commenters should include the name of the person or organization filing the comment, which will facilitate agency follow up for clarifications as necessary, as well as a page number on each page of their submissions. All comments received are a part of the public record and will generally be posted on the NTIA website, *http://www.ntia.gov,* without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

I. Challenge Structure & Goals

A. How could a Challenge be structured such that it would take advantage of DOD's role as an early U.S. Government adopter of 5G technology to mature the open 5G stack ecosystem faster, encourage more participation in open 5G stack development including encouraging new participants, and identify any roadblocks to broader participation?

B. How could a Challenge be structured to focus on the greatest impediments to the maturation of end-to-end open 5G stack development?

C. What should be the goals of a Challenge focusing on maturation of the open 5G stack ecosystem? How could such a Challenge be structured to allow for the greatest levels of innovation? What metrics should be used in the assessment of proposals to ensure the best proposals are selected?

D. How will the open 5G stack market benefit from such a Challenge? How could a Challenge be structured to provide dual benefit to both the Government and the open 5G stack market?

II. Incentives and Scope

A. What are the incentives in open 5G stack ecosystem development that would maximize cooperation and collaboration, promote interoperability amongst varied open 5G stack components developed by different participants, and mature desired featured sets faster with greater stability?

B. Could a Challenge be designed that addresses the issues raised in previous questions and also includes test and evaluation of the security of the components?

[1] 47 U.S.C. 902(b)(2)(D).

[2] 47 U.S.C. 901(b)(1)–(6).

[3] Executive Office of the President, National Strategy to Secure 5G of the United States of America (Mar. 2020), *https://www.whitehouse.gov/wp-content/uploads/2020/03/National-Strategy-5G-Final.pdf.*

C. Could a Challenge be designed that would require participants to leverage software bill of materials design principles in the development of components for an open 5G stack?

D. Many open 5G stack organizations have developed partial implementations for different aspects of an open 5G stack. What portions of the open 5G stack has your organization successfully developed with working code? What portions of the open 5G stack does your organization believe can be developed quickly (6 months or less)? What development support would best enable test and evaluation of the different elements of an open 5G stack?

E. What 5G enabling features should be highlighted in the Challenge, such as software defined networking, network slicing, network function virtualization, radio access network intelligent controller, radio access network virtualization?

III. Timeframe & Infrastructure

A. What software and hardware infrastructure will be needed to successfully execute this Challenge?

B. What is a reasonable timeframe to structure such a Challenge? Should there be different phases for such a Challenge? If so, what are appropriate timelines for each suggested phase?

Dated: January 5, 2021.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021–00202 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2020–0035]

Secondary Trademark Infringement Liability in the E-Commerce Setting

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

ACTION: Request for comments; reopening of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) published a request for comments in the **Federal Register** on November 13, 2020, seeking information from intellectual property rights holders, online third-party marketplaces and other third-party online intermediaries, and other private sector stakeholders on the application of the traditional doctrines of trademark infringement to the e-commerce setting. Through this notice, the USPTO is reopening the period for public comment until January 25, 2021.

DATES: *Comment date:* Written comments must be received on or before January 25, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(a) Electronic Submissions: Submit all electronic comments via the Federal e-Rulemaking Portal at *www.regulations.gov* (at the homepage, enter PTO–T–2020–0035 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF formats only. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with confidential business information that you do not wish to be made public, submit the comment as a written/paper submission in the manner detailed below.

(b) Written/Paper Submissions: Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO–T–2020–0035, Office of Policy and International Affairs, Comment Request; Secondary Trademark Infringement Liability in the E-Commerce Setting.

Submissions of Confidential Business Information: Any submissions containing confidential business information must be delivered in a sealed envelope marked ''confidential treatment requested'' to the address listed above. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of confidential business information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on *www.regulations.gov.* In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with confidential business information. Should a submitter fail to either docket a non-confidential version of its submission or post a notice that confidential business information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

FOR FURTHER INFORMATION CONTACT: Holly Lance, USPTO, Office of Policy and International Affairs, at *Holly.Lance@uspto.gov* or 571–272–9300. Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571–272–8400.

SUPPLEMENTARY INFORMATION: On November 13, 2020, the USPTO published a notice in the **Federal Register** requesting public input on the application of contributory and/or vicarious trademark infringement liability (secondary infringement liability) to e-commerce. *See* Request for Comments on Secondary Trademark Infringement Liability in the E-Commerce Setting, 85 FR 72635 (Nov. 13, 2020). In that notice, the USPTO indicated that it is seeking input from the private sector and other stakeholders as to the application of the traditional doctrines of trademark infringement to the e-commerce setting, including whether to pursue changes in the application of the secondary infringement standards to e-commerce platforms, in accordance with the call to action in the Department of Homeland Security's January 24, 2020, Report to the President of the United States titled ''Combating Trafficking in Counterfeit and Pirated Goods.'' To assist in gathering public input, the USPTO published questions, and sought focused public comments, on the effectiveness of the traditional doctrines of secondary trademark infringement in the e-commerce setting, and also invited recommendations for resolving any shortcomings in the application of these doctrines. The notice requested public comments on or before December 28, 2020.

Through this notice, the USPTO is reopening the period for public comment until January 25, 2021, to give

interested members of the public additional time to submit comments. All other information and instructions to commenters provided in the November 13, 2020, notice remain unchanged. Previously submitted comments do not need to be resubmitted.

Andrei Iancu,

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

[FR Doc. 2021–00216 Filed 1–8–21; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Advisory Committees Solicitation of Applications for Membership

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice.

SUMMARY: Pursuant to the authorities given to the Director of the Bureau of Consumer Financial Protection (Bureau) under the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Director Kraninger invites the public to apply for membership for appointment to its Consumer Advisory Board (CAB), Community Bank Advisory Council (CBAC), Credit Union Advisory Council (CUAC), and Academic Research Council (ARC), (collectively, advisory committees). Membership of the advisory committees includes representatives of consumers, diverse communities, the financial services industry, academics, and economists. Appointments to the committees are generally for two years. However, the Director may amend the respective committee charters from time to time during the charter terms, as the Director deems necessary to accomplish the purpose of the committees. The Bureau expects to announce the selection of new members in late-summer 2021.

DATES: The application will be available on January 11, 2021, here: *https://www.consumerfinance.gov/about-us/advisory-committees/apply/*. Complete application packets received on or before 11:59 p.m. EST on February 24, 2021, will be given consideration for membership on the committees.

ADDRESSES: If an applicant requires a reasonable accommodation to complete the application, please contact Kimberley Medrano, Program Manager, *CFPB_BoardandCouncilApps@cfpb.gov.*

All applications for membership on the advisory committees should be sent:

- *Electronically: https://www.consumerfinance.gov/about-us/advisory-committees/apply/.*
- *Mail:* Kimberley Medrano, Program Manager, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Submissions must be postmarked on or before February 27, 2021.
- *Mail/Hand Delivery/Courier:* Kimberley Medrano, Program Manager, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Submissions must be received on or before 5:00 p.m. eastern standard time on February 25, 2021. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

FOR FURTHER INFORMATION CONTACT: Kimberley Medrano, Program Manager, 202–435–9623, *CFPB_BoardandCouncilApps@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau is charged with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws,'' so as to ensure that ''all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.'' Pursuant to section 1021(c) of the Wall Street Reform and Consumer Protection Act, Public Law 111–203, Dodd-Frank Act, the Bureau's primary functions are:

1. Conducting financial education programs;
2. Collecting, investigating, and responding to consumer complaints;
3. Collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
4. Supervising persons covered under the Dodd-Frank Act for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
5. Issuing rules, orders, and guidance implementing Federal consumer financial law; and
6. Performing such support activities as may be needed or useful to facilitate the other functions of the Bureau.

As described in more detail below, section 1014 of the Dodd-Frank Act calls for the Director of the Bureau to establish a Consumer Advisory Board to advise and consult with the Bureau regarding its functions, and to provide information on emerging trends and practices in the consumer financial markets.

Pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Act, the Director of the Bureau of Consumer Financial Protection established the discretionary committees, CBAC, CUAC, and ARC, under agency authority in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C., App. 2.

III. Qualifications

Pursuant to section 1014(b) of the Dodd-Frank Act, in appointing members to the Consumer Advisory Board, ''the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.'' The determinants of ''expertise'' shall depend, in part, on the constituency, interests, or industry sector the nominee seeks to represent, and where appropriate, shall include significant experience as a direct service provider to consumers.

Pursuant to section 12 of the Community Bank Advisory Council Charter, in appointing members to the committee the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only bank or thrift employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership. Membership is limited to employees of banks and thrifts with total assets of $10 billion or less that are not affiliates of depository institutions or community banks with total assets of more than $10 billion.

Pursuant to section 12 of the Credit Union Advisory Council Charter, in appointing members to the committee the Director shall seek to assemble members with diverse points of view, institution asset sizes, and geographical backgrounds. Only credit union employees (CEOs, compliance officers, government relations officials, etc.) will be considered for membership.

Membership is limited to employees of credit unions with total assets of $10 billion or less that are not affiliates of depository institutions or credit unions with total assets of more than $10 billion.

Pursuant to section 12 of the Academic Research Council Charter, in appointing members to the committee the Director shall seek to assemble members who are economic experts and academics with diverse points of view; such as experienced economists with a strong research and publishing background, and a record of involvement in research and public policy, including public or academic service. Additionally, members should be prominent experts who are recognized for their professional achievements and rigorous economic analysis including those specializing in household finance, finance, financial education, labor economics, industrial organization, public economics, and law and economics; and experts from related social sciences related to the Bureau's mission. In particular, the Director will seek to identify academics with strong methodological and technical expertise in structural or reduced form econometrics; modeling of consumer decision-making; survey and random controlled trial methods; benefit cost analysis, welfare economics and program evaluation; or marketing.

The Bureau has a special interest in ensuring that the perspectives of women and men, all racial and ethnic groups, and individuals with disabilities are adequately represented on the advisory committees, and therefore, encourages applications from qualified candidates from these groups. The Bureau also has a special interest in establishing advisory committees that are represented by a diversity of viewpoints and constituencies, and therefore encourages applications from qualified candidates who:

1. Represent the United States' geographic diversity; and

2. Represent the interests of special populations identified in the Dodd-Frank Act, including service members, older Americans, students, and traditionally underserved consumers and communities.

IV. Application Procedures

Any interested person may apply for membership on the committees.

A complete application (*https://www.consumerfinance.gov/about-us/advisory-committees/apply/*) must include:

1. A one-page cover letter, which summarizes the applicant's expertise and provides reason(s) why he or she would like to join the committee

2. A complete résumé or curriculum vitae for the applicant;

3. A recommendation letter from a third party describing the applicant's interests and qualifications to serve on the committee; and

4. A complete questionnaire.

To evaluate potential sources of conflicts of interest, the Bureau will ask potential candidates to provide information related to financial holdings and/or professional affiliations, and to allow the Bureau to perform a background check. The Bureau will not review applications and will not answer questions from internal or external parties regarding applications until the application period has closed.

The Bureau does not accept applications from federally registered lobbyists, convicted felons or current elected officials for a position on the advisory committees.

Only complete applications will be given consideration for membership on the advisory committees.

Dated: December 8, 2020.

Karla Carnemark,

Acting Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2020–27400 Filed 1–8–21; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0001]

Agency Information Collection Activities; Comment Request; Freedom of Information Act (FOIA) Third Party Perjury Form

AGENCY: Office of Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before March 12, 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–2021–SCC–0001. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the 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 Elise Cook, (202) 401–3769.

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: Freedom of Information Act (FOIA) Third Party Perjury Form.

OMB Control Number: 1880–0545.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 62,000.

Total Estimated Number of Annual Burden Hours: 31,000.

Abstract: This collection is necessary to certify the identity of individuals requesting information under the Freedom of Information Act (FOIA) and Privacy Act (PA). This certification is required under 5 U.S.C. Section 552a(b). The form is used by Privacy Act requesters to obtain personal records via regular mail, fax, or email. The department will use the information to help identify first-party or third party requesters with same or similar name when requesting retrieval of their own documents.

Dated: January 5, 2021.

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. 2021–00205 Filed 1–8–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–487–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed South Sioux City to Sioux Falls A-Line Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the South Sioux City to Sioux Falls A-line Replacement Project, proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon a portion of its existing pipeline in-place and to construct, operate, and maintain new natural gas facilities in Dakota and Dixon Counties, Nebraska, and Lincoln and Union Counties, South Dakota.

The EA assesses the potential environmental effects of the construction and operation of the South Sioux City to Sioux Falls A-line Replacement Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Project includes the following:

- Construction of 82.2 miles of 12-inch-diameter pipeline in Nebraska and South Dakota (A-line);
- construction of 3.2 miles of 12-inch-diameter pipeline in South Dakota (SDM97701 Tie-Over);
- construction of 1.9 miles of 3-inch-diameter pipeline in Nebraska (Ponca Branch Line);
- abandonment in-place of 79.2 miles of 14- and 16-inch-diameter pipeline in Nebraska and South Dakota (A-line);
- abandonment in-place of 0.2 mile of 2-inch-diameter pipeline in Nebraska (Ponca Branch Line);
- abandonment in-place of 0.1 mile of 2-inch-diameter pipeline in Nebraska (Jackson Branch Line); and
- construction and modification of aboveground facilities, including valves, regulators, metering facilities, pig launchers and receivers,[1] an odorizer, and town border station sites.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.* CP20–487). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on February 4, 2021.

For your convenience, there are three methods you can use to file your comments with the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP20–487–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only

[1] A pipeline ''pig'' is a device used to clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

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. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00258 Filed 1–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–256]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2146–256.

c. *Date Filed:* November 19, 2020.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* The Neely-Henry Development of the Coosa River Hydroelectric Project is in Calhoun, Etowah, and St. Clair counties, Alabama; the non-project use of project lands and waters is in Etowah County. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Justin Bearden, Alabama Power Company at (205) 257–6769 or *jbearden@southernco.com.*

i. *FERC Contact:* Shana High at (202) 502–8674 or *shana.high@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* February 4, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2146–256. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power Company is requesting Commission approval to permit Godfrey's Marina, LLC to expand their existing marina on the Neely-Henry Development to accommodate an additional 24 watercraft.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00255 Filed 1–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–336–001.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Tariff Amendment: Rate Schedule S–2 Tracker Filing (ASA/PCB) eff 12/1/2020 Amended to be effective 12/1/2020.
Filed Date: 1/4/21.
Accession Number: 20210104–5050.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–365–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—1/1/2021 to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5004.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–366–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Nonconforming Negotiated Rate Agreement Amendment to be effective 1/4/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5005.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–367–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 1–4–21 to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5006.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–368–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 1–1–2021) to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5007.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–369–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 53453 to Exelon 53491) to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5008.
Comments Due: 5 p.m. ET 1/19/21.

Docket Numbers: RP21–370–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon 51753, 51754 to BP 53499, 53500, Spire 53501) to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5009.
Comments Due: 5 p.m. ET 1/19/21.

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: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00261 Filed 1–8–21; 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: ER17–424–008.
Applicants: Footprint Power Salem Harbor Development LP.
Description: Notice of Non-Material Change in Status of Footprint Power Salem Harbor Development LP.
Filed Date: 1/4/21.
Accession Number: 20210104–5282.
Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: ER17–1531–004.
Applicants: CPV Fairview, LLC.
Description: Errata to June 30, 2020 Market Power Update of CPV Fairview, LLC.
Filed Date: 12/16/2020.
Accession Number: 20201216–5085.
Comment Date: 5 p.m. ET 1/26/21.

Docket Numbers: ER20–391–004; ER14–41–005; ER14–42–005; ER16–498–004; ER16–499–004; ER16–500–004; ER20–547–004.
Applicants: J. Aron & Company LLC, RE Rosamond One LLC, RE Rosamond Two LLC, RE Mustang LLC, RE Mustang 3 LLC, RE Mustang 4 LLC, Goldman Sachs Renewable Power Marketing.
Description: Notice of Non-Material Change in Status of J. Aron & Company LLC, et al.
Filed Date: 1/4/21.
Accession Number: 20210104–5362.
Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: ER21–796–000.
Applicants: Horizon West Transmission, LLC.
Description: § 205(d) Rate Filing: Horizon West Transmission, LLC Revisions to Transmission Owner Tariff to be effective 1/1/2021.
Filed Date: 1/4/21.
Accession Number: 20210104–5107.
Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: ER21–797–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5869; Queue No. AE2–126 to be effective 12/3/2020.
Filed Date: 1/4/21.
Accession Number: 20210104–5144.
Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: ER21–798–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Modify Section 8.6.5 of Attachment AE to be effective 8/5/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5010.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–799–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Evegy Companies Name Changes Clean-Up Filing to be effective 4/1/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5012.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–800–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Evergy Companies Name Changes—KCPL–GMO Formula Rate to be effective 4/1/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5013.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–801–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Evergy Companies Name Changes—KCPL Formula Rate to be effective 4/1/2021.

Filed Date: 1/5/21.
Accession Number: 20210105–5014.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–802–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Evergy Companies Name Changes—Westar Energy Formula Rate to be effective 4/1/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5015.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–803–000.
Applicants: Springfield Power, LLC.
Description: § 205(d) Rate Filing: Notice of Succession filing to be effective 1/16/2019.
Filed Date: 1/5/21.
Accession Number: 20210105–5017.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–804–000.
Applicants: DG Whitefield LLC.
Description: § 205(d) Rate Filing: Notice of Succession filing to be effective 1/6/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5018.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–805–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: BHP—BH Wyoming GDEMA Revised Schedule B to be effective 3/7/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5029.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–806–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: BHP—BHCE GDEMA Revised Schedule B to be effective 3/7/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5030.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–807–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: BHP—CLFP GDEMA Revised Schedule B to be effective 3/7/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5031.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–808–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: BHP—Gillette GDEMA Revised Schedule B to be effective 3/7/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5032.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–809–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: BHP—MDU GDEMA Revised Schedule B to be effective 3/7/2021.
Filed Date: 1/5/21.
Accession Number: 20210105–5033.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–810–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–05_SA 3289 Termination of Sugar River Wind—ATC GIA (J584) to be effective 12/28/2020.
Filed Date: 1/5/21.
Accession Number: 20210105–5035.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–811–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–05_SA 3362 Termination of ATC-Quilt Block Wind Farm II GIA (J807) to be effective 8/24/2020.
Filed Date: 1/5/21.
Accession Number: 20210105–5036.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–812–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–05_SA 3496 Termination of ATC-Shullsburg Wind Farm GIA (J819) to be effective 8/24/2020.
Filed Date: 1/5/21.
Accession Number: 20210105–5037.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–813–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–05_SA 3363 Termination of ATC-Marathon Wind Farm GIA (J821) to be effective 8/24/2020.
Filed Date: 1/5/21.
Accession Number: 20210105–5038.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–814–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–05_SA 3106 Termination of Dodge County Wind-SMMPA Substitute GIA (J441) to be effective 12/26/2019.
Filed Date: 1/5/21.
Accession Number: 20210105–5039.
Comments Due: 5 p.m. ET 1/26/21.

Docket Numbers: ER21–815–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Filing of Service Agreement No. 726 to be effective 12/30/2020.
Filed Date: 1/5/21.
Accession Number: 20210105–5040.
Comments Due: 5 p.m. ET 1/26/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–21–000; ES21–22–000; ES21–23–000; ES21–24–000.
Applicants: Transource Maryland, LLC, Transource Missouri, LLC, Transource Pennsylvania, LLC, Transource West Virginia, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities for Transource Maryland, LLC, et al.
Filed Date: 1/4/21.
Accession Number: 20210104–5299.
Comments Due: 5 p.m. ET 1/25/21.

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: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00260 Filed 1–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–8–000]

Commission Information Collection Activities (FERC–512); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on a renewal of currently approved information collection, FERC–512 (Preliminary Permit).

DATES: Comments on the collection of information are due March 12, 2021.

ADDRESSES: You may submit comments (identified by Docket No. IC21–8–000) by one of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov.*

• *U.S. Postal Service Mail:* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.

• Delivery of filings other than by eFiling or the U.S. Postal Service should be delivered to Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–512, Preliminary Permit.

OMB Control No.: 1902–0073.

Type of Request: Three-year approval of the FERC–512 information collection requirements, with no changes to the current reporting requirements.

Abstract: The Commission regulates nonfederal hydropower projects on navigable waters and federal lands pursuant to the Federal Power Act (FPA).[1] The FERC–512 is an application for a preliminary permit or to extend a preliminary permit term. Preliminary permits, issued for up to four years, preserve the right of permit holders to have first priority in applying for a license for a project being studied, but do not authorize construction of any facilities. Nor does a preliminary permit allow the use of eminent domain to acquire lands for the project. The preliminary permits are issued pursuant to sections 4(f), 5, and 7 of the FPA. Preliminary permits may be extended one time for up to four additional years, pursuant to section 5 of the FPA. The purpose of obtaining a preliminary permit is to maintain priority status for an application for a license while the applicant conducts site examinations and surveys to prepare maps, plans, specifications, and estimates. This period of time also provides the applicant with the opportunity to conduct engineering, economic, and environmental feasibility studies in addition to making the financial arrangements for funding the construction of the project. No other application for a preliminary permit or application for license submitted by another party can be accepted during the permit term. The application for a preliminary permit is used by Commission staff to assess the scope of the proposed project, the technology to be used, and jurisdictional aspects of the project. The staff assessment includes a review of the proposed hydro development for conflicts with other permits or existing projects and public notice of the application to solicit public and agency comments. The application for a one-time extension, up to four years, of a preliminary permit is used by Commission staff to determine if a permittee has met the 2018 Water Infrastructure Act's good faith and reasonable diligence standard. An application for a preliminary permit includes an initial statement and three numbered exhibits, per 18 CFR 4.81. The initial statement includes information on the applicant, the project, the requested term of the permit, affected political jurisdictions, and a verification of the facts.

Type of Respondents: Business or other for-profit and not for-profit institutions.

Estimate of Annual Burden[2] *and Cost:*[3] The Commission estimates as shown below in the table:

FERC–512—(PRELIMINARY PERMIT)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3)*(4)=(5)	Average annual cost per respondent (5)÷(1)
Annual Reporting and Recordkeeping	50	1	50	24 hrs.; $1,992	1,200 hrs.; $99,600.	$1,992
TOTAL FERC–512	50	1	50	24 hrs.; $1,992	1,200 hrs.; $99,600.	$1,992

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00262 Filed 1–8–21; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 791a–825r (2012).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[3] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–512 are approximately the same as the Commission's average cost. The FERC 2020 average salary plus benefits for one FERC full-time equivalent (FTE) is $172,329/year (or $83.00/hour).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–011]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on December 30, 2020, the North American Electric Reliability Corporation submitted an

annual report on Find, Fix, Track and Report and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.[1]

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 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 should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

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 Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

[1] North American Electric Reliability Corp., Order Accepting With Conditions the Electric Reliability Organization's Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC 61,193 (2012) (March 2012 Order).

North American Electric Reliability Corp., Order on Compliance Filing, 143 FERC 61,253 (2013) (June 2013 Order).

North American Electric Reliability Corp., Order on Compliance Filing, 148 FERC 61,214 (2014) (September 2014 Order).

North American Electric Reliability Corp., Docket No. RC11–6–004 (Nov. 13, 2015) (delegated letter order) (November 2015 Order).

Comment Date: 5:00 p.m. Eastern Time on January 20, 2021.

Dated: January 5, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–00256 Filed 1–8–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0628; FRL–10016–60–OMS]

Agency Information Collection Activities; Renewal Request Submitted to OMB for Review and Approval; Comment Request; Experimental Use Permits (EUPs) for Pesticides (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Experimental Use Permits (EUPs) for Pesticides (EPA ICR Number 0276.17 and OMB Control Number 2070–0040), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of an existing ICR, which is currently approved through February 28, 2021. Public comments were previously requested via the **Federal Register** on August 17, 2020. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

DATES: Comments must be received on or before February 10, 2021.

ADDRESSES: Submit your comments to EPA, referencing docket identification (ID) number EPA–HQ–OPP–2017–0628, online using *http://www.regulations.gov.* EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Carolyn Siu, Mission Support Division (7101M), Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. Please note that 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.*

Abstract: The information collection provides EPA with the data necessary to determine whether to issue an EUP under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires that before a pesticide product may be distributed or sold in the U.S., it must be registered by EPA. However, FIFRA section 5 authorizes EPA to issue an EUP to allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUPs are issued either for a pesticide not registered with the Agency or for a new use of a registered pesticide.

Form Number: 8570–17.

Respondents/Affected entities: Pesticide and other Agricultural Chemical Manufacturing.

Respondent's obligation to respond: Mandatory under FIFRA section 5.

Estimated number of respondents: 31.

Frequency of response: On occasion.

Estimated total burden: 567 hours.

Estimated total costs: $37,497. This includes an estimated cost of $0 for non-

burden hour paperwork costs, *e.g.,* investment or maintenance and operational costs.

Changes in the estimates from the last approval: There are no changes in the estimates.

Dated: December 11, 2020.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00248 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0619; FRL–10016–62–OMS]

Agency Information Collection Activities; Renewal Request Submitted to OMB for Review and Approval; Comment Request; Pesticide Program Public Sector Collections (FIFRA Sections 18 & 24(c)) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR), Pesticide Program Public Sector Collections (FIFRA Sections 18 & 24(c)) (EPA ICR Number 2311.04 and OMB Control Number 2070–0182), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of ICR, which is currently approved through February 28, 2021. Public comments were previously requested via the **Federal Register** on August 17, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Comments must be received on or before February 10, 2021.

ADDRESSES: Submit your comments to EPA, referencing docket identification (ID) number EPA- HQ–OPP–2017–0619, online using *http://www.regulations.gov*.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Carolyn Siu, Mission Support Division (7101M), Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0159; email address: *siu.carolyn@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: This ICR covers the paperwork burden under the PRA that is associated with two types of pesticide registration requests made by States, U.S. Territories, or Federal agencies. Specifically, this ICR covers emergency exemption requests, which allow for an unregistered use of a pesticide, and State registrations of a pesticide use to meet a special local need (SLN). FIFRA section 18 authorizes EPA to grant emergency exemptions to States, U.S. Territories, and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. FIFRA Section 18 requests include unregistered pesticide use exemptions for specific agricultural, public health, quarantine and crisis purposes. FIFRA Section 24(c) authorizes any particular State to register additional uses of a federally registered pesticide for distribution and use within that state to meet a SLN.

Form Numbers: 8570–25 & 8570–4.

Respondents/Affected Entities: States and Federal government agencies and pesticide, fertilizer, and other agricultural chemical manufacturing.

Respondent's obligation to respond: Mandatory under FIFRA Sections 3 and 11.

Frequency of response: On Occasion.

Estimated total number of potential respondents: 283.

Estimated total burden: 25,753 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $ 1,829,103 (per year), includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is no change in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: December 11, 2020.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00249 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0618; FRL–10019–12–OW]

RIN 2040–ZA29

Effluent Guidelines Program Plan 14; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Environmental Protection Agency's (EPA) Effluent Guidelines Program Plan 14 (Plan 14). EPA prepared Plan 14 pursuant to Clean Water Act (CWA) Section 304(m) as described in the **SUPPLEMENTARY INFORMATION** section. Plan 14 provides updates on activities discussed in Preliminary Effluent Guidelines Program Plan 14 (Preliminary Plan 14) and discusses comments that were received during the public comment period.

FOR FURTHER INFORMATION CONTACT: Dr. Phillip Flanders, Engineering and Analysis Division, Office of Water, 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–8323; fax number: (202) 566–1053; email address: *flanders.phillip@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. The Effluent Guidelines Program Plan 14

Document and all supporting documents providing further details are available for review.

B. How can I get copies of these documents and other related information?

Docket. EPA has established an official public docket for these actions under Docket ID No. EPA–HQ–OW–2018–0618. The official public docket is the collection of materials that are available for public viewing at the Water Docket in EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460.

Electronic Access. You can access this **Federal Register** document electronically through the United States Government online source for federal regulations at *http://www.regulations.gov*.

Internet access. Copies of the supporting documents are available at *http://www.epa.gov/eg/effluent-guidelines-plan*.

II. Notice of Availability

A. Legal Authority.

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.,* and in particular Sections 301(d), 304(b), 304(g), 304(m), 306, 307(b) and 308 of the Act, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

B. Summary of Preliminary Effluent Guidelines Program Plan 14

EPA prepared Plan 14 pursuant to CWA Section 304(m). Effluent guidelines plans provide a summary of EPA's annual review of effluent guidelines and pretreatment standards, consistent with CWA Sections 301(d), 304(b), 304(g), 304(m), and 307(b). From these reviews, the plans identify any new or existing industrial categories selected for effluent guidelines or pretreatment standards rulemakings and provide a schedule for such rulemakings. In addition, the plans present any new or existing categories of industry selected for further review and analysis. Plan 14 provides updates on activities discussed in Preliminary Effluent Guidelines Program Plan 14 (Preliminary Plan 14) and discusses comments that were received during the public comment period.

EPA received 17 unique comment letters on Preliminary Plan 14. Commenters generally provided suggestions for improving certain analyses as well as comments for EPA to consider as it continues work on the detailed studies discussed in the Plan. EPA considered public comments and made revisions to clarify the final document, but did not change course on any substantive areas of ELG work as a result of public comments.

Plan 14 presents preliminary results from some new analyses and provides updates on EPA's reviews of industrial wastewater discharges and treatment technologies discussed in Preliminary Plan 14 including analyses of industrial sources and discharges of nutrients, proposed treatment technology reviews, and the effluent limitations guidelines database.

Plan 14 also provides updates on ongoing point source category studies, including EPA's decision to conclude the Petroleum Refining Category and planned next steps for the detailed study on the Electrical and Electronic Components Category. Plan 14 provides an update on the Pre- and Polyfluoroalkyl Substances (PFAS) Multi-Industry study, the scope of which includes organic chemical manufacturers, airports, rug and textile manufacturers, pulp and paper manufacturers, and the metal finishing point source category (added to the scope of the study after the Preliminary Plan 14 was published). Plan 14 discusses the types of information regarding PFAS that has been received to date, that EPA primarily received this information through outreach to stakeholders, and that EPA continues to evaluate this information to inform decisions about how best to address industrial PFAS discharges.

Finally, Plan 14 discusses several actions that are included in EPA's Fall Regulatory Agenda, including initiating an effort to evaluate the best available technology economically available limitations for two waste streams (landfill leachate and legacy wastewater) for the steam electric power generating point source category that were vacated in an April 2019 decision in U.S. Court of Appeals for the Fifth Circuit; and an advance notice of proposed rulemaking for the Organic Chemicals, Plastics, and Synthetic Fibers point source category to solicit additional information or data about PFAS manufacturers and formulators.

Plan 14 can be found at *http://www.epa.gov/eg/effluent-guidelines-plan*.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2021–00215 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0326; FRL–10018–80–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Asphalt Processing and Roofing Manufacture (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Asphalt Processing and Roofing Manufacture (EPA ICR Number 0661.13, OMB Control Number 2060–0002), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2021. Public comments were previously requested via the **Federal Register** on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0326, to EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable standards at 40 CFR part 60, subpart UU. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Asphalt processing and roofing manufacture facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart UU).

Estimated number of respondents: 144 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 34,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $9,240,000 (per year), which includes $5,240,000 in annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00247 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2020–0204; FRL–10018–83–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (EPA ICR Number 2522.03, OMB Control Number 2060–0720), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2021. Public comments were previously requested, via the **Federal Register**, on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2020–0204, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of municipal solid waste landfills are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A) and the applicable standards in 40 CFR part 60 subpart Cf. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Existing municipal solid waste (MSW) landfills that have accepted waste since November 8, 1987 and commenced

either construction, reconstruction, or modification on or before July 17, 2014.

Respondent's obligation to respond: Mandatory (40 CFR part 60 subpart Cf).

Estimated number of respondents: 1,912 (total).

Frequency of response: Initially, annually.

Total estimated burden: 634,000 hours (per year) for both privately-owned and publicly-owned municipal solid waste landfills, with an additional 2,100 hours for State and local agencies administering this rule. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $45,600,000 (per year) for both privately-owned and publicly-owned municipal solid waste landfills, which includes $2,760,000 in annualized capital/startup and/or operation & maintenance costs. This overall sum also includes $135,000 (per year) for State and local agencies-controlled landfills.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. The decrease in burden is due to changes in several areas. The number of respondents has been adjusted to reflects the lower expected number of landfills controlling between years 2022 through 2024 based on projected emissions, as well as the number of landfills subject between years 2022 and 2024, based on waste disposal quantities which increase over time at active landfills, and assuming that in these years landfills will be controlling under the more stringent 34 Mg/yr requirements. The estimates also subtract out landfills expected to modify during this time period and become subject to the MSW landfill NSPS instead (OMB Control Number 2060–0697). This ICR therefore reflects an increase in the total number of respondents subject to the rule, but a smaller number of controlling landfills subject to monitoring and testing requirements.

This ICR also reflects that some landfills subject to EPA approved state plans implementing Subpart Cf have completed their initial implementation activities to comply with the rule. Therefore, capital/startup costs (new equipment and testing) have decreased. O&M costs have also decreased from the previous ICR due to a decrease in the number of landfills required to control emissions and perform monitoring.

The labor burden has also decreased in this ICR as most landfills have completed their initial compliance requirements, such as testing, submitting design capacity reports, submitting collection and control system design plans. Additionally, this ICR adjusts the burden to remove requirements for certain sources (*e.g.,* legacy controllers) that would have submitted certain one-time reports under other MSW Landfill regulations, and are not required to resubmit reports under Subpart Cf. This ICR also adjusts the burden for landfills to familiarize themselves with the new rule requirements to reflect the initial burden for reviewing the Federal plan or State plans, as they are implemented, and a lower recurring burden for re-familiarizing with the rule requirements after the first year.

This ICR also adjusts the number of respondents subject to the requirements of subpart Cf which are implemented under State plans and a Federal plan to incorporate the burden associated with the Federal plan. The Federal plan is currently pending but expected to be finalized at 40 CFR part 62, subpart OOO. As of August 18, 2020, EPA data indicates that 8 State and local agencies enforce the State plans and two other state agencies are expected to have their plans effective by 2022. The remainder of these landfills will be covered by a federal plan once it becomes effective.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00244 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0019; FRL–10018–81–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Electric Utility Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Electric Utility Steam Generating Units (EPA ICR Number 1053.13, OMB Control Number 2060–0023), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2021. Public comments were previously requested via the **Federal Register** on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0019, to EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 60, subpart A),

and any changes, or additions to these Provisions, are specified at 40 CFR part 60, subpart Da. Owners or operators of the affected facilities must submit a one-time only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum. This information is being collected to assure compliance with 40 CFR part 60, subpart Da.

Form Numbers: None.

Respondents/affected entities: Owners or operators of electric utility steam generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Da).

Estimated number of respondents: 732 (total).

Frequency of response: Semiannually, quarterly.

Total estimated burden: 171,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $31,000,000 (per year), which includes $11,000,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in burden from the currently approved ICR due to a slight decrease in the number of respondents. Based on consultations with agency experts, we expect no new coal-fired boilers under subpart Da and the discontinued use of some existing coal-fired units within the industry, thus reducing the number of respondents required to conduct recordkeeping and reporting. This results in a reduction in labor burden and eliminates costs associated with initial notifications and capital/startup costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00246 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0351; FRL–10018–85–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG) (EPA ICR Number 1947.10, OMB Control Number 2060–0471), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2021. Public comments were previously requested, via the **Federal Register** on May 12, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OECA–2013–0351, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Facilities with a vegetable oil production process.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart GGGG).

Estimated number of respondents: 92 (total).

Frequency of response: Initially, occasionally, and annually.

Total estimated burden: 34,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,090,000 (per year), which includes $0 in annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. There is an increase in the number of respondents subject to the rule since the publication of the final rule in 2020. This increase is due to an assumption of a continued growth rate of one new respondent per year in the industry.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00243 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0332; FRL–10018–82–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (EPA ICR Number 1564.11, OMB Control Number 2060–0202), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2021. Public comments were previously requested via the **Federal Register** on May 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR, including its estimated burden and cost to the public, is given below. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0332, to EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person, at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the specific requirements at 40 CFR part 60, subpart Dc. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Owners or operators of small industrial-commercial-institutional steam generators with maximum design heat input capacity of 29 megawatts (MW) or less, but greater than or equal to 2.9 MW.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Dc).

Estimated number of respondents: 323 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 219,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $38,300,000 (per year), which includes $12,600,000 in annualized capital/setup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden and O&M cost from the most-recently approved ICR due to an increase in the number of respondents. This ICR assumes an industry growth rate of 11 respondents per year, or an increase of 33 respondents, since the last ICR renewal period, which results in an increase in burden and the number of responses submitted. The industry growth also results in an increase in O&M costs. This ICR also maintains a continuous growth rate of 11 respondents per year over the next three years. Because the number of new sources anticipated over the next three years has not changed, there is no increase in the anticipated capital costs reflected in this ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00245 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0403; FRL–10018–71–OMS]

Information Collection Request; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions From Operating Mill Tailings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Radon Emissions from Operating Mill Tailings (EPA ICR Number 2464.03, OMB Control Number 2060–0706) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2020. Public comments were previously requested via the **Federal Register** on August 20, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before February 10, 2021.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–

HQ–OAR–2020–0403, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Jonathan P. Walsh, Radiation Protection Division, Office of Radiation and Indoor Air, Mail Code 6608T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9238; fax number: 202–343–2304; email address: *walsh.jonathan@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: On January 17, 2017, EPA issued final revisions to the NESHAP for Radon Emissions from Operating Mill Tailings, codified at 40 CFR part 61, subpart W. These revisions were promulgated as part of a review of pre-1990 NESHAPs pursuant to Clean Air Act Section 112(q)(1). Included in the final revisions was a requirement that owners and operators of uranium recovery facilities maintain specific records pertaining to the design, construction and operation of the uranium tailings impoundments, both conventional and non-conventional, and heap leach piles. These records are to be retained at the facility and contain information regarding the approved design of the impoundments and/or heap leach pile, including but not limited to, all tests performed that prove the liner is compatible with the material(s) being placed on the liner. For non-conventional impoundments this requirement also includes written and digital photographic records showing compliance with the requirement to maintain liquid in the impoundment such that any solid materials in the impoundment are not visible above the liquid level. Both the retention of design documents required for all impoundments and the records generated during inspections to meet the liquid retention requirement for non-conventional impoundments were new requirements for collection of information that is not covered under the already existing ICR for radionuclide NESHAPs, EPA Number 1100.16, OMB Number 2060–0191.

Information collected is used by EPA to ensure that public health continues to be protected from the hazards of airborne radionuclides by compliance with these standards. Compliance is demonstrated through inspection. All facilities are required to maintain their records for the operational lifetime of the facility. In some cases, they also report their results to EPA.

Form Numbers: None.

Respondents/affected entities: The North American Industry Classification System (NAICS) codes of facilities associated with the activity of the respondents are: Uranium-Radium-Vanadium Ore Mining—212291.

Respondent's obligation to respond: Mandatory (CAA, Sec, 112; 40 CFR part 61).

Estimated number of respondents: 9 (total).

Frequency of response: Reporting (submission of digital photographs) at least monthly; more frequent or one-time collection of records, depending on activity.

Total estimated burden: 1,806 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $115,812 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 5,347 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is mainly attributable to a reduction in the number of estimated respondents. The initial ICR identified a larger universe of respondents that could potentially be subject to the newly defined requirements, many of which were (and remain) in the process of licensing and development. It is estimated that no additional facilities will become subject to these requirements in the next few years. The Agency has also made a minor adjustment, based on consultations and public comments received, in the estimated number of hours to read and become familiar with the requirements resulting from the transition of the SWIPR system from a start-up to an operations-and-maintenance mode.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–00242 Filed 1–8–21; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 14, 2021, 1:00 p.m. Eastern Time.

PLACE: Because of the COVID–19 pandemic, the meeting will be held as an audio-only conference. The public may listen to the audio-only conference by following the instructions that will be posted on *www.eeoc.gov* 24 hours before the meeting. Closed captioning services will be available.

STATUS: A portion of the meeting will be open to the public.

MATTERS TO BE CONSIDERED:

The following items will be considered at the meeting's open session:

Resolution Concerning the Commission's Authority to Commence or Intervene in Litigation

Revised Procedures for Commission Approval of Amicus Curiae Participation

The following item will be considered at the meeting's closed session:

Recommendation to participate as amicus curiae

The Legal Counsel has certified that, in his opinion, the portion of the Commission meeting scheduled for January 14, 2021 concerning participation as amicus curiae may properly be closed under the 10th exemption to the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and Commission regulation at 29 CFR 1612.4(j).

Note: In accordance with the Sunshine Act, the public will be able to listen to the Commission's deliberations and voting in the open session. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its website, *www.eeoc.gov,* and provides a recorded announcement a

week in advance on future Commission meetings.)

Please telephone (202) 663–7100 (voice) or (202) 921–2750, or email *commissionmeetingcomments@eeoc.gov* at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Rachel V. See, Acting Executive Officer, (202) 921–2545.

Dated: January 7, 2021.

Rachel V. See,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2021–00377 Filed 1–7–21; 4:15 pm]

BILLING CODE 6570–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

AGENCY Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held January 14, 2021, from 9:00 a.m. until such time as the Board may conclude its business.

ADDRESSES: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions in **SUPPLEMENTARY INFORMATION** for board meeting visitors.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: Parts of this meeting of the Board will be open to the public, and parts will be closed. If you wish to observe the open portion, at least 24 hours before the meeting, go to *FCA.gov,* select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009.

The matters to be considered at the meeting are as follows:

Open Session

Approval of Minutes

- December 10, 2020

New Business

- Criminal Referral Bookletter

Report

- Auditor's Report on FCA FY 2020 Financial Statements

Closed Executive Session

- Meeting with Auditors [1]
- Report on 2020 FISMA Audit [2]

Dated: January 6, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–00241 Filed 1–7–21; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1116; FRS 17369]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 10, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business

[1] Closed session is exempt pursuant to 5 U.S.C. 552b(c)(2).

[2] Closed session is exempt pursuant to 5 U.S.C. 552b(c)(2).

concerns with fewer than 25 employees.''

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents and Responses: 74 respondents; 74 responses.

Estimated Time per Response: 190 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 303(r) and 403.

Total Annual Burden: 14,060 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system. For these reasons, the information requested in (b) (Terrestrial Route Map) and (c) (Undersea Location Spreadsheet) above is presumptively exempt from public disclosure under Freedom of Information Act (FOIA) Exemption 3, 5 U.S.C. 552(b)(3), and section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), as implemented in 47 CFR 0.457(c)(1)(i) (exempting disclosure of ''maps showing the exact location of submarine cables''). The information requested in (a) (System Status and Restoration Messages) and (d) (Restoration Capability) described above will be considered exempt under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). If a FOIA request is filed for information submitted in response to this request, the respondent whose records are the subject of the request will be notified of the FOIA request and given the opportunity to oppose release of the records. *See* 47 CFR 0.461(d)(3). We note that the information provided in response to this request will be shared with the Department of Homeland Security's National Communications System (NCS) and relevant Executive Branch agencies on a confidential basis. *See* 44 U.S.C. 3510.

Needs and Uses: This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purposes of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems. This information will provide situational awareness regarding the operational status of submarine cable systems to the Federal government, and allow the Executive Branch to assess potential risks and threats to these critical communications systems in the context of other available information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–00194 Filed 1–8–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0761, 3060–1171; FRS 17367]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 10, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 64,218 respondents; 521,074 responses.

Estimated Time per Response: 0.5 (30 minutes) to 30 hours.

Frequency of Response: Annual reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 727,143 hours.

Annual Cost Burden: $34,350,444.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'' in the **Federal Register** on August 15, 2014, published at 79 FR 48152, which became effective on September 24, 2014.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, be closed captioned. The existing collections include petitions by video programming providers, producers, and owners for exemptions from the closed captioning rules, responses by commenters, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors (VPDs) and video programmers, recordkeeping in support of complaint responses, and compliance ladder obligations in the event of a pattern or trend of violations; recordkeeping of monitoring and maintenance activities; caption quality best practices procedures; making video programming distributor contact information available to viewers in phone directories, on the Commission's website and the websites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them); and video programmers filing of contact information and compliance certifications with the Commission.

On February 19, 2016, the Commission adopted the Closed Captioning Quality Second Report and Order, published at 81 FR 57473, August 23, 2016, amending its rules to allocate the responsibilities of VPDs and video programmers with respect to the provision and quality of closed captioning. The Commission took the following actions, among others:

(a) Required video programmers to file certifications with the Commission that (1) the video programmer (i) is in compliance with the rules requiring the inclusion of closed captions, and (ii) either is in compliance with the captioning quality standards or has adopted and is following related Best Practices; or (2) is exempt from the captioning obligation and specifies the exemption claimed.

(b) Revised the procedures for receiving, serving, and addressing television closed captioning complaints in accordance with a burden-shifting compliance model.

(c) Established a compliance ladder for the Commission's television closed captioning quality requirements.

(d) Required VPDs to use the Commission's web form when providing contact information to the VPD registry.

(e) Required video programmers to register their contact information with the Commission for the receipt and handling of written closed captioning complaints.

OMB Control Number: 3060–1171.

Title: Commercial Advertisement Loudness Mitigation (''CALM'') Act; 73.682(e) and 76.607(a).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,937 respondents and 4,868 responses.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25–80 hours.

Total Annual Burden: 6,036 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i) and (j), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission will use this information to determine compliance with the CALM Act. The CALM Act mandates that the Commission make the Advanced Television Systems Committee (''ATSC'') A/85 Recommended Practice mandatory for all commercial TV stations and cable/multichannel video programming distributors (MVPDs).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–00193 Filed 1–8–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 20–89; DA No. 20–1504; FRS 17363]

Wireline Competition Bureau and Office of The Managing Director Set July 31, 2021 Invoicing Deadline for Covid-19 Telehealth Program and Provide Post-Program Guidance

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) establishes an invoicing deadline for the COVID–19 Telehealth Program and provide COVID–19 Telehealth Program funding Awardees with additional information on the post-program report.

DATES: July 31, 2021.

ADDRESSES: You may submit the post-program report template, identified by WC Docket No. 20–89, by the following method:

• Comments must be filed electronically using the Federal

Communications Commission's Electronic Comment Filing System at: *http://fjallfoss.fcc.gov/ecfs2/*.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*.

• *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (try).

For detailed instructions for submitting the template and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Stephanie Minnock, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, *stephanie.minnock@fcc.gov* or 202–418–7400 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice in WC Docket No. 20–89; DA 20–1504 released December 18, 2020. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/DA-20-1504A1.pdf*. For more information about the COVID–19 Telehealth Program, please refer to the Commission's website at *www.fcc.gov/covid19telehealth*.

I. Introduction

The Wireline Competition Bureau (WCB) and the Office of the Managing Director (OMD) establishes a July 31, 2021, invoicing deadline for the COVID–19 Telehealth Program. Also, COVID–19 Telehealth Program funding awardees (Awardees) are provided with additional information on the post-program report, which must be filed with the Commission no later than January 31, 2022. Additionally, Awardees are reminded of the program's recordkeeping and auditing requirements.

As part of the Coronavirus Aid, Relief, and Economic Security Act, Congress appropriated $200 million to the Federal Communications Commission (Commission) ''to support efforts of health care providers to address coronavirus by providing telecommunications services, information services, and devices necessary to enable the provision of telehealth services.'' On April 2, 2020, the Commission established the COVID–19 Telehealth Program to administer the $200 million in congressionally appropriated funding. The Commission issued funding awards for 539 applications from April 16, 2020 through July 8, 2020, when the appropriated $200 million budget was exhausted. WCB set an initial deadline of September 30, 2020 for Awardees to purchase eligible connected devices and implement eligible services, but extended that deadline to December 31, 2020, after receiving multiple requests from Awardees that needed more time to purchase connected devices and/or implement services or that were experiencing delays.

II. Discussion

A. *Invoicing Deadline.* WCB and OMD developed a process for reviewing Awardees' monthly invoicing forms and supporting documentation. To further facilitate the administration of the COVID–19 Telehealth Program, the invoicing filing deadline is set for July 31, 2021. Awardees have until December 31, 2020 to purchase eligible connected devices and implement eligible services, and can receive up to six months of support for eligible services with monthly recurring charges. An invoicing deadline is necessary for efficient administration of the COVID–19 Telehealth Program and provides certainty to Awardees. Thus, the deadline of seven months after the purchase/implementation deadline of December 31, 2020 provides a reasonable timeframe for Awardees to receive their eligible services and connected devices and timely file their requests for reimbursement along with supporting documentation to the Commission. Accordingly, Awardees must file their requests for reimbursement for the cost of eligible connected devices and/or telecommunications or information services on or before July 31, 2021, in order to receive reimbursement for eligible expenses under the COVID–19 Telehealth Program.

B. *Post-Program Report.* As part of the Report and Order, FCC 20–44, the Commission stated that Awardees should provide a report to the Commission on the effectiveness of the COVID–19 Telehealth Program funding no later than six months after the conclusion of the COVID–19 Telehealth Program. Awardees, therefore, should submit their post-program reports by January 31, 2022—six months after the invoicing deadline. These reports will provide the Commission with important feedback on whether and how the COVID–19 Telehealth Program funding impacted health outcomes, patient treatment, health care facility administration, and any other relevant aspects of Awardees' response to COVID–19. Appended in the Public Notice is a post-program report template, which contains a list of questions that Awardees should respond to when developing their post-program report. Awardees are encouraged to provide any additional feedback as part of the post-program report. Once completed, Awardees should file their completed report(s) in WC Docket No. 20–89 in the Commission's electronic comment filing system, available at *https://www.fcc.gov/ecfs/*.

C. *Program Rules and Reminders.* As a reminder, Awardees must maintain records related to their participation in the COVID–19 Telehealth Program for at least three years from the last date of service under this program to demonstrate their compliance with program requirements. Awardees must present any records related to their participation in the COVID–19 Telehealth Program to the Commission or its delegates upon request. Awardees may also be subject to compliance audits to ensure compliance with rules and requirements for the COVID–19 Telehealth Program. If audited, Awardees must provide documentation related to their participation in the COVID–19 Telehealth Program.

Federal Communications Commission.

Cheryl L. Callahan, Assistant Chief,

Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2021–00315 Filed 1–8–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, January 14, 2021 at 10:00 a.m.

PLACE: Virtual meeting. Note: Because of the covid-19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the commission's website

www.fec.gov and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Welcoming Remarks
Draft Advisory Opinion 2020–02: Bertrand
Audit Division Recommendation Memorandum on the Mississippi Republican Party (A17–05)
Audit Division Recommendation Memorandum on Van Drew for Congress (A19–04)
Audit Division Recommendation Memorandum on the National Tooling & Machining Association (NTMA) Committee for a Strong Economy
(A19–10)
Proposed Final Audit Report on the Democratic Foundation of Orange County (A19–23)
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–00463 Filed 1–7–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

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 February 10, 2021.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *The R. Dean Phillips Bank Trust, Las Vegas Nevada;* to become a bank holding company and acquire voting shares of (i) Great River Bancshares, Inc., Quincy, Illinois, and thereby indirectly acquire voting shares of The Hill-Dodge Banking Company, Warsaw, Illinois; (ii) T&C Bancorp, Inc., and thereby indirectly acquire voting shares of Town & Country Bank Midwest, both of Quincy, Illinois, and North Missouri Bancorp, Inc., and The Citizens Bank of Edina, both of Edina, Missouri; (iii) Ambage, Inc., West Point, Nebraska, and thereby indirectly acquire voting shares of F&M Bank, Falls City, Nebraska; (iv) West Point Bancorp, Inc., and thereby indirectly acquire voting shares of F&M Bank, both of West Point, Nebraska, and Town & Country Bank, Las Vegas, Nevada; (v) Topeka Bancorp, Inc., and thereby indirectly acquire voting shares of Kaw Valley Bank, both of Topeka, Kansas; and (vi) HNB National Bank, Hannibal, Missouri.

Board of Governors of the Federal Reserve System, January 6, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–00288 Filed 1–8–21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements pertaining to the Commission's administrative activities, consisting of: (a) Responding to applications to the Commission pursuant to the Commission's Rules of Practice (Parts 1 and 4); (b) the FTC's consumer reporting systems; and (c) the FTC's program evaluation activities. The current clearance expires on May 31, 2021.

DATES: Comments must be filed by March 12, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act: FTC File No. P072108,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kenny Wright, Attorney, Office of the General Counsel, (202) 326–2907, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: *Title of Collection:* FTC Administrative Activities.

OMB Control Number: 3084–0169.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 452,318 hours.

Estimated Annual Labor Costs: $26,890.

Discussion

Pursuant to its Rules of Practice, the Commission collects information to carry out its administrative responsibilities. Any person, partnership, or corporation may request advice from the Commission or FTC staff regarding a course of action the requester contemplates. The Commission's rules require requesters to provide the information necessary to facilitate resolution of the requests, including information on the question to be resolved, the identity of the companies or persons involved, and other material facts. *See* FTC Rule 1.2, 16 CFR 1.2. The FTC's ethics regulations require former employees who are seeking ethical clearance to participate

in FTC matters to submit screening affidavits to facilitate resolution of their requests. *See* FTC Rule 4.1(b), 16 CFR 4.1(b). Requests to participate must include, among other things, a description of the proceeding in which participation is contemplated; the name of the Commission office or division in which the former employee was employed and the position the employee occupied; and a statement whether, while employed by the Commission, the former employee participated in any proceeding or investigation concerning the same company, individual, or industry currently involved in the matter in question. These requirements prevent the improper use of confidential nonpublic information acquired while working at the FTC. The Commission's Rules of Practice also authorize outside parties to request employee testimony, through compulsory process or otherwise, and to request documentary material through compulsory process in cases or matters to which the agency is not a party. *See* FTC Rule 4.11(e), 16 CFR 4.11(e). These rules require persons seeking testimony or material from the Commission to submit a statement in support of the request setting forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources.

The Commission receives approximately 55 such requests annually. Staff estimates respondents will incur, on average, approximately 2 hours of burden to submit a request, resulting in a cumulative 110 burden hours per year (55 requests × 2 burden hours). Based on an estimated average wage of $145/hour for executive and attorney wages, staff estimates a total annual cost burden of $15,950 (110 hours × $145). Staff estimates that requesters would incur no capital, start-up, operation, maintenance, or other similar costs associated with submitting covered requests.

The FTC also allows consumers to report fraud, identity theft, National Do Not Call Registry violations, and other violations of law through telephone hotlines and three online consumer report forms. Consumers may call a hotline phone number or log on to the FTC's website to report violations using the applicable reporting forms. The provision of this information is voluntary. The FTC also conducts customer satisfaction surveys regarding the support that the Commission's Consumer Response Center provides to consumers to obtain information about the overall effectiveness of the call center and online complaint intake forms. This information assists Bureau of Consumer Protection staff in carrying out the agency's consumer protection mission. The FTC is also mandated by Congress under the Identity Theft and Assumption Deterrence Act of 1998, 18 U.S.C. 1001 *et seq.,* to serve as the central clearinghouse for identity theft complaints.

The time necessary to file a consumer report or participate in related customer satisfaction surveys will vary. FTC staff estimates that approximately 7,750,841 respondents will submit information pursuant to these processes and that the associated burden will be 452,131 hours per year over the course of the three-year clearance. The cost per respondent to file a complaint is negligible. Participation is voluntary and will not require any labor expenditures by respondents. In addition, there are no capital, start-up, operation, maintenance, or other similar costs for respondents.

The FTC also conducts evaluations of its competition advocacy program and the effectiveness of its merger divestiture orders. The FTC's Competition Advocacy Program draws on the Commission's expertise in competition and consumer protection matters to encourage federal and state legislatures, courts, and other state and federal agencies to consider the effects of proposed actions on consumers and competition. Statutory authority for the advocacy program is found in part in sections 6(a) and (f) of the FTC Act. 15 U.S.C. 46(a) and (f). The FTC's Office of Policy and Planning evaluates the effectiveness of these advocacy comments by sending questionnaires to selected comment recipients. FTC staff sends questionnaires to approximately 20 respondents per year. FTC staff estimates that, on average, respondents will need 15 minutes or less to complete a questionnaire, yielding a cumulative burden of 5 burden hours (20 respondents per year × 15 minutes per respondent). FTC staff estimates an hourly labor cost of $100 for the time spent by survey participants (primarily, staff at state and federal agencies or members of federal and state legislatures and their staff). Thus, staff estimates a total labor cost of $25 for each response (15 minutes × $100 per hour). This yields a cumulative yearly labor costs will be approximately $500 (20 respondents × $25 per response). FTC staff estimates that respondents would incur no capital, start-up, operation, maintenance, or other similar costs for respondent to these questionnaires.

Following an order of divestiture in a merger matter, the FTC's Bureau of Competition's Compliance Division conducts brief calls with acquirers of divested assets to assess the effectiveness of these divestitures. The Commission issues, on average, 15–17 orders in merger cases per year that require divestitures or other remedies. For interviews with purchasers of divested assets, each interview typically takes less than one hour to complete. FTC staff estimates that it takes each participant no more than one hour to prepare for the interview. Accordingly, staff estimates that, for each interview, two individuals (typically a company executive and an attorney) will devote two hours each (one hour preparing and one hour participating) to responding to questions for a total of four hours. Assuming that staff evaluates approximately 17 divestitures per year during the three-year clearance period, staff estimates that the total hours burden will be 68 hours per year (17 divestiture reviews × 4 hours for preparing and participating). Staff may include approximately two monitor interviews a year, which would add at most 4 hours (2 interviews × 2 hours for preparing and participating). Interviews of monitors typically involve only the monitor and take approximately one hour to complete with no more than one hour to prepare for the interview. This yields a total burden of 72 burden hours per year. Staff estimates that the total annual labor cost, based on an estimated average of $145/hour for executive and attorney wages, would be $10,440 (72 hours × $145). There are no capital, start-up, operation, maintenance, or other similar costs to respondents.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before March 12, 2021.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 12, 2021. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we

encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment, including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 12, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–00214 Filed 1–8–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013; Docket No. 2020–0053; Sequence No. 16]

Submission for OMB Review; Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding certified cost or pricing data and data other than certified cost or pricing data.

DATES: Submit comments on or before February 10, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

B. Need and Uses

The Truth in Negotiations Act, 10 U.S.C. 2306a and 41 U.S.C. 3502, requires the Government to obtain certified cost or pricing data from contractors prior to the award of certain contract actions. Contractors may be exempt from this requirement under certain conditions. This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

a. *52.214–28, Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding.* When contracting by sealed bidding, this clause requires contractors to require subcontractors to submit certified cost or pricing data for a modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1).

b. *52.215–12, Subcontractor Certified Cost or Pricing Data.* When contracting

by negotiation, this clause requires contractors to require subcontractors to submit certified cost or pricing data.

c. *52.215–13, Subcontractor Certified Cost or Pricing Data—Modifications.* When contracting by negotiation, this clause requires contractors to require subcontractors to submit certified cost or pricing data for a modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403–4(a)(1).

d. *52.215–20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.* When contracting by negotiation, this provision requires offerors, if not granted an exception, to prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, unless the contracting officer and the contractor agree to a different format.

e. *52.215–21, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.* When contracting by negotiation, this clause requires contractors, if not granted an exception, to submit, for a modification or price adjustment expected to exceed the threshold set forth at FAR 15.403–4(a)(1), certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15–2 of FAR 15.408, unless the contracting officer and the contractor agree to a different format.

Certified cost or pricing data is used by agencies to assure that contract prices and any subsequent contract modifications are fair and reasonable.

C. Annual Burden

Respondents: 28,399.

Annual Responses: 148,094.

Total Burden Hours: 9,160,160.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 71077, on November 6, 2020. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0013, Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–00264 Filed 1–8–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153; Docket 2020–0053; Sequence No. 15]

Submission for OMB Review; Alternatives to Government-Unique Standards

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and extension of a previously approved information collection requirement concerning alternatives to Government-unique standards.

DATES: Submit comments on or before February 10, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0153, Alternatives to Government-Unique Standards. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or *jennifer.hawes@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. *OMB control number, Title, and any Associated Form(s):* 9000–0153, Alternatives to Government-Unique Standards.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the provision at Federal Acquisition Regulation (FAR) 52.211–7, Alternatives to Government-Unique Standards. This solicitation provision permits offerors to propose alternatives to Government-unique standards in response to Government solicitations. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. The information collected from offerors will be used by Federal agencies to determine if voluntary consensus standards will satisfy the Government's needs for a particular solicitation, in order to comply with OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, and Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 15 U.S.C. 272 note).

This OMB Control Number was previously entitled ''OMB Circular A–119,'' but has been updated to reflect the information collection requirement.

C. Annual Burden

Respondents: 100.

Total Annual Responses: 100.

Total Burden Hours: 100.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 70622, on November 5, 2020. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB

Control No. 9000–0153, Alternatives to Government-Unique Standards.

William F. Clark,

Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2021–00265 Filed 1–8–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CK–21–001, US Travelers Health Research, Surveillance, Communication, and Outreach Network; RFA–CK–21–002, Emerging Infections Network—Research for Preventing, Detecting, and Managing Travelers who Acquire Infectious Diseases Abroad; and RFA–CK–21–003, Monitoring Cause-specific School Absenteeism for Estimating Community-wide Influenza and SARS-CoV–2 Transmission; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CK–21–001, US Travelers Health Research, Surveillance, Communication, and Outreach Network; RFA–CK–21–002, Emerging Infections Network—Research for Preventing, Detecting, and Managing Travelers who Acquire Infectious Diseases Abroad; and RFA–CK–21–003, Monitoring Cause-specific School Absenteeism for Estimating Community-wide Influenza and SARS-CoV–2 Transmission; February 10–11, 2021, 10:00 a.m.—5:00 p.m., EST.

Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Blvd., Atlanta, GA 30329 which was published in the **Federal Register** on November 30, 2020, Volume 85, Number 230, pages 76575–76576.

The meeting is being amended to change the meeting date to February 10, 2021. The meeting is closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE, Mailstop US8–1, Atlanta, Georgia 30329–4027, (404) 718–8833, *ganderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00280 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–PS–21–002, Implementation Research Consortium to Accelerate Impact of Health Department-Delivered HIV Prevention Activities.

Date: March 23, 2021.

Time: 10:00 a.m.–5:00 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Boulevard, Atlanta, Georgia 30329–4027.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE, Mailstop US8–1, Atlanta, Georgia 30329–4027, (404) 718–8833, *ganderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00284 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—Funding Opportunity Announcement (FOA), PAR 20–280, Cooperative Research Agreements to the World Trade Center Health Program (U01); and RFA OH–21–004, Exploratory/Developmental Grants Related to the World Trade Center Health Program (R21).

Dates and Times: March 16–17, 2021, from 9:00 a.m.–6:00 p.m., EDT; and March 18, 2021, from 9:00 a.m.–12:00 p.m., EDT.

Place: Virtual.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Marilyn Ridenour, B.S.N., M.B.A., M.P.H., C.P.H., C.I.C., CAPT, USPHS, Scientific Review Officer, CDC, National

Institute for Occupational Safety and Health, 1095 Willowdale Road, Mailstop 1811, Morgantown, West Virginia 26505, Telephone: (304) 285–5879.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00283 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–21–001, Promoting the Importance of Infant and Childhood Vaccination Among Pregnant Women by Prenatal Care Providers; and RFA–IP–21–002, US Enhanced Surveillance Network to Assess Burden, Natural History, and Effectiveness of Vaccines to Prevent Enteric and Respiratory Viruses in Children.

Date: April 13–14, 2021.

Time: 10:00 a.m.–5:00 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Boulevard, Atlanta, Georgia 30329–4027.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE, Mailstop US8–1, Atlanta, Georgia 30329–4027, (404) 718–8833, *ganderson@cdc.gov*.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00281 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—Funding Opportunity Announcement (FOA), RFA OH–21–003, Extension of the World Trade Center Health Registry (U50).

Date: April 13, 2021.

Time: 9:00 a.m.–6:00 p.m., EDT.

Place: Virtual.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Marilyn Ridenour B.S.N., M.B.A., M.P.H., C.P.H., C.I.C., CAPT, USPHS, Scientific Review Officer, CDC, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Mailstop 1811, Morgantown, West Virginia 26505, Telephone: (304) 285–5879.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00285 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–21–003, Collaborative Research on Influenza, Coronavirus Disease 2019 (COVID–19), and Other Respiratory Pathogens in South Africa.

Date: May 13, 2021.

Time: 10:00 a.m.–5:00 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Boulevard, Atlanta, Georgia 30329–4027.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE, Mailstop US8–1, Atlanta, Georgia 30329–4027, (404) 718–8833, *ganderson@cdc.gov*.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–00282 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2021–0001]

Proposed Revised Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA), the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) develops vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. HHS/CDC seeks written comment on proposed updated vaccine information statements for vaccines covered by the National Vaccine Injury Compensation Program (VICP).

DATES: Written comments must be received on or before March 12, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0001, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments should be addressed to Suzanne Johnson-DeLeon (*VISComments@cdc.gov*), National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop H24–6, 1600 Clifton Road NE, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and docket number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Johnson-DeLeon, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop H24–6, 1600 Clifton Road NE, Atlanta, Georgia 30329; *VISComments@cdc.gov.*

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the patient's parent or legal representative in the case the patient is a child) receiving vaccines covered under the National Vaccine Injury Compensation Program (VICP).

Development and revision of the vaccine information materials, also known as vaccine information statements (VISs), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring provision of vaccine information materials before vaccine administration for them as well: Hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and seasonal influenza vaccines. Instructions for use of the vaccine information materials are found on the CDC website at: *https://www.cdc.gov/vaccines/hcp/vis/index.html.*

CDC is proposing updated versions to simplify, streamline, and standardize the content and formatting of the vaccine information statements.

As proposed, each of the updated VISs contains the same seven sections. Formatting of the documents is identical, using the same fonts and layout.

Section 1 (''Why get vaccinated?'') provides an overview of the disease(s) prevented by the vaccine. This section is being updated to provide a clearer, more plain-language description of the disease and its impact.

Section 2 (*e.g.,* ''Hepatitis A vaccine'') describes the vaccine and recommendations for its use. A general description of the usually-recommended schedule is provided and groups of people for whom the vaccine is typically recommended are identified. Updates to the text in this section remove some of the more specific details related to schedules and numbers of doses, which can vary depending on an individual patient's circumstances.

Section 3 (''Talk with your health care provider'') highlights conditions and medical history that should be brought to the vaccine provider's attention when deciding whether the vaccine is appropriate for an individual patient. Previously entitled ''Some people should not get this vaccine,'' this section has been refocused to be broader

in scope. Some of the conditions listed in this section are contraindications or precautions to vaccination, while others are intended to prompt the patient and provider to ask additional questions and investigate further.

Section 4 (''Risks of a vaccine reaction'') sets forth adverse events that could occur after vaccination. Included are discussion of the risk of severe allergic reaction and the remote possibility of serious injury or death. Language for this section has been standardized across VISs to the extent possible while still adhering to vaccine-specific information from the recommendations of the Advisory Committee on Immunization Practices (ACIP).

The complete text of section 5 (''What if there I a serious problem?''), section 6 (''The National Vaccine Injury Compensation Program''), and section 7 (''How can I learn more?''), as proposed, matches exactly across all of the vaccine information materials, except for the VIS for rotavirus vaccine which includes additional information related to the risk of intussusception (a very serious adverse event that is specific to rotavirus vaccine) in sections 5 and 6.

Text in all sections of the VISs is updated using plain language terms and concepts, and removing some of the more detailed numerical and statistical data, to make the documents more easily understandable to the general public. Because the vaccine information statements are intended for patient education, content that is relevant for providers but not for patients is removed. Language has been updated to reflect a provider-neutral approach, reflecting the fact that vaccines may be administered by medical professionals in a variety of specialty fields (*e.g.,* using the term ''health care provider'' instead of ''doctor'' or ''nurse'').

The vaccine information materials referenced in this notice are being developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and health care provider groups.

We invite written comment on the proposed vaccine information materials. Copies of the proposed vaccine information materials are available at *http://www.regulations.gov* (see Docket Number CDC–2021–0001). Comments submitted will be considered in finalizing these materials. When the final materials are published in the **Federal Register**, the notice will include an effective date for their mandatory use.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021–00266 Filed 1–8–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0356]

Submission for OMB Review; Formative Data Collections for ACF Research and Evaluation

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching generic clearance for Formative Data Collections for ACF Research and Evaluation (OMB #0970–0356). There are no changes to the proposed types of information collection or uses of data, but the request does include an increase to the estimated number of respondents and, therefore, the overall burden estimate.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning 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:* ACF programs promote the economic and social well-being of families, children, individuals, and communities. OPRE studies ACF programs, and the populations they serve, through rigorous research and evaluation projects. These include evaluations of existing programs, evaluations of innovative approaches to helping low-income children and families, research syntheses, and descriptive and exploratory studies. OPRE's research serves to provide further understanding of current programs and service populations, explore options for program improvement, and assess alternative policy and program designs. OPRE anticipates undertaking a variety of new research projects related to welfare, employment and self-sufficiency, Head Start, child care, healthy marriage and responsible fatherhood, family and youth services, home visiting, child welfare, and other areas of interest to ACF. Under this generic clearance, ACF engages in a variety of formative data collections with researchers, practitioners, technical assistance providers, service providers, and potential participants throughout the field to fulfill the following goals: (1) Inform the development of ACF research, (2) maintain a research agenda that is rigorous and relevant, (3) ensure that research products are as current as possible, and (4) inform the provision of technical assistance. ACF uses a variety of techniques including semi-structured discussions, focus groups, surveys, and telephone or in-person interviews, in order to reach these goals.

Following standard OMB requirements, OPRE will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review requests within 10 days of submission.

Respondents: Example respondents include: key stakeholder groups involved in ACF projects and programs, state or local government officials, service providers, participants in ACF programs or similar comparison groups, experts in fields pertaining to ACF research and programs, or others involved in conducting ACF research or evaluation projects.

ANNUAL BURDEN ESTIMATES

Instrument	Estimated total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Semi-Structured Discussions and Focus Groups	3,000	1	2	6,000
Interviews	1,500	1	1	1,500
Questionnaires/Surveys	1,125	1	.5	563

Estimated Total Annual Burden Hours: 8,063

Authority: Social Security Act, Sec. 1110 [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–00209 Filed 1–8–21; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2635]

Potential Approach for Defining Durations of Use for Medically Important Antimicrobial Drugs Intended for Use In or On Feed: A Concept Paper; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is requesting comments on a document entitled ''Potential Approach for Defining Durations of Use for Medically Important Antimicrobial Drugs Intended for Use In or On Feed: A Concept Paper.'' The concept paper outlines a potential framework for how sponsors of new animal drug products containing medically important antimicrobial drugs approved for use in or on animal feed might voluntarily establish appropriately defined durations of therapeutic administration to food-producing animals where none currently exist. Establishing appropriately defined durations of use to mitigate development of antimicrobial resistance would be consistent with previous efforts by FDA to protect public health by promoting the judicious use of these drugs in food-producing animals.

DATES: Submit either electronic or written comments by April 12, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 12, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 12, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–2635 for ''Potential Approach for Defining Durations of Use for Medically Important Antimicrobial Drugs Intended for Use In or On Feed: A Concept Paper.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the

''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit written requests for single copies of the concept paper to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the concept paper.

FOR FURTHER INFORMATION CONTACT: John Mussman, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0589, *john.mussman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In response to recommendations made by FDA in Guidance for Industry (GFI) #213,[1] as part of a strategy to address antimicrobial resistance associated with the use of antimicrobial drugs in animal agriculture, sponsors of all new animal drugs containing antimicrobial drugs important to human medicine (medically important antimicrobial drugs) approved for use in or on the feed or in the drinking water of food-producing animals worked with FDA over a 3-year period from 2013 to 2016 to voluntarily withdraw approval of indications that were not considered necessary for assuring animal health (production indications) and to voluntarily change the marketing status of all remaining approved uses of such new animal drugs from ''over the counter'' to either by veterinary prescription or by veterinary feed directive, as applicable.

In September 2016, FDA announced that it intended to enter the next phase of its efforts to mitigate antimicrobial resistance by focusing on medically important antimicrobial drugs used in animal feed or water that have at least one therapeutic indication without a defined duration of use. In a notice published in the **Federal Register** on September 14, 2016 (81 FR 63187), the Agency requested information from the public about how to establish appropriately targeted durations of use for therapeutic products affected by GFI #213 with no defined duration of use. Public feedback received in response to that request for information was taken into consideration during development of this concept paper.

On September 14, 2018, FDA released a 5-year action plan for supporting antimicrobial stewardship in veterinary settings.[2] This plan includes an action item intended to ensure that all medically important antimicrobial drugs used in or on the feed or drinking water of food-producing animals have an appropriately targeted duration of use.[3]

II. Request for Comments

We are requesting early input and comments from the public on a concept paper that outlines a potential framework for how sponsors of approved new animal drug applications and abbreviated new animal drug applications for products containing medically important antimicrobial drugs for use in or on the feed of food-producing animals could voluntarily change the approved conditions of use of these drugs to establish appropriately defined durations of use for those indications that currently have an undefined duration of use. A copy of the concept paper may be obtained as described in section III below.

For the purpose of this potential framework, the term ''undefined duration of use'' means that for one or more of the indications for which the drug is approved, the product's labeling either includes no information regarding the duration of administration or otherwise does not provide an appropriately targeted duration of use. Although FDA's 5-year action plan for supporting antimicrobial stewardship that issued in September 2018 included an action item calling for the Agency to develop a strategy for establishing appropriately defined durations of use for medically important antimicrobial drugs used in or on the feed or drinking water of food-producing animals, the Center for Veterinary Medicine later determined that all of the approved uses of medically important antimicrobial drugs in dosage forms other than feed already have appropriately defined durations of use. For this reason, the scope of the concept paper is limited to those drugs that are approved for use in or on medicated feed.

The concept paper is intended to outline for sponsors and other stakeholders a potential process framework for how to make voluntary changes to the approved conditions of use of their medically important antimicrobial drugs administered in or on the medicated feed of food-producing animals to establish appropriately defined durations of use where none currently exist. Establishing appropriately defined durations of use to mitigate the development of antimicrobial resistance would be consistent with previous efforts by FDA to protect public health by promoting the judicious use of these drugs in food-producing animals.

Under the potential framework described in the concept paper, the process for revising the conditions of use would include making changes to the approved labeling for the product to appropriately define duration of use and, when appropriate, providing additional information to be included on the product's labeling that would be relevant to the veterinarian in determining when drug administration should be initiated or stopped in accordance with the approved labeling and consistent with the principles of judicious use of antimicrobials. In addition, were the potential framework later to be adopted through guidance, sponsors who choose to voluntarily establish appropriately defined durations of use for their products would be expected to submit data or other information supporting effectiveness at the shortest duration of use proposed for the labeling.

The potential framework includes a possible timeline for sponsors, with two phases: Phase 1, reassessing the existing data used to support the original approval of the affected product indications, considering what additional data or information might be needed, and formulating plans to obtain such data or information; and Phase 2, taking steps to obtain approval of revisions to conditions of use for their affected products. The potential framework also includes possible timelines for making labeling changes to combination proprietary free-choice medicated feeds and generic products, as well as a possible timeline for sponsors who intend to voluntarily withdraw the approval of an indication or an entire application rather than submit data or other information to define a duration of use.

We do not intend for the concept paper described in this notice to produce any decisions or new positions on specific regulatory issues or processes. Rather, the intent is to gather

[1] See GFI #213, ''New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209,'' December 2013. (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cvm-gfi-213-new-animal-drugs-and-new-animal-drug-combination-products-administered-or-medicated-feed*)

[2] See FDA's 5-year action plan entitled, ''Supporting Antimicrobial Stewardship in Veterinary Settings: Goals for Fiscal Years 2019–2023.'' (*https://www.fda.gov/media/115776/download*)

[3] See Action item 1.1.2 of the 5-year plan.

information and obtain early input from the public on a potential framework for how sponsors may voluntarily change the approved conditions of use of medically important antimicrobial drugs used in or on the medicated feed of food-producing animals to establish an appropriately defined duration of use for those indications that currently have an undefined duration of use. The concept paper does not contain recommendations and does not constitute draft or final guidance by FDA. It should not be used for any purpose other than to facilitate public comment. FDA intends to consider all information and comments received on the concept paper before issuing draft guidance for additional comment.

We are specifically interested in receiving public comments on the following questions:

1. Are the potential timeframes outlined in the concept paper reasonable to achieve the goals described in the concept paper? If not, are there specific scientific or administrative barriers that would prevent sponsors from meeting these timeframes?

2. Are the potential processes for revising the applications described in the concept paper reasonable? If not, what specific adjustments could be made to improve these processes?

3. Are there other factors we should consider regarding this potential framework? If so, what are they?

III. Electronic Access

Persons with access to the internet may obtain the concept paper at either *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry* or *https://www.regulations.gov.*

Dated: January 4, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–00189 Filed 1–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HHS–NIH–CDC–SBIR PHS 2021–1 Phase I: Reagents for Immunologic Analysis of Non-Mammalian and Underrepresented Mammalian Models (Topic 094) (For SBIRs Phase I)

Date: January 28, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20892 (Virtual Meeting),

Contact Person: Kelly L. Hudspeth, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20852, 240–669–5067, *kelly.hudspeth@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HHS–NIH–CDC–SBIR PHS 2021–1 Phase II: Reagents for Immunologic Analysis of Non-Mammalian and Underrepresented Mammalian Models (Topic 094) (For SBIRs Phase II).

Date: January 29, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly L. Hudspeth, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20852, 240–669–5067, *kelly.hudspeth@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00219 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Communities of Practice Webinar on Non-Animal Approaches for Mixtures Assessment; Notice of Public Webinar; Registration Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public webinar ''Non-animal Approaches for Mixtures Assessment.'' The webinar is organized on behalf of ICCVAM by the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). Interested persons may participate via WebEx. Time will be allotted for questions from the audience. Information about the webinar and registration are available at *https://ntp.niehs.nih.gov/go/commprac-2021.*

DATES:

Webinar: January 26, 2021, 9:00 a.m. to approximately 11:00 a.m. EST.

Registration for Webinar: January 4, 2021, until 11:00 a.m. EST January 26, 2021.

Registration to view the webinar is required.

ADDRESSES: Webinar web page *https://ntp.niehs.nih.gov/go/commprac-2021.*

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Kleinstreuer, Acting Director, NICEATM, Division of NTP, NIEHS, P.O. Box 12233, K2–16 Research Triangle Park, NC 27709. Phone: 984–287–3150, Email: *Nicole.kleinstreuer@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2032, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of toxicity testing methods that protect human health and the environment while replacing, reducing, or refining animal use. ICCVAM also provides guidance to test method developers and facilitates collaborations that promote the development of new test methods. To address these goals, ICCVAM will hold a Communities of Practice webinar on ''Non-animal Approaches for Mixtures Assessment.''

While most available toxicity data are for single chemicals, humans are often

exposed to chemicals as mixtures. Assessing the safety of a mixture is a complex process that requires consideration of both the toxicity of each chemical component of the mixture and the potential for interaction among the components to affect toxicity of the overall mixture. Additionally, most alternative methods and approaches used for assessing chemical safety are developed and evaluated using single chemicals. This can result in lack of clarity about whether a method is appropriate to use for assessing toxicity of a particular mixture.

This webinar will discuss new approach methodologies for assessing exposure to, and potential hazards associated with, chemical mixtures. Key insights and ongoing activities will be described in three presentations featuring speakers from U.S. federal research and regulatory agencies. The preliminary agenda and additional information about presentations will be posted at *https://ntp.niehs.nih.gov/go/commprac-2021* as available.

Webinar and Registration: This webinar is open to the public with time scheduled for questions by participants following each presentation. Registration for the webinar is required and will be open from January 4, 2021, through 11:00 a.m. EST on January 26, 2021. Registration is available at *https://ntp.niehs.nih.gov/go/commprac-2021.* Interested individuals are encouraged to visit this web page to stay abreast of the most current webinar information. Registrants will receive instructions on how to access and participate in the webinar in the email confirming their registration.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 17 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability. ICCVAM also promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *https://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *https://ntp.niehs.nih.gov/go/niceatm.*

Dated: January 6, 2021.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2021–00227 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2021–1 Phase I: Improving Technologies to Make Large-scale High Titer Phage Preps (Topic 95).

Date: February 5, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2018–1 Phase II: Improving Technologies to Make Large-scale High Titer Phage Preps (Topic 95).

Date: February 5, 2021.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E72A, Rockville, MD 20892–9823, (240) 669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00222 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, January 29, 2021, 10:00 a.m. to 05:00 p.m., a virtual meeting, which was published in the **Federal Register** on November 25, 2020, 85 FR 75342.

The meeting notice is amended to change the open session meeting end time as follows: The open session will now be held from 11:00 a.m. to 3:50 p.m.

Dated: January 5, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00221 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: February 8–9, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20852, (240) 669–5026, *haririmf@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00223 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HHS–NIH–CDC–SBIR PHS 2021–1: Point-of-Care HIV Viral Load, Drug Resistance, and Adherence Assays (Topic 87).

Date: February 5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kristina Wickham, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22B, Rockville, MD 20852, 301–761–5390, *kristina.wickham@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00220 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Regents, February 9–10, 2021, 9:00 a.m. to 5:00 p.m. at the National Institutes of Health, Building 38, Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on November 20, 2020, 85 FR 225, Page 74361.

This notice is being amended to change the meeting to a one-day meeting on February 9, 2021 and the time change to 10 a.m. to 4:45 p.m. The URL link to this meeting is: *https://videocast.nih.gov.* Any member of the public may submit written comments no later than 15 days after the meeting.

Dated: January 5, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–00186 Filed 1–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0022]

Agency Information Collection Activities: Entry Summary

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 10, 2021) to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC. 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP

programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 47977) on August 7, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry Summary.
OMB Number: 1651–0022.
Form Number: 7501.
Current Action: CBP proposes to extend the expiration date of this collection of this information collection. There is no change to the burden hours or the information collected.
Type of Review: Extension (without change).
Affected Public: Importer, importer's agent for each import transaction.
Abstract: CBP Form 7501, *Entry Summary,* is used to identify merchandise entering the commerce of the United States, and to document the amount of duty and/or tax paid. CBP Form 7501 is submitted by the importer, or the importer's agent, for each import transaction. The data on this form is used by CBP as a record of the import transaction; to collect the proper duty, taxes, certifications and enforcement information; and to provide data to the U.S. Census Bureau for statistical purposes. CBP Form 7501 must be filed within 10 working days from the time of entry of merchandise into the United States. Collection of the data on this form is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 142.11 and CFR 141.61. CBP Form 7501 and accompanying instructions can be found at *https://www.cbp.gov/newsroom/publications/forms?title=7501&=Apply.*

7501-Formal Entry (Electronic Submission)

Estimated Number of Respondents: 2,336.
Estimated Number of Annual Responses per Respondent: 9,903.
Estimated Number of Total Annual Responses: 23,133,408.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 1,920,072.86.

7501-Formal Entry (Paper Submission)

Estimated Number of Respondents: 28.
Estimated Number of Annual Responses per Respondent: 9,903.
Estimated Number of Total Annual Responses: 277,284.
Estimated Time per Response: 20 minutes.
Estimated Total Annual Burden Hours: 92,335.57.

*7501-Formal Entry With Softwood Lumber Act of 2008 * (Paper Only)*

Estimated Number of Respondents: 210.
Estimated Number of Annual Responses per Respondent: 1,905.
Estimated Number of Total Annual Responses: 400,050.
Estimated Time per Response: 40 minutes.
Estimated Total Annual Burden Hours: 266,433.

7501-Informal Entry (Electronic Submission)

Estimated Number of Respondents: 1,883.
Estimated Number of Annual Responses per Respondent: 2,582.
Estimated Number of Total Annual Responses: 4,861,906.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden Hours: 403,538.19.

7501-Informal Entry (Paper Submission)

Estimated Number of Respondents: 19.
Estimated Number of Annual Responses per Respondent: 2,582.
Estimated Number of Total Annual Responses: 49,058.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 12,264.5.

7501A-Document/Payment Transmittal (Paper Only)

Estimated Number of Respondents: 20.
Estimated Number of Annual Responses per Respondent: 60.
Estimated Number of Total Annual Responses: 1,200.
Estimated Time per Response: 15.
Estimated Total Annual Burden Hours: 300.

Exclusion Approval Information Letter

Estimated Number of Respondents: 5,000.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 5,000.
Estimated Time per Response: 3 minutes.
Estimated Total Annual Burden Hours: 250.

Dated: January 6, 2021.

Seth D. Renkema,
Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–00254 Filed 1–8–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0001]

Agency Information Collection Activities: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 10, 2021) to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 85 FR Page 68903) on October 30, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.

OMB Number: 1651–0001.

Form Number: CBP Form 1302, CBP Form 1302A, CBP Form 7509, CBP Form 7533.

Current Action: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form 1302: The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration,* or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38. 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2020-Apr/CBP%20Form%201302_0.pdf.* Although the form has been mostly automated through the Automated Commercial Environment (ACE), there are still circumstances where a paper CBP Form 1302 is required due to not being captured in ACE. CBP is working to automate the remaining use cases of the CBP for the CBP Form 1302 through the Vessel Entrance and Clearance System (VECS).

CBP Form 1302A: The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms,* or CBP-approved electronic equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87–4.89, and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2018-Feb/CBP%20Form%201302A_0.pdf.* Certain functions of the paper CBP Form 1302A that are not part of the automated export manifest process will also be automated through VECS.

Electronic Ocean Export Manifest: CBP began a pilot in 2015 to electronically collect the ocean export manifest information. This information is transmitted to CBP in advance via the Export Information System within the Automated Commercial Environment (ACE).

CBP Form 7509: The aircraft commander or agent must file Form 7509, *Air Cargo Manifest,* with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118 and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509_0.pdf.*

Air Cargo Advance Screening (ACAS): As provided by 19 CFR 122.48b, for any inbound aircraft required to make entry that will have commercial cargo aboard, the inbound air carrier or other eligible party must transmit, via a CBP-approved electronic interchange system, specified advance data concerning the inbound cargo to CBP as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

Electronic Air Export Manifest: CBP began a pilot in 2015 to electronically collect the air export manifest information. This information is transmitted to CBP in advance via the ACE's Export Information System.

CBP Form 7533: The master or person in charge of a conveyance files CBP Form 7533, *INWARD CARGO MANIFEST FOR VESSEL UNDER FIVE TONS, FERRY, TRAIN, CAR, VEHICLE, ETC,* which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61, 123.91, and 123.92, and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533_0.pdf.*

Electronic Rail Export Manifest: CBP began a pilot in 2015 to electronically collect the rail export manifest

information. This information is transmitted to CBP in advance via the ACE's Export Information System.

Manifest Confidentiality: An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31.

Vessel Stow Plan: For all vessels transporting goods to the US, except for any vessel exclusively carrying bulk cargo, the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the United States. The vessel stow plan is provided for by 19 CFR 4.7c.

Container Status Messages (CSMs): For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

Importer Security Filing (ISF): For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames outlined in 19 CFR 149.2. Transmission of these data elements provide CBP with advance information about the shipment.

Type of Collection: Air Cargo Manifest (CBP Form 7509) Air Cargo Advanced Screening (ACAS).

Estimated Number of Respondents: 215.

Estimated Number of Annual Responses per Respondent: 6820.4651.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 366,600.

Type of Collection: Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533).

Estimated Number of Respondents: 33,000.

Estimated Numbers of Annual Responses per Respondent: 291.8.

Estimated Number of Total Annual Responses: 9,629,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 962,940.

Type of Collection: Cargo Declaration (CBP Form 1302).

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses per Respondent: 300.

Estimated Number of Total Annual Responses: 3,000,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,500,000.

Type of Collection: Export Cargo Declaration (CBP Form 1302A).

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Type of Collection: Importer Security Filing.

Estimated Number of Respondents: 240,000.

Estimated Number of Annual Responses per Respondent: 33.75.

Estimated Number of Total Annual Responses: 8,100,000.

Estimated Time per Response: 2.19 hours.

Estimated Total Annual Burden Hours: 17,739,000.

Type of Collection: Vessel Stow Plan.

Estimated Number of Respondents: 163.

Estimated Number of Annual Responses per Respondent: 109.

Estimated Number of Total Annual Responses: 17,767.

Estimated Time per Response: 1.79 hours.

Estimated Total Annual Burden Hours: 31,803.

Type of Collection: Container Status Messages.

Estimated Number of Respondents: 60.

Estimated Number of Annual Responses per Respondent: 4,285,000.

Estimated Number of Total Annual Responses: 257,100,000.

Estimated Time per Response: .0056 minutes.

Estimated Total Annual Burden Hours: 23,996.

Type of Collection: Request for Manifest Confidentiality.

Estimated Number of Respondents: 5,040.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,040.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,260.

Type of Collection: Electronic Air Export Manifest.

Estimated Number of Respondents: 260.

Estimated Number of Annual Responses per Respondent: 5,640.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 121,711.

Type of Collection: Electronic Ocean Export Manifest.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 400.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 1.5 minutes.

Estimated Total Annual Burden Hours: 5,000.

Type of Collection: Electronic Rail Export Manifest.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 300.

Estimated Number of Total Annual Responses: 15,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2,490.

Dated: January 6, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–00259 Filed 1–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0075]

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 10, 2021) to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (85 FR 68905) on October 30, 2020, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Drawback Process Regulations.
OMB Number: 1651–0075.
Form Number: CPB Form 7553.
Current Action: This submission is being made to extend the expiration date with no change to the burden hours.
Type of Review: Extension (without change).
Affected Public: Businesses.
Abstract: The collections of information related to the drawback process are required as per 19 CFR part 190 (Modernized Drawback), which provides for refunds of duties, taxes, and fees for certain merchandise that is imported into the United States where there is a subsequent related exportation or destruction. All claims for drawback, sometimes referred to as TFTEA-Drawback, must be filed electronically in the Automated Commercial Environment (ACE), in accordance with the Trade Facilitation Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122), 19 U.S.C. 1313, and in compliance with the regulations in part 190, 181 (NAFTA Drawback), and 182 (USMCA Drawback). Specific information on completing a claim is available in the drawback CBP and Trade Automated Interface Requirement (CATAIR) document at: *https://www.cbp.gov/document/guidance/ace-drawback-catair-guidelines.*

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (NOI), documents both the exportation and destruction of merchandise eligible for drawback. The NOI is the official notification to CBP that an exportation or destruction will occur for drawback eligible merchandise. The CBP Form 7553 has been updated to comply with TFTEA-Drawback requirements and is accessible at *http://www.cbp.gov/newsroom/publications/forms.*

Relevant Regulations and Statutes

Title 19, part 181—*https://ecfr.io/Title-19/Part-181.*

Title 19, part 182—*https://ecfr.federalregister.gov/current/title-19/chapter-I/part-182?toc=1.*

Title 19, part 190—*https://ecfr.io/Title-19/Part-190.*

19 U.S.C. 1313—*https://www.govinfo.gov/content/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1313.pdf.*

19 U.S.C. 1313 authorizes the information collected on the CBP form 7553 as well as in the ACE system for the electronic drawback claim.

The New Data Elements in ACE for Drawback include the following:

1. Substituted Value per Unit
2. Entry Summary Line Item Number
3. Bill of Materials/Formula
4. Certificate of Delivery/Drawback Eligibility Indicator
5. Import Tracing Identification Number (ITIN)
6. Manufacture Tracing Identification Number (MTIN)
7. Certification for Valuation of Destroyed Merchandise
8. Substituted Unused Wine Certification
9. Certification of Eligibility for AP and/or WPN Privilege(s)
10. Identification of Accounting Methodology
11. Indicator for Notice of Intent To Export or Destroy
12. Indicator for Waiver of Drawback Claim Rights

New data elements added to the CBP Form 7553:

1. Continuation sheet (#15–19)
2. Line item number added (#15)
3. Rejected merchandise box added (#20)
4. Instructions were edited to comply with TFTEA-Drawback requirements

This collection of information applies to the individuals and companies in the trade community who are and are not familiar with drawback, importing and exporting procedures, and with the CBP regulations.

Please note that CBP Forms 7551 and 7552 are both abolished. From February 24, 2019, onward, TFTEA-Drawback, as provided for in part 190, is the only legal framework for filing drawback claims. Sections 190.51, 190.52, and 190.53 provide the requirements to submit a drawback claim electronically.

Sections 190.10 and 190.24 require that any transfers of merchandise must be evidenced by business records, as defined in section 190.2.

Type of Information Collection: CBP Form 7553 Notice of Intent to Export/Destroy Merchandise.

Estimated Number of Respondents: 3,066.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 66,772.

Estimated Time per Response: 33 minutes (.55 hours).

Estimated Total Annual Burden Hours: 38,582.

Dated: January 6, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–00257 Filed 1–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. FEMA–2020–0031]

Privacy Act of 1974; System of Records

AGENCY: Federal Emergency Management Agency, U.S. Department of Homeland Security.

ACTION: Notice of a Modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Homeland Security (DHS) proposes to modify a current system of records titled, ''DHS/Federal Emergency Management Agency (FEMA)-014 Hazard Mitigation Planning and Flood Mapping Products and Services Records System of Records.'' This system of records allows DHS/FEMA to collect and maintain records on individuals who are involved in the creation and updating of flood maps, individuals requesting information on flood map products or services, and individuals involved with hazard mitigation planning. DHS/FEMA is updating this system of records notice to (1) modify the records' location; (2) update the authority for maintenance of the system; (3) update the purpose of the system; (4) revise the categories of individuals covered by the system; (5) update the categories of records in the system; (6) update record source categories; and (7) revise and add routine uses.

DATES: Submit comments on or before February 10, 2021. This modified system will be effective upon publication. New or modified routine uses will be effective February 10, 2021.

ADDRESSES: You may submit comments, identified by docket number FEMA–2020–0031 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Constantina Kozanas, Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number FEMA–2020–0031. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Tammi Hines, (202) 212–5100, *FEMA-Privacy@fema.dhs.gov,* Acting Senior Director for Information Management, Federal Emergency Management Agency, U.S. Department of Homeland Security, Washington, DC 20528. For privacy questions, please contact: Constantina Kozanas, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

This modified system of records notice is being published because the Federal Emergency Management Agency (FEMA) collects, maintains, uses, retrieves, and disseminates personally identifiable information of public officials, certifiers, applicants, and homeowners who are involved in the Hazard Mitigation and Flood Mapping Process. FEMA administers the National Flood Insurance Program (NFIP) and Hazard Mitigation Planning programs. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by the Disaster Mitigation Act of 2000, provides the legal basis for FEMA and other government agencies to undertake a risk-based approach to reducing losses from natural hazards through mitigation planning. The Federal Insurance Mitigation Administration's (FIMA) Mitigation Planning Program oversees and provides guidance to state, local, tribal, and territorial (SLTT) governments that are required to develop a FEMA-approved risk-based hazard mitigation plan. This plan is a precondition for receiving non-emergency disaster assistance from the federal government, including funding for flood hazard mitigation projects. FEMA collaborates with SLTT mitigation planners and risk analysts to support the development, review, and approval of SLTT hazard mitigation plans, tracks planned mitigation actions, and facilitates collaboration among planners and risk analysts.

The National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*), and as further amended by the Biggert Waters Flood Insurance Reform Act of 2012, Public Law 112–141, establishes that FEMA will provide flood insurance in communities that participate in the NFIP by adopting and enforcing floodplain management ordinances that meet the minimum NFIP requirements. The law requires FEMA to provide, maintain, and make public flood hazard information and maps to support floodplain management and insurance activities. FEMA's regulations implementing NFIA, including the flood mapping program, may be found in 44 CFR 59–72.

The NFIA requires insurance companies that write flood insurance policies on behalf of the NFIP to use FEMA flood maps to determine insurance rates. These flood maps consist of zones or areas. Flood hazard areas identified on FEMA flood maps are identified as a Special Flood Hazard Area (SFHA). SFHA is defined as the area that will be inundated by a flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent-annual-chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1–A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1–A30, Zone AR/A, Zone V, Zone VE, and Zones V1–V30. Moderate flood hazard areas, labeled Zone B or Zone X (shaded) are also shown on the maps, and are the areas between the limits of the base flood and the 0.2-percent annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded).

Members of the public view and review these FEMA maps and related products online free of charge to understand a property's flood risk. Other related information may also be shown on different layers that can be seen on FEMA's National Flood Hazard Layer available at *msc.fema.gov.* In addition, community officials must use

these maps to manage development in flood-prone areas.

FEMA flood maps are subject to revision through the Letters of Map Change (LOMC) administrative process. Letters of Map Changes are documents issued by FEMA to revise or amend the flood hazard information shown on the Flood Insurance Rate Map (FIRM) in response to requests from community officials and property owners. Letters of Map Changes include two types of map changes: Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR). The procedures for both types of map changes are outlined in 44 CFR 70 and 65, respectively. LOMRs modify small portions of flood maps based on scientific and technical information submitted to FEMA with a request to revise flood maps. Conditional Letters of Map Revision (CLOMR) are provisional findings for flood map revisions based on scientific and technical data based on proposed changes to floodplain conditions.

Letters of Map Revision Based on Fill (LOMR–F) and Conditional LOMR-Fs are specific types of (C)LOMR-based floodplain changes consisting only of placement of earthen fill to raise the ground level in the floodplain. LOMAs are modifications to the regulatory floodplain based on documentation that adjacent grade for a particular property or structure is naturally higher than the predicted flood elevation and was therefore inadvertently included in the floodplain. A Conditional LOMA (CLOMA) is a provisional finding that the adjacent grade for a proposed structure was inadvertently included in the floodplain. A Letter of Determination Review (LODR) is a finding by FEMA of whether the documentation provided by the requester shows a particular property to be in the floodplain or not.

Adequate Progress (Zone A99) determinations, regulated through 44 CFR 61.12, provide for lower flood insurance premium rates in areas where FEMA determines that a community has made adequate progress on its construction or reconstruction of a project designed for flood risk reduction. These areas, landward of the flood protection system, are designated as Zone A99 on the FIRM and flood insurance premium rates and floodplain management requirements are generally less than those required in other SFHAs (*e.g.,* Zone AE, Zone AO, and Zone AH). Flood Protection Restoration (Zone AR) determinations, regulated through 44 CFR 65.14, may provide reduced flood insurance premium rates and floodplain management regulations in areas where FEMA has issued a determination that a project is sufficiently underway to restore a flood protection system to meet 44 CFR 65.10 accreditation requirements. Areas landward of the flood protection system that are being rehabilitated are designated as Zone AR on the FIRM, and may have base flood elevations (BFE) representing the current risk as if the flood protection system was not in place.

FEMA accepts, reviews, and tracks applications from levee owners and communities seeking Zone AR designations, Zone A99 designations, and recognition of accredited levee systems on FIRMs. To support a mapping project, levee owners and communities have the responsibility to provide documentation that either a levee system meets the requirements of 44 CFR 65.10 to have the levee system shown as accredited (*i.e.,* provide protection from the 1-percent-annual-chance flood) or the levee system meets the mapping procedure(s) for non-accredited levee systems.

FEMA performs the following tasks in support of flood mapping:

- Identify and prioritize the need for flood hazard data updates;
- Schedule and track progress and quality of flood hazard and risk studies;
- Conduct community outreach and coordinate with SLTT officials and the public on the flood hazard and risk study process;
- Collect information to support flood hazard analysis from a wide variety of sources including SLTT government organizations and other organizations such as levee owners;
- Provide public review of the proposed flood hazard data;
- Adjudicate administrative appeals to flood hazards and flood elevations;
- Coordinate and track the request and processing of flood map revisions and amendments;
- Publish and distribute map revisions, amendments, flood hazard and risk data, maps, and related information;
- Respond to inquiries from stakeholders and help to resolve issues related to flood maps;
- Monitor the effectiveness of program delivery and stakeholder satisfaction; and
- Collaborate with SLTT mitigation planners and risk analysts to support the development, review, and approval of SLTT hazard mitigation plans, track planned mitigation actions, and facilitate collaboration among planners and risk analysts.

The administrative appeals processes referenced above satisfy due process obligations owed to affected communities and property holders. This requirement includes making available to the public the relevant data documenting the scientific and technical basis of the maps and documenting the community and public coordination processes associated with the development and publication of the maps. The NFIA also requires participating communities to adopt these maps as the basis for their land use regulations.

FEMA obtains information about individuals in various forms (paper and electronic): By communicating with SLTT officials, their contractors, and community members about flood maps and hazard mitigation plans; by collecting requests for LOMCs from public records; through FEMA's websites; and by operating call centers. These activities allow FEMA to assist states with mitigation planning, as well as to ensure FIRMs are accurate and up to date.

FEMA is updating this system of records notice to reflect the following changes. First, the system location has been updated to more accurately reflect the location of the records at the FEMA Headquarters in Washington, DC and at field offices and electronically in the Risk Analysis and Management (RAM) System (formerly Mapping Information Platform (MIP) system, the Map Service Center, and Risk Map collaboration sites) and LOMA-Logic. Second, the Biggert Waters Flood Insurance Reform Act of 2012, Public Law 112–141, 126 Stat. 916 (and codified in sections of 42 U.S.C. secs. 4101–4130) was added as an authority for maintenance of the system and provides for public disclosure flood hazard information and maps to support floodplain management and insurance activities. Third, the purpose of the system is being updated to document the broader flood mapping, risk analysis, and hazard mitigation planning functions supported by the system, and to include community outreach, including public meetings, in the hazard mitigation and flood mapping processes. Fourth, the categories of individuals have been revised to clarify that property owners include applicants for letters of map change and to more accurately reflect individuals solicited to attend public meetings related to flood hazard identification and hazard mitigation and flood mapping activities. Fifth, the categories of records have been updated to clarify that information collected regarding property owners includes applicants for Letters of Map Change; to include business website and business social media account information for public officials, certifiers, and others

included in the approval process; and to include public records (including voter records, tax records, real estate records, or directories) that are collected to conduct outreach for attendance in public meetings related to Letters of Map Change. Sixth, record source categories are being updated to clarify that records come from homeowners, tenants, state/local/tribal/territorial government, and public records. Seventh, Routine Use E is being modified and Routine Use F is being added to conform to Office of Management and Budget Memorandum M–17–12 regarding breach notification and investigation. Routine Use K was added to reflect that pursuant to the National Flood Insurance Act, FEMA routinely makes available to the public: Name, business contact information, and professional license information for public officials, certifiers, engineers, and other licensed professionals and their staff who participate in the development, update, and approval of flood hazard maps. Additionally, this routine use reflects that the address of the subject property is also publicly disclosed. Routine Use L was added to account for testing of new technology compatible with the purpose of this system of records.

Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information sharing mission, information stored in the DHS/FEMA–014 Hazard Mitigation Planning and Flood Mapping Products and Services System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/FEMA may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This modified system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the DHS/FEMA–014 Hazard Mitigation Planning and Flood Mapping Products and Services Records.

In accordance with 5 U.S.C. sec. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA)–014 Hazard Mitigation Planning and Flood Mapping Products and Services Records System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the FEMA Headquarters in Washington, DC and field offices. Additionally, records may be located in the Risk Analysis and Management (RAM) system (formerly Mapping Information Platform (MIP) system, the Map Service Center, and Risk Map collaboration sites) and the LOMA-Logic system.

Primary Production Server/Data Storage Locations:

Alleghany Ballistics Laboratory Data Center (Operated by IBM), Rocket Center, WV

CDS Operations Sites:

Primary Local Operations Site (Operated by IBM), Fairfax, VA

Alleghany Ballistics Laboratory Data Center (Operated by IBM), Rocket Center, WV

Secondary Local Operations Site (Operated by Michael Baker International), Alexandria, VA

Backup Data Storage Sites (In Addition to Sites Already Listed Above):

Alleghany Ballistics Laboratory (Operated by IBM), Rocket Center, WV

Iron Mountain Secure Offsite Storage, Various U.S. locations

SYSTEM MANAGER(S):

Program Management, Risk Management Program, Federal Insurance and Mitigation Administration, 400 C Street SW, Washington, DC 20472.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Flood Insurance Act of 1968, as amended, including the Biggert Waters Flood Insurance Reform Act of 2012, Public Law 112–141, 126 Stat. 916 (codified in sections of 42 U.S.C. secs. 4001–4130); The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by the Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390, 14 Stat. 1552; and 44 CFR parts 59–72.

PURPOSE(S) OF THE SYSTEM:

The purposes of this system of records are to support FEMA's flood mapping, risk analysis, and hazard mitigation planning functions, which are to: Identify and prioritize the need for flood hazard updates; schedule and track progress and quality of flood hazard and risk studies; conduct community outreach and coordinate with SLTT officials and the public on the flood hazard and risk study process; collect information to support flood hazard analysis from a wide variety of sources, including SLTT government organizations and other organizations such as levee owners; provide public review of the proposed flood hazard data; adjudicate administrative appeals to flood hazards and flood elevations; coordinate and track the request and processing of flood map revisions and amendments; publish and distribute flood hazard and risk data, maps, and related information, as well as updates, revisions, and amendments thereto; respond to inquiries from stakeholders and help to resolve issues related to flood maps; monitor the effectiveness of program delivery and stakeholder satisfaction; and collaborate with SLTT officials to support the development, review, and approval of SLTT hazard mitigation plans, track planned mitigation actions, and facilitate collaboration among planners and risk analysts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public, including: Letters of map change applicants/property owners, developers, investors, and their representatives; realtors; certifiers, including Registered Professional Engineers and Licensed Land Surveyors; state, local, tribal, or territorial government officials with authority over a community's flood

plain management activities, which includes Mapping Review Partners (MRP); potential or confirmed respondents to customer service surveys/focus groups; potential or confirmed attendees at FEMA's public meetings or other outreach activities related to flood hazard identification and flood mapping activities; and FEMA staff and stakeholders registered to use FEMA's information technology systems and collaboration sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Full name;
- Position or title;
- Email addresses;
- Addresses (mailing and property);
- Business website or business social media account information;
- Public Records (such as voter records, tax records, real estate records, or directories) to conduct outreach activities;
- Company or community name;
- Organization or agency name;
- Six-digit NFIP community number;
- Fax number;
- Professional license number;
- Professional license expiration date;
- Signature;
- Signature date;
- Fill placement and date;
- Type of construction;
- Elevation data;
- Base Flood Elevation (BFE) data;
- Legal property description;
- FEMA region number (1–10);
- Transcripts of conversations with FEMA call centers or helpdesk including name, address, phone number, email address, caller type (*e.g.,* property owner, realtor), chat subject, and chat subject category;
- Bank name and account information including electronic funds transfer, and credit/debit card account information;
- Payment confirmation number;
- User account creation and access information; and
  - Username;
  - Activation code;
  - Password;
  - Roles and responsibilities;
  - Challenge questions and answers; and
  - System permissions or permission levels.
- Voluntary response to customer satisfaction and experience surveys and focus groups, including demographic information about the individual.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals (*e.g.,* home and property owners, tenants, investors, and property developers, or their representatives); LOMC Certifiers (*e.g.,* Registered Professional Engineers and Licensed Land Surveyors); state, local, tribal, or territorial government officials, including those with authority over a community's floodplain management activities or other land use, which includes MRPs; FEMA staff and stakeholders registered to use SharePoint information and collaboration portals; the FEMA Community Information System (CIS) system; and the cloud-based LOMA–LOGIC tool. Records may also be obtained from public records maintained by SLTT or private entities, such as tax records, real estate records, voter records or directories.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. sec. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. sec. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including the U.S. Attorneys Offices, or other federal agencies conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee or former employee of DHS in his/her official capacity;
3. Any employee or former employee of DHS in his/her individual capacity, only when DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. secs. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another federal agency or federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To state and local governments pursuant to signed agreements allowing such governments to assist FEMA in making LOMC determinations.

J. To the U.S. Department of the Treasury for the processing of payments for products and services.

K. To the public, in accordance with the National Flood Insurance Act, the following information: Names and business contact information of certifiers, public officials, and others involved in the development, update, and approval of flood hazard maps,

including business websites or business social media account information as well as the address of the subject property. This does not include names or other information regarding the applicant/property owner.

L. To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, with the approval of the Chief Privacy Officer, when DHS is aware of a need to use relevant data, that relate to the purpose(s) stated in this SORN, for purposes of testing new technology.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS/FEMA stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

DHS/FEMA retrieves records by name, address information, legal description of property, order number, and account number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA authority N1–311–01–2, item 1, and FEMA records disposition schedule FIA 1–2–2, FEMA retires community case file materials to off-site storage when the record is three years old and destroys the record 100 years after the retirement date.

In accordance with NARA authority N1–311–86–1, item 2.A.2, and FEMA Records Disposition Schedule FIA–2, appeals records are cut off after the appeal is resolved or the appealed map becomes effective and are retired two years after cutoff. FEMA destroys appeals records 20 years after cutoff.

Pursuant to NARA authority N1–311–86–1, item 2.A.3, and FEMA Records Disposition Schedule FIA–3, digital preliminary flood maps are destroyed five years after FEMA issues a flood elevation determination or insurance rate map.

Pursuant to NARA authority N1–311–86–1, item 2.A.4, and FEMA Records Disposition Schedule FIA–4, flood elevation determination (or insurance rate) maps are permanent, cut off when superseded, and transferred directly to the National Archives five years after cutoff, or sooner, for permanent storage.

Pursuant to NARA authority DAA–GRS–2016–0012–0002, NARA's General Record Schedule 5.5, item 20, and FEMA Records Disposition Schedule COMM 2, FEMA stores copies of checks and credit card numbers received by mail from stakeholders who request changes to the flood maps and who request engineering library services to obtain copies of flood map information for one year.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS/FEMA safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS/FEMA has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and FEMA's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act (JRA) provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his/her identity, meaning that the individual must provide his/her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. sec. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information being requested;
- Identify which component(s) of the Department he or she believes may have the information;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If the request is seeking records pertaining to another living individual, the request must include an authorization from the individual whose record is being requested, authorizing the release to the requester.

Without the above information, the component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

82 FR 49404 (October 25, 2017); 71 FR 7990 (February 15, 2006).

Constantina Kozanas,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021–00307 Filed 1–8–21; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7041–N–01; OMB Control No. 2528–0259]

60-Day Notice of Proposed Information Collection: Family Options Study: Long-Term Followup

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 12, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Family Options Study: Long-Term Followup.

OMB Approval Number: 2528–0259.

Type of Request: Reinstatement without change of a previously approved collection.

Form Number: NA.

Description of the need for the information and proposed use: The purpose of this proposed information collection is to locate the families that enrolled in the U.S. Department of Housing and Urban Development's (HUD) Family Options Study between September 2010 and January 2012 and to update their current contact information.

The Family Options Study is a multi-site experiment designed to test the impacts of different housing and service interventions on homeless families in five key domains: Housing stability, family preservation, adult well-being, child well-being, and self-sufficiency. Both the design and the scale of the study provides a strong basis for conclusions about the relative impacts of the interventions over time, and data collected at two previous points in time, twenty (20) months after random assignment and thirty-seven (37) months after random assignment, yielded powerful evidence regarding the positive impact of providing a non-time-limited housing subsidy to a family experiencing homelessness. It is possible, though, that some effects of the various interventions might change over time or take longer to emerge, particularly for child well-being. Therefore, HUD plans to conduct a followup survey of study families roughly eleven years after enrollment into the study. Locating, reengaging, and updating the contact information for study families will be critical to supporting a healthy response rate for the planned 11-year followup survey.

This **Federal Register** Notice provides an opportunity to comment on the Participant Update Contact Form that will be used to reengage with study families and gather updated contact information.

Respondents: Families enrolled in the Family Options Study.

Estimated Number of Respondents: This information collection will affect 2,241 individuals.

Estimated Time per Response: Completion of the Participant Update Contact Form is expected to take, on average, five minutes, or 0.08 hours.

Frequency of Response: The Participant Update Contact Form will be completed be each family a single time.

Estimated Total Annual Burden Hours: The estimated total annual burden of this information collection is 179 hours.

Estimated Total Annual Cost: The estimated total annual cost for this information collection is $1,817. The estimated total annual cost is calculated by multiplying the total number of respondent hours (179) by $10.15. The amount of $10.15 was calculated using the minimum hourly wage ($7.25) plus an assumed 40 percent for fringe benefits.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is conducted under Title 12, United States Code, Section 1701z and Section 3507 of the Paperwork Reduction Act of 1995, 44, U.S.C., 35, as amended.

ANNUALIZED BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
Participant Update Contact Form	2,241	1	1	.08	179	$10.15	$1,816.85
Total	2,241				179		1,816.85

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The Principal Deputy Assistant Secretary for Policy Development and Research, Michael J. Marshall, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the **Federal Register** Liaison for HUD, for purposes of publication in the **Federal Register**.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2021–00251 Filed 1–8–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–0091; FXES111 40100000–212–FF01E00000]

Record of Decision for the Final Environmental Impact Statement for the Deschutes Basin Habitat Conservation Plan, Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; record of decision and habitat conservation plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the proposed issuance of an Endangered Species Act (ESA) permit for the Deschutes Basin Habitat Conservation Plan (HCP). The ROD documents the Service's decision to issue an incidental take permit (ITP) to the Deschutes Basin Board of Control (DBBC)'s eight-member irrigation districts, and the City of Prineville (applicants). As summarized in the ROD, the Service has selected Alternative 2—the Proposed Action, which includes implementation of the HCP and issuance of a 30-year ITP authorizing take of two threatened species listed under the ESA that may occur incidental to covered activities in the plan area over the permit term.

ADDRESSES: You may obtain copies of the ROD and other documents associated with the decision by the following methods.

- *Internet: http://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0091, or at *https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716.*
- *Upon Request:* You may request alternative formats of the documents directly from the Service (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Bridget Moran, by telephone at 541–383–7146, or by email at *bridget_moran@fws.gov.* Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the proposed issuance of an Endangered Species Act (ESA) section 10(a)(1)(B) incidental take permit (ITP) to the Deschutes Basin Board of Control (DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts) and the City of Prineville (collectively referred to as the applicants) in Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon. The ROD documents the Service's decision to issue an ITP to the applicants. As summarized in the ROD, the Service has selected Alternative 2, the Proposed Action (described below), which includes implementation of a Habitat Conservation Plan (HCP) and issuance of the ITP authorizing incidental take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and the threatened bull trout (*Salvelinus confluentus*) over a 30-year period. The applicants have also requested a separate ITP covering take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed sockeye salmon (*O. nerka*) from the National Marine Fisheries Service (NMFS). The Service and NMFS (jointly, the Services) make independent decisions regarding coverage for incidental take of the species under their respective jurisdictions. NMFS's decision is not addressed in the Service's ROD.

We are advising the public of the availability of the ROD, developed in compliance with agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), and the final HCP as submitted by the applicants. The Service published a notice of availability (NOA) of the Draft EIS in the **Federal Register** on October 4, 2019 (84 FR 53164), and jointly published a NOA of the Final EIS with NMFS on November 6, 2020 (85 FR 71086). All alternatives were described in detail, evaluated, and analyzed in the Draft and Final EIS. As the EIS was developed prior to the September 14, 2020, effective date for the Council on Environmental Quality's updated NEPA regulations, the Final EIS and ROD were completed consistent with the previous regulations (40 CFR 1506.13).

Background

All eight water districts are quasi-municipal corporations formed and operated according to Oregon State law to distribute water to irrigators (patrons) within designated geographic boundaries and in accordance with the individual water rights held by those patrons. The City of Prineville operates City-owned infrastructure and provides essential services—including public safety, municipal water supply, and sewage treatment—for more than 9,000 residents. The applicants have determined that continued operation of irrigation and essential services (covered activities) requires ITPs to address unavoidable incidental take of species listed under the ESA (covered species), which is ongoing.

The applicants have proposed a conservation program to avoid, minimize, and mitigate the impacts of taking of the covered species. The HCP addresses the adverse effects of the covered activities on the covered species by reducing or eliminating those effects to the maximum extent practicable, and by mitigating effects that cannot be eliminated altogether. In general, adverse effects on listed species can result from direct harm or injury of individuals of the species, and through changes in habitat that interfere with the essential life activities of the species.

Both types of effects are addressed in the HCP conservation measures. The covered activities affect the covered species primarily through changes in the hydrology (flow) of occupied waters associated with the storage, release, diversion, and return of irrigation water.

In the course of storing, releasing, diverting, and returning irrigation water, the applicants alter the hydrology of the Deschutes River and a number of its tributaries. In a similar fashion, the pumping of groundwater for municipal water supply by the City of Prineville affects the hydrology in one of those tributaries, the Crooked River. In most cases, the hydrologic changes resulting from activities covered by the HCP have adverse impacts on aquatic habitats for the covered species. When flows are reduced, the total area of usable habitat for aquatic species generally decreases and water temperatures typically increase to the extent that habitat quality is negatively impacted. The HCP conservation measures will modify irrigation activities that reduce in-stream flow (storage and diversion of water) to address the adverse effects described above. As a result, with implementation of the HCP, flows in the affected reaches will be higher than they were historically (over the last 50+ years) in the winter, and provide improved habitat quality for the covered species.

Purpose and Need

As described in the Final EIS, the Service's purpose for the Federal action is to fulfill our section 10(a)(1)(B) conservation authorities and obligations. The need for our action is to respond to the ITP application submitted by the applicants requesting take of the Oregon spotted frog and bull trout, the two species under the Service's jurisdiction.

Alternatives

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a Final EIS analyzing the proposed action (Alternative 2, identified as the preferred alternative), a no-action alternative, and two additional alternatives to the proposed action; summaries of each alternative are presented below. The Final EIS analyzed both the Service's proposed issuance of an ITP and NMFS's proposed issuance of an ITP. The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur. Public comments received in response to the Draft EIS were considered, and the Final EIS reflected clarifications of the existing analysis to address public comments. The Final EIS did not identify an environmentally preferable alternative. Pursuant to NEPA implementing regulations found at 40 CFR 1505.2, the Service identified Alternative 3 (Enhanced Variable Streamflows) as the environmentally preferable alternative in the ROD.

Alternative 1—No-action Alternative: No ITPs would be issued, and the applicants' HCP would not be implemented. Under Alternative 1, ongoing applicant activities would remain subject to the take prohibition for listed species under section 9 of the ESA. This alternative assumes continuation of actions covered in an ESA section 7 biological opinion issued to the Bureau of Reclamation addressing the effects of water management activities in the Upper Deschutes River Basin to the Oregon spotted frog, and continuation of actions covered in other ESA section 7 consultation documents addressing the effects of Deschutes River Basin projects to the Middle Columbia River steelhead trout and the bull trout.

Alternative 2—Proposed Action, Deschutes Basin HCP: Under this alternative, identified as the preferred alternative in the Final EIS, the Service would issue a 30-year ITP to the applicants for incidental take of the two covered species under its jurisdiction, NMFS would issue a separate ITP for incidental take of the two covered species under its jurisdiction, and the applicants would implement the HCP. Over the 30-year period of HCP implementation, in-stream flows would be modified to mimic more natural flow patterns to support the various life stages of the covered species. The HCP also includes the establishment of conservation funds to support habitat restoration and enhancement projects, as well as additional funding for in-stream water leasing programs.

Alternative 3—Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, covered activities, and permit term as described for the proposed action, but with modifications to the HCP conservation strategy, including increased fall and winter flows in the Deschutes River below Wickiup Dam, and in-stream protection of uncontracted water releases on the Crooked River for fish and wildlife.

Alternative 4—Accelerated Schedule for Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, and covered activities as described for the proposed action, but with a 20-year permit term and modifications to the HCP conservation strategy for an accelerated schedule for increases in fall and winter flows in the Deschutes River below Wickiup Dam, and in-stream protection of additional uncontracted water releases on the Crooked River for fish and wildlife.

Decision and Rationale for Decision

Based on our review of the alternatives and their environmental consequences as described in the Final EIS, we have selected the Proposed Action (Alternative 2). The Proposed Action includes the implementation of the final HCP and the Service's issuance of an ITP authorizing incidental take of the two covered species under the Service's jurisdiction for a 30-year permit term. Our assessment of the application was conducted in accordance with the requirements of section 10(a)(1)(B) of the ESA and its implementing regulations. In order to issue an ITP for covered species under the ESA, we must determine that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(B). We have made the determination that the HCP meets this criteria, as described further in the ROD.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–00304 Filed 1–8–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–FAC–2020–N122; FF03F22900/FRFR481203YA200/XXX; OMB Control Number 1018–New]

Agency Information Collection Activities; Online Program Management System for Carbon Dioxide-Carp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 12, 2021.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number ''1018–Asian Carp'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: The Lacey Act (Act, 18 U.S.C. 42) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

Implementation and enforcement of the Lacey Act is the responsibility of the Department of the Interior. The Service, in concert with our diverse partners, works to conserve, restore, and maintain the nation's fishery resources and aquatic ecosystems for the benefit of the American people, to include managing and controlling four species of invasive carp—bighead, black, grass, and silver—native to Asia. Under the authority of the Act, the Service listed bighead, black, and silver carp species as injurious wildlife to protect humans, native wildlife, and wildlife resources from the purposeful or accidental introduction of Asian carp into the nation's aquatic ecosystems.

The Service takes part in a broad, partner-driven approach to strategically control the movement of Asian carp. The spread of these invasive species in the nation's river systems threatens the conservation efforts conducted by our agency, our State partners, and other stakeholders, to promote self-sustaining aquatic resources and healthy aquatic ecosystems. In addition to widespread and longstanding ecological consequences, aquatic invasive species often result in significant economic losses and cost our nation's economy billions of dollars per year.

To effectively carry out our responsibilities under the Act and protect the aquatic resources of the United States, the Service, in collaboration with the U.S. Geological Survey, proposes to administer applications of Carbon Dioxide-Carp by registered management partners (applicators) and to collect information regarding the usage of Carbon Dioxide-Carp, an Environmental Protection Agency (EPA) registered product #6704–95 to control Asian carp. Carbon Dioxide-Carp is approved for use only by the U.S. Fish and Wildlife Service, U.S. Geological Survey, U.S. Army Corps of Engineers, State natural resource managers, or persons under their direct supervision.

The Service will use the information collected to document the label requests, maintain inventory, and document application results of Carbon Dioxide-Carp as an EPA registered product. The Service proposes to collect information from applicators using the following four forms:

- Form 3–2130: Report on Receipt of Label—Applicators must apply for a label to attach to a treatment container of Carbon Dioxide-Carp prior to being able to legally apply it as an Asian carp deterrent or as an under-ice lethal control for aquatic nuisance species. This form collects the following information:
  - Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
  - Date of label receipt;
  - Site of application, to include GPS location, approximate number of surface acres, and date of application;
  - Label number; and
  - Name and address of applicator.
- Form 3–2163: Inventory Form for Use with Carbon Dioxide-Carp—Registered applicators must maintain an accurate inventory of CO2– Carp for the duration of possession of the product label. This form collects the following information:
  - Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);
  - Date of application;
  - Amount of Carbon Dioxide-Carp applied (pounds);
  - Label number;
  - Label return date;
  - Any adverse incident; and
  - Name of applicator and affiliation.
- *Form 3–2164: Worksheet for Field Application Locations*—Applicators must complete Form 3–2164 for each application of Carbon Dioxide-Carp

before the actual application. This form collects the following information:

○ Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);

○ Site information, to include the name and address of the location; applicator name, address, telephone number, and email address; and the applicator's certification number; and

○ Carbon Dioxide-Carp use information, to include estimated pounds of CO_2 needed, estimated dates of use, purpose, and a list of obtained permits.

• *Form 3–2191: Results Report Form*—Investigator must submit application results to the Service to document efficacy of the treatment and any possible adverse effects, as this data is required by the EPA to maintain product registration. This form collects the following information:

○ Applicant's information, to include address, date of birth, contact number(s), email address, and relevant business information (if application is on behalf of a business, corporation, public agency, Tribe, or institution);

○ Site information (to include GPS coordinates and city/county/state) and reporting individual; and

○ Application information, to include total amount of Carbon Dioxide-Carp used (pounds); application date(s); adverse incident information (to include date reported to the U.S. Geological Society); applicator name and label number; NPDES Permit number; and other required permits and permit numbers.

• *Form 3–2541: 6(a)(2) Adverse Incident Report*—Investigator must submit application adverse results to the Service to document any irregularities in the application circumstances or adverse effects on non-target organisms. This form collects the following information:

○ Administrative data, to reporting and contact individual (if different), address and phone number, incident status, location and date of incident, when registrant became aware of incident, and whether incident was part of a larger study;

○ Pesticide data, to include whether exposure was to concentrate prior to dilution;

○ Incident circumstances, to include whether there is evidence that label directions were not followed, whether applicator is a certified pest control operator, type of exposure, incident site, situation, and brief description of habitat and incident circumstances; and

○ Information involving fish, wildlife, plants, or other non-target organisms; species; symptoms or adverse effects; magnitude of the effects; and any explanatory or qualifying information surrounding the incident.

ePermits Initiative

We are exploring the feasibility of using the Service's new ''ePermits'' initiative, an automated permit application system that will allow the agency to move towards a streamlined permitting process to reduce public burden. The ePermits platform would automate the five forms associated with this proposed information collection. Public burden reduction is a priority for the Service, the Assistant Secretary for Fish and Wildlife and Parks, and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting and reporting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has internet access, including personal computers, tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of any associated fees.

Title of Collection: Online Program Management System for Carbon Dioxide-Carp.

OMB Control Number: 1018–New.

Form Number: FWS Forms 3–2130, 3–2163, 3–2164, 3–2191, and 3–2541.

Type of Review: New.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Annual Nonhour Burden Cost: $15,000.00. We estimate that each of the anticipated 10 annual respondents would pay an EPA Maintenance fee of $400, a State registration fee of $252; and an administrative fee of $858.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (min)	Estimated annual burden hours *
Form 3–2130: Report on Receipt of Label					
Government	5	1	5	15	1
ePermits Form 3–2130: Report on Receipt of Label					
Government	5	1	5	12	1
Form 3–2163: Inventory Form for Use with Carbon Dioxide-Carp					
Government	5	1	5	15	1
ePermits Form 3–2163: Inventory Form for Use with Carbon Dioxide-Carp					
Government	5	1	5	12	1
Form 3–2164: Worksheet for Field Application Locations					
Government	5	1	5	15	1
ePermits 3–2164: Worksheet for Field Application Locations					
Government	5	1	5	12	1
Form 3–2191: Results Report Form					
Government	5	1	5	15	1
ePermits Form 3–2191: Results Report Form					
Government	5	1	5	12	1
Form 3–2541: 6(a)(2) Adverse Incident Report					
Government	1	1	1	60	1
ePermits Form 3–2541: 6(a)(2) Adverse Incident Report					
Government	1	1	1	50	1

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (min)	Estimated annual burden hours *
Totals:	*42*		*42*		*10*

* Rounded.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: January 5, 2021.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2021–00206 Filed 1–8–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0179]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Solicitation of Nominations for the Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before February 10, 2021.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Jennifer Davis, Bureau of Indian Education, 2600 N. Central Avenue, Suite 800, Phoenix, Arizona 85004, fax: (602) 265–0293; or by email to *jennifer.davis@bie.edu*. Please reference OMB Control Number 1076–0179 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, Ms. Jennifer Davis by email at *jennifer.davis@bie.edu* or by telephone at (602) 265–1592. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 21, 2020 (85 FR 59325). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. 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.

The Bureau of Indian Education (BIE) is seeking renewal for an information collection that would allow it to collect information regarding individuals' qualifications to serve on the Federal advisory committee known as the Advisory Board for Exceptional Children. This information collection requires persons interested in being nominated to serve on the Board to provide information regarding their qualifications. This information collection includes one form. After reviewing comments from respondents, BIE has edited the instructions and form to correct a typographical error, explicitly allow self-nomination, and clarify that the Board provides guidance in accordance with all relevant federal laws. BIE has also added clarifying language to the form to assist respondents with providing necessary information (example: ''Work Address'' now clarifies ''Work Address (City, State, Zip Code)).

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) requires the BIE to establish an Advisory Board on Exceptional Education. See 20 U.S.C. 1411(h)(6). Advisory Board members shall serve staggered terms of two or three years from the date of their appointment. This Board is currently in operation. This information collection allows BIE to better manage the nomination process for future appointments to the Board.

Title of Collection: Solicitation of Nominations for the Advisory Board for Exceptional Children.

OMB Control Number: 1076–0179.

Form Number: None.

Type of Review: Revision of currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 20, per year.

Total Estimated Number of Annual Responses: 20, per year.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 20 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2021–00317 Filed 1–8–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–OIA–31249; PIN00IO14.XI0000]

U.S. Nominations to the World Heritage List; 15-Day Notice of Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice requests public comment on the next potential U.S. nominations from the U.S. World Heritage Tentative List (''Tentative List'') to the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List. The public may also make suggestions for future additions to the Tentative List. This notice complies with applicable World Heritage Program regulations.

DATES: Comments will be accepted on or before January 26, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Mail to:* Jonathan Putnam, Office of International Affairs, National Park Service, 1849 C Street NW, Washington, DC 20240.
- *Email to: jonathan_putnam@nps.gov.* Phone: (202) 354–1809.

Comments will not be accepted in any way other than those specified above.

Information on the U.S. World Heritage program can be found at: *https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm.*

To request a paper copy of the U.S Tentative List, please contact April Brooks, Office of International Affairs, National Park Service, 1849 C Street NW, Room 2415, Washington, DC 20240 (202) 354–1808, or Email: *april_brooks@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, (202) 354–1809.

For the World Heritage nomination format, see the World Heritage Centre website at: *http://whc.unesco.org/en/nominations.*

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972), an international treaty for the preservation of natural and cultural heritage sites of global significance. U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention. The National Park Service serves as the principal technical agency for the U.S. Government to the Convention.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites which a country may consider for nomination within a given time period, but does not guarantee future nomination. The World Heritage Committee's *Operational Guidelines* ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries also are limited at this time to nominating no more than one site in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject to U.S. laws.

Current U.S. World Heritage Tentative List

The current U.S. World Heritage Tentative List includes the following properties:

Cultural Sites

Civil Rights Movement Sites, Alabama [other properties would be added for a complete nomination]

—Dexter Avenue King Memorial Baptist Church, Montgomery
—Bethel Baptist Church, Birmingham
—16th Street Baptist Church, Birmingham

Dayton Aviation Sites, Ohio

—Dayton Aviation Heritage National Historical Park

Hopewell Ceremonial Earthworks, Ohio

—Fort Ancient State Memorial, Warren County
—Hopewell Culture National Historical Park, near Chillicothe
—Newark Earthworks State Historic Site, Newark and Heath

Jefferson (Thomas) Buildings, Virginia (Proposed Jointly as an Extension to the World Heritage Listing of Monticello and the University of Virginia Historic District)

—Poplar Forest, Bedford County
—Virginia State Capitol, Richmond

Mount Vernon, Virginia

Serpent Mound, Ohio

Ellis Island, New Jersey and New York

Chicago Early Skyscrapers, Illinois, including: [Other Properties May Be Added in the Course of Developing a Nomination]

—Rookery
—Auditorium Building
—Monadnock Building
—Ludington Building
—Marquette Building
—Old Colony Building
—Schlesinger & Mayer (Carson, Pirie Scott) Department Store
—Second Leiter Building
—Fisher Building

Central Park, New York

Brooklyn Bridge, New York

Moravian Bethlehem District, Pennsylvania

Natural Sites

National Marine Sanctuary of American Samoa (Formerly Fagatele Bay National Marine Sanctuary, American Samoa)

Okefenokee National Wildlife Refuge, Georgia

Petrified Forest National Park, Arizona

White Sands National Monument, New Mexico

Marianas Trench National Monument, U.S. Territory, Commonwealth of the Northern Mariana Islands, Guam

Central California Current, California, Including

—Cordell Bank National Marine Sanctuary
—Monterey Bay National Marine Sanctuary
—Greater Farallones National Marine Sanctuary
—Farallon Islands National Wildlife Refuge

—Point Reyes National Seashore
—Golden Gate National Recreation Area

Big Bend National Park, Texas

Pacific Remote Islands National Monument, U.S. Territorial Waters

Notes: (1) A nomination for the Hopewell Ceremonial Earthworks was authorized for preparation in May 2018 by the Department of the Interior and is now under development. (2) The Department has requested and is now awaiting advice from the International Council on Monuments and Sites (ICOMOS) on adding other properties to the proposal for the Civil Rights Movement Sites and its overall justification. (3) The government of the German state of Saxony is proposing an extension to the World Heritage listing of Christiansfeld, a Moravian Church Settlement in Denmark, that would include Herrnhut in Germany, the Moravian Bethlehem District in Bethlehem, Pennsylvania, and potentially other historic Moravian settlements in other countries.

Request for Public Comments

Comments on whether to authorize the preparation of a World Heritage nomination for any of the properties on the Tentative List should address the readiness and ability of the property owner(s) to prepare a satisfactory nomination document. Suggestions for additions to the Tentative List not previously submitted must address: (i) How the property(ies) would meet the World Heritage nomination criteria, requirements for authenticity, integrity, legal protection and management. Information on these criteria and requirements can be found on the website noted in the **FOR FURTHER INFORMATION CONTACT** section of this notice; and (ii) The U.S. legal prerequisites that include the agreement of all property owners to the nomination of their property, an official determination that the property is nationally significant (such as by designation as a National Historic or National Natural Landmark), and effective legal protection. All previous suggestions for the Tentative List made during previous comment periods or otherwise submitted since 2008, have been retained and considered and should not be resubmitted at this time.

Selection and Nomination

All public comments will be summarized and provided to Department of the Interior officials, who will obtain the advice of the Federal Interagency Panel for World Heritage before making any selection of properties for authorization to prepare a World Heritage nomination. The selection may include relevant factors, such as the likelihood of being able to complete a satisfactory nomination, and the fact that the United States is currently prohibited by law from providing any funding to UNESCO, including UNESCO and World Heritage member dues. Once authorized, the property owners may prepare a draft nomination.

The Department does not have a fixed schedule for completing or submitting World Heritage nominations. No more than one nomination from any country may be submitted per year, per the UNESCO World Heritage *Operational Guidelines.* Completed nominations, if approved by the Department for submission, may be submitted to the UNESCO World Heritage Centre by February 1 of any year.

Public Availability of Comments

All comments will be a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, members of the public should be aware that the entire comment—including personal identifying information—may be made public at any time. While commenters can request that personal identifying information be withheld from public review, it may not be possible to comply with this request.

Authority: 54 U.S.C. 307101; 36 CFR part 73.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2021–00310 Filed 1–8–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-31331; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before December 25, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 26, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on property or proposed district name, (County) State.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 25, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

CALIFORNIA

Orange County

Johnson, Hugh Edgar, House, 444 W. Brookdale Pl., Fullerton, SG100006089

FLORIDA

Monroe County

Matecumbe Methodist Church Cemetery, 81801 Overseas Hwy., Islamorada, SG100006117

Pinellas County

House at 827 Mandalay Avenue, 827 Mandalay Ave., Clearwater, SG100006118

Sumter County

Wild Cow Prairie Cemetery, 5822 Cty. Rd. 673, Bushnell vicinity, SG100006119

Volusia County

Wright, James W., Building, 258 West Voorhis Ave., DeLand, SG100006120

Walton County

Herman Lodge No. 108 Free & Accepted Masons of Florida, 314 Madison St., Freeport, SG100006121

ILLINOIS

Cook County

Irving, James B., House, 2771 Crawford Ave., Evanston, SG100006102

Lake County

Fagen, Mildred and Abel, House, 1711 Devonshire Ln., Lake Forest, SG100006090

IOWA

Linn County

Harris, Dr. Percy and Lileah, House, (Twentieth Century African American Civil Rights-related Resources in Iowa MPS), 3626 Bever Ave. SE, Cedar Rapids, MP100006115

MASSACHUSETTS

Plymouth County

Myles Standish Park and Myles Standish House Site, 0 Mayflower Dr., Duxbury, SG100006091

Worcester County

Stone, Lucy, Home Site, 69 Coy Hill Rd., West Brookfield, SG100006122

MICHIGAN

Wayne County

Birwood Wall, (The Civil Rights Movement in Detroit, Michigan, 1900–1976 MPS), Along the alleyway between Birwood Ave. and Mendota St. from Eight Mile Rd. to Pembroke Ave., Detroit, MP100006100

WGPR–TV Studio, (The Civil Rights Movement in Detroit, Michigan, 1900–1976 MPS), 3146 East Jefferson Ave., Detroit, MP100006101

MISSISSIPPI

Bolivar County

AMPCO Manufacturing Plant, 101 AMPCO Rd., Rosedale, SG100006103

Clay County

Kenneth G. Neigh Dormitory Complex, 276 Mary Holmes Row, West Point, SG100006106

Jackson County

Building at 707 Krebs Avenue, 707 Krebs Ave., Pascagoula, SG100006109

NEW YORK

Niagara County

Main Street Historic District, 1300–2127 Main St., 813–822 Cleveland Ave., 833 Lincoln Pl., 801–831 Linwood Ave., 1600 Lockport St., 800–909 Niagara Ave., 908–919 Ontario Ave., 832–919 Ontario Ave., 832 Pierce Ave., 1317–1329 Portage Rd., 835 Willow Ave., Niagara Falls, SG100006092

Suffolk County

Eagle's Nest (Boundary Increase), (Huntington Town MRA), 180 and 185 Little Neck Rd., Centerport, BC100006094

OHIO

Cuyahoga County

Oakwood Club Subdivision Historic District, 1538–1688 Oakwood Dr., 1598,1681 Wood Rd., Cleveland Heights, SG100006098

Franklin County

Carnegie Library Otterbein University, 102 West College Ave., Westerville, SG100006110

Lanman-Ingram House, 2015 West Fifth Ave., Marble Cliff, SG100006113

Summit County

Berkshire Park Historic District, Roughly Bounded by Oakwood Dr., Roosevelt Ave., Elmwood St., 4th St., 3rd St., Miller Ct., Cuyahoga Falls, SG100006088

A. Schrader's Son, Inc. of Ohio Buildings, 705–711 Johnston St., Akron, SG100006104

PENNSYLVANIA

Philadelphia County

Henry Whitaker's Sons' Mill, 2000 East Westmoreland St, Philadelphia, SG100006096

SOUTH DAKOTA

Gregory County

Gregory County Courthouse, (County Courthouses of South Dakota MPS), 221 East 8th St., Burke, MP100006095

WISCONSIN

Door County

Potawatomi State Park Observation Tower, 3740 County PD, Nasewaupee, SG100006108

Green Lake County

Methodist Episcopal Church, 240 West 2nd St., Marquette, SG100006107

Milwaukee County

Lincoln Creek Parkway, (Milwaukee County Parkway System MPS), Located between West Lincoln Creek Dr. at West Hampton Ave., and Meaux Park, Milwaukee, MP100006105

WYOMING

Carbon County

Pine Grove Station (Boundary Increase), Address Restricted, Rawlins vicinity, BC100006112

A request for removal has been made for the following resource:

FLORIDA

Brevard County

Whaley, Marion S., Citrus Packing House, 2275 US 1, Rockledge, OT93000286

Additional documentation has been received for the following resources:

NEW YORK

Suffolk County

Eagle's Nest (Additional Documentation), (Huntington Town MRA), Little Neck Rd., Huntington, AD85002545

WYOMING

Carbon County

Pine Grove Station Site (Additional Documentation), Address Restricted, Rawlins vicinity, AD78002820

Authority: Section 60.13 of 36 CFR part 60.

Dated: December 30, 2020.

Sherry Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–00267 Filed 1–8–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Third Review)]

Hand Trucks from China; Scheduling of Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on hand trucks from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: October 5, 2020.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: *Background.*—On October 5, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 39584, July 1, 2020) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on January 11, 2021, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 15, 2021 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 15, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 6, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–00293 Filed 1–8–21; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the joint response to its notice of institution from two domestic producers of hand trucks, Gleason Industrial Products, Inc. and Precision Products, Inc. (collectively, ''domestic interested parties''), to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Extended Benefit (EB) Program for Delaware

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

This notice announces a change in benefit period eligibility under the EB program for Delaware.

The following changes have occurred since the publication of the last notice regarding the State's EB status:

- Based on the data released by the Bureau of Labor Statistics on December 18, 2020, the seasonally-adjusted total unemployment rate for Delaware fell below the 6.5% threshold necessary to remain ''on'' in EB. The payable period in EB will end on January 9, 2021.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.as.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S–4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693–2991 (this is not a toll-free number) or by email: *Stengle.Thomas@dol.gov.*

Signed in Washington, DC.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2021–00263 Filed 1–8–21; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE:

10:00 a.m., Thursday, January 14, 2021

Recess: 12:15 p.m.

12:30 p.m., Thursday, January 14, 2021

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. Board Briefing, ACCESS Initiative.
2. NCUA Rules and Regulations, Credit Union Service Organizations.
3. Board Briefing, Statutory Inflation Adjustment of Civil Monetary Penalties.
4. NCUA Rules and Regulations, Corporate Credit Unions.
5. NCUA Rules and Regulations, CAMELS Rating System.
6. NCUA Rules and Regulations, Risk Based Net Worth, Complex Threshold.
7. NCUA's 2021 Annual Performance Plan.
8. Board Briefing, Consolidated Appropriations Act, 2021.

9. NCUA Rules and Regulations, Simplification of Risk Based Capital Requirements.

PORTIONS CLOSED TO THE PUBLIC:

1. Supervisory Action. Closed pursuant to Exemptions (7), (8) and (9)(ii).
2. Supervisory Action. Closed pursuant to Exemptions (5), (7), (8), (9)(i)(B) and (9)(ii).
3. Delegation of Authority. Closed pursuant to Exemption (2).
4. Personnel Action. Closed pursuant to Exemptions (2) and (6).
5. Personnel Action. Closed pursuant to Exemptions (2) and (6).
6. Board Briefing. Closed pursuant to Exemption (8).

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. 2021–00473 Filed 1–8–21; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 11, 18, 25, February 1, 8, 15, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of January 11, 2021

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.

Week of January 25, 2021—Tentative

There are no meetings scheduled for the week of January 25, 2021.

Week of February 1, 2021—Tentative

There are no meetings scheduled for the week of February 1, 2021.

Week of February 8, 2021—Tentative

There are no meetings scheduled for the week of February 8, 2021.

Week of February 15, 2021—Tentative

Thursday, February 18, 2021

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Nadim Khan: 301–415–1119)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@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, at 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: January 7, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2021–00414 Filed 1–7–21; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–219; 72–15; 50–293, and 72–1044; NRC–2020–0282]

Holtec Decommissioning International, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued two exemptions in response to requests from Holtec Decommissioning International, LLC. The exemptions afford the licensee temporary relief from a certain requirement under NRC regulations. The exemptions are in response to the licensee's requests for relief due to the coronavirus disease 2019 (COVID–19) public health emergency (PHE). The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: The two exemptions were issued on December 16, 2020, in response to requests submitted by the licensee on November 20, 2020 and supplemented on December 9 and 10, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0282 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0282. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

FOR FURTHER INFORMATION CONTACT: Bruce Watson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6221, email: *Bruce.Watson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC issued two exemptions in response to requests from the licensee dated November 20, 2020, and supplemented on December 9 and 10, 2020. The exemptions afford the licensee temporary relief from a certain requirement of part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Plants and Materials.''

The exemptions from 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI, ''Nuclear Power Reactor Training and Qualification Plan for Personnel Performing Security Program Duties,'' subsection VI.C.3(I)(1) for Holtec Decommissioning International, LLC (for Oyster Creek Nuclear Generating Station and Pilgrim Nuclear Power Station), will help to ensure that these regulatory requirements do not unduly limit licensee flexibility in using personnel resources in a manner that most effectively manages the impacts of the COVID–19 PHE on maintaining the required security posture at the facilities, while performing decommissioning activities and the implementation of the licensees' NRC approved security plans, protective strategy, and implementing procedures. The licensee has committed to certain security measures to ensure response readiness and for their security personnel to maintain performance capability.

The NRC is periodically providing this compiled listing of related exemptions using a single **Federal Register** notice for COVID–19 related exemptions, instead of issuing individual **Federal Register** notices. The compiled listing provides transparency regarding the number of exemptions the NRC is issuing related to a given regulatory requirement. Additionally, the NRC publishes a list of approved licensing actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/materials/storage.html* and *https://www.nrc.gov/about-nrc/covid-19/materials/decommissioning.html.*

II. Availability of Documents

The following table provides the facility name, docket number, document description, and ADAMS accession numbers for documents related to each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the respective licensee and the NRC's decision, are provided in each exemption approval listed in the tables. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

Document description	ADAMS accession No.
Holtec Decommissioning International, LLC. Oyster Creek Nuclear Generating Station Docket Nos. 50–219 and 72–15	
Request for a One-Time Exemption from 10 CFR part 73, appendix B, section VI, subsection C.3.(I)(1) Regarding Annual Force-on-Force (FOF) Exercises, Due to COVID 19 Pandemic.	Non-public, withheld under 10 CFR 2.390.
Response to Request for Additional Information on Request for a One-Time Exemption from 10 CFR part 73, appendix B, section VI, subsection C.3.(I)(1) Regarding Annual Force-on-Force (FOF) Exercises, Due to COVID 19 Pandemic, dated December 9, 2020.	ML20345A146.
Oyster Creek Nuclear Generating Station—Exemption from Annual Force-on-Force Exercise Requirement of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI.C.3.(I)(1), dated December 16, 2020.	ML20345A291.
Holtec Decommissioning International, LLC. Pilgrim Nuclear Power Station Docket Nos. 50–293 and 72–1044	
Request for a One-Time Exemption from 10 CFR part 73, appendix B, section VI, subsection C.3.(I)(1) Regarding Annual Force-on-Force (FOF) Exercises, Due to COVID 19 Pandemic.	Non-public, withheld under 10 CFR 2.390.
Supplemental Information to Support Request for a One-Time Exemption from 10 CFR part 73, appendix B, section VI, subsection C.3.(I)(1) Regarding Annual Force-on-Force (FOF) Exercises, Due to COVID 19 Pandemic, dated December 10, 2020.	ML20345A199.
Pilgrim Nuclear Power Station—Exemption from Annual Force-on-Force Exercise Requirement of 10 CFR part 73, appendix B, ''General Criteria for Security Personnel,'' section VI.C.3.(I)(1), dated December 16, 2020.	ML20345A324.

Dated: January 5, 2021.

For the Nuclear Regulatory Commission.

Bruce Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–00201 Filed 1–8–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

OPM Guidance Documents Web Portal

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is announcing an online centralized portal that includes information about our guidance and a searchable, indexed listing of, and links to, our guidance documents. The portal, located on our website, does not displace other listings of or links to our guidance documents in topic-specific sections of our website.

DATES: The guidance portal is accessible by the public on the date of publication of this notice.

ADDRESSES: OPM's guidance Web Portal is available at *www.opm.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: Alexys Stanley, Regulatory Affairs Analyst, and *regulatory.information@opm.gov* or via telephone at (202) 606–1000.

SUPPLEMENTARY INFORMATION: Executive Order 13891, and OMB implementing guidance memorandum M–20–02, require Federal agencies to establish an online, centralized, searchable database of their guidance documents, to include certain identifying information, and to provide information on how to comment on open guidance and how to request revisions to the agency's guidance. They also require agencies to publish notice in the **Federal Register** of the new guidance portal.

In compliance with the above, OPM is publishing this notice of the availability of a single, searchable, indexed database containing OPM guidance documents currently in effect, which may be accessed at *www.opm.gov/guidance.*

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–00210 Filed 1–8–21; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2020; Order No. 5803]

Postal Service Performance Report and Performance Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: On December 29, 2020, the Postal Service filed the FY 2020 Performance Report and FY 2021 Performance Plan with its FY 2020 Annual Compliance Report. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 1, 2021. *Reply Comments are due:* March 15, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

Each year the Postal Service must submit to the Commission its most recent annual performance plan and annual performance report. 39 U.S.C. 3652(g). On December 29, 2020, the Postal Service filed its FY 2020 Annual Report to Congress in Docket No. ACR2020.[1] The FY 2020 Annual Report includes the Postal Service's FY 2020 annual performance report (FY 2020 Report) and FY 2021 annual performance plan (FY 2021 Plan). FY 2020 Annual Report at 31–57.

The FY 2021 Plan reviews the Postal Service's plans for FY 2021. The FY 2020 Report discusses the Postal Service's progress during FY 2020 toward its four performance goals:

- High-Quality Service
- Excellent Customer Experiences
- Safe Workplace and Engaged Workforce
- Financial Health

Each year, the Commission must evaluate whether the Postal Service met the performance goals established in the annual performance plan and annual performance report. 39 U.S.C. 3653(d). The Commission may also ''provide recommendations to the Postal Service related to the protection or promotion of public policy objectives set out in'' title 39. *Id.*

Since Docket No. ACR2013, the Commission has evaluated whether the Postal Service met its performance goals in reports separate from the Annual Compliance Determination.[2] The Commission continues this current practice to provide a more in-depth analysis of the Postal Service's progress toward meeting its performance goals and plans to improve performance in future years. To facilitate this review, the Commission invites public comment on the following issues:

- Did the Postal Service meet its performance goals in FY 2020?
- Do the FY 2020 Report and the FY 2021 Plan meet applicable statutory requirements, including 39 U.S.C. 2803 and 2804?
- What recommendations should the Commission provide to the Postal Service that relate to protecting or promoting public policy objectives in title 39?
- What recommendations or observations should the Commission make concerning the Postal Service's strategic initiatives?[3]
- What other matters are relevant to the Commission's analysis of the FY 2020 Report and the FY 2021 Plan under 39 U.S.C. 3653(d)?

II. Request for Comments

Comments by interested persons are due no later than March 1, 2021. Reply comments are due no later than March 15, 2021. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as Public Representative to represent the interests of the general public in this proceeding with respect to issues related to the Commission's analysis of the FY 2020 Report and the FY 2021 Plan.

III. Ordering Paragraphs

It Is Ordered

1. The Commission invites public comment on the Postal Service's FY 2020 Report and FY 2021 Plan.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as Public Representative to represent the interests of the general public in this proceeding with respect to issues related to the Commission's analysis of the FY 2020 Report and the FY 2021 Plan.
3. Comments are due no later than March 1, 2021.
4. Reply comments are due no later than March 15, 2021.
5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–00200 Filed 1–8–21; 8:45 am]

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RAILROAD RETIREMENT BOARD

Civil Monetary Penalty Inflation Adjustment

AGENCY: Railroad Retirement Board.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2021.

SUMMARY: As required by Section 701 of the Bipartisan Budget Act of 2015, entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Railroad Retirement Board (Board) hereby publishes its 2021 annual adjustment of civil penalties for inflation.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General

[1] United States Postal Service FY 2020 Annual Report to Congress, Library Reference USPS–FY20–17, December 29, 2020 (FY 2020 Annual Report).

[2] *See* Docket No. ACR2013, Postal Regulatory Commission, Review of Postal Service FY 2013 Performance Report and FY 2014 Performance Plan, July 7, 2014; Docket No. ACR2014, Postal Regulatory Commission, Analysis of the Postal Service's FY 2014 Program Performance Report and FY 2015 Performance Plan, July 7, 2015; Docket No. ACR2015, Postal Regulatory Commission, Analysis of the Postal Service's FY 2015 Annual Performance Report and FY 2016 Performance Plan, May 4, 2016; Docket No. ACR2016, Postal Regulatory Commission, Analysis of the Postal Service's FY 2016 Annual Performance Report and FY 2017 Performance Plan, April 27, 2017; Docket No. ACR2017, Postal Regulatory Commission, Analysis of the Postal Service's FY 2017 Annual Performance Report and FY 2018 Performance Plan, April 26, 2018; Docket No. ACR2018, Postal Regulatory Commission, Analysis of the Postal Service's FY 2018 Annual Performance Report and FY 2019 Performance Plan, May 13, 2019; Docket No. ACR2019, Postal Regulatory Commission, Analysis of the Postal Service's FY 2019 Annual Performance Report and FY 2020 Performance Plan, June 1, 2020.

[3] *See* FY 2020 Annual Report at 55–57.

Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–1275, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), entitled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (Inflation Adjustment Act) to require agencies to publish regulations adjusting the amount of civil monetary penalties provided by law within the jurisdiction of the agency not later than January 15th of every year.

For the 2021 annual adjustment for inflation of the maximum civil penalty under the Program Fraud Civil Remedies Act of 1986, the Board applies the formula provided by the 2015 Act and the Board's regulations at Title 20, Code of Federal Regulations, Part 356. In accordance with the 2015 Act, the amount of the adjustment is based on the percent increase between the Consumer Price Index (CPI–U) for the month of October preceding the date of the adjustment and the CPI–U for the October one year prior to the October immediately preceding the date of the adjustment. If there is no increase, there is no adjustment of civil penalties. The percent increase between the CPI–U for October 2020 and October 2019, as provided by Office of Management and Budget Memorandum M–21–10 (December 23, 2020) is 1.01182 percent. Therefore, the new maximum penalty under the Program Fraud Civil Remedies Act is $11,803 (the 2020 maximum penalty of $11,665 multiplied by 1.01182, rounded to the nearest dollar). The new minimum penalty under the False Claims Act is $11,803 (the 2020 minimum penalty of $11,665 multiplied by 1.01182, rounded to the nearest dollar), and the new maximum penalty is $23,607 (the 2020 maximum penalty of $23,331 multiplied by 1.01182, rounded to the nearest dollar). The adjustments in penalties will be effective January 11, 2021.

Dated: January 6, 2021.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2021–00230 Filed 1–8–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90853; File No. SR–CBOE–2020–117]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Certain Rules To Accommodate the Listing and Trading of Index Options With an Index Multiplier of One

January 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 purpose of this proposed rule change is to amend certain rules to accommodate the listing and trading of index options with an index multiplier of one (''micro-options'').[3]

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain rules to accommodate the listing and trading of index options with an index multiplier of one (''micro-options'').[4] The Exchange may list options on indexes that satisfy the initial and maintenance criteria in Rule 4.10, and currently lists options on 19 indexes. The following table lists the current indexes on which the Exchange currently lists options, as well as the current value of the index as of the close of trading on November 25, 2020, which indexes satisfy the initial and maintenance criteria for broad-based, narrow-based indexes, or the specific indexes in Rule 4.10:

Index (option symbol)	Current value
S&P 500 Index (SPX)	3629.65
Mini-S&P 500 Index (XSP)	362.97
Russell 2000 Index (RUT)	1845.02
Cboe Volatility Index (VIX)	21.25
Dow Jones Industrial Average (DJX)	[5] 29872.47
S&P 100 Index (OEX and XEO)	1662.28
S&P 500 ESG Index (SPESG)	309.24
S&P Materials Select Sector Index (SIXB)	754.63

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange intends to file a Form 19b–4(e) with the Commission for any index option it lists for trading with an index multiplier of one pursuant to Rule 19b–4(e) of the Act. As further discussed below, the proposed rule change would also permit the Exchange to list flexible index options (''FLEX Index Options'') with an index multiplier of one (''FLEX Micro Options''). Unless the context otherwise requires, the term ''micro-options'' as used in this rule filing includes FLEX Micro Options.

[4] The Exchange intends to file a Form 19b–4(e) with the Commission for any index option it lists for trading with an index multiplier of one pursuant to Rule 19b–4(e) of the Act. As further discussed below, the proposed rule change would also permit the Exchange to list flexible index options (''FLEX Index Options'') with an index multiplier of one (''FLEX Micro Options''). Unless the context otherwise requires, the term ''micro-options'' as used in this rule filing includes FLEX Micro Options.

Index (option symbol)	Current value
S&P Industrials Select Sector Index (SIXI)	894.23
S&P Financial Select Sector Index (SIXM)	350.98
S&P Real Estate Select Sector Index (SIXRE)	178.53
S&P Utilities Select Sector Index (SIXU)	649.19
S&P Health Care Select Sector Index (SIXV)	1,093.10
MSCI EAFE Index (MXEA)	2,065.60
MSCI Emerging Markets Index (MXEF)	1,218.29
Russell 1000 Growth Index (RLG)	2,300.88
Russell 1000 Value Index (RLV)	1,315.93
Russell 1000 Index (RUI)	2,040.23
FTSE 100 Mini-Index (UKXM)	637.97

[5] Options are based on 1/100th of the index value.

Pursuant to the definition of index multiplier[6] in Rule 4.11, the Exchange may determine the index multiplier of an option, which it generally does in the specifications for an index option.[7] Similarly, Article I, Section 1, I(3) of the Options Clearing Corporation (''OCC'') By-Laws defines ''index multiplier'' as the dollar amount (as specified by the Exchange on which such contract is traded) by which the current index value is to be multiplied to obtain the aggregate current index value. Unlike the definition of a unit of trading for stock options in the OCC By-Laws, which states the unit of trading in is designated by OCC but is 100 shares if not otherwise specified, the definition of index multiplier includes no such default.[8] Therefore, the Exchange believes the current index multiplier definition in the OCC By-Laws (which would have previously been filed with the Commission) permits any index multiplier specified by the listing Exchange given the lack of a default index multiplier for index options (and the inclusion of a default unit of trading for equity options). This is consistent with the lack of default number in Exchange's definition of index multiplier and the ability for the Exchange to specify the index multiplier, as noted above. However, certain other Rules reflect an index multiplier of 100, and the proposed rule change updates those Rules to reflect the potential for an index multiplier of one.

Additionally, the Exchange believes micro-options are covered by the disclosures in the Options Disclosure Document (''ODD''). The ODD reflects the possibility of differing values of index multipliers when describing features of index options.[9] Specifically, the ODD states the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier.[10] As a result, the risk disclosures regarding index options in the ODD currently cover any risks associated with option index options with multipliers of one (and other amounts).

The Exchange believes micro-options will expand investors' choices and flexibility by listing and trading option contracts on index options, which provide investors with the ability to gain exposure to the market or specific industries, with a notional value of 1/100th of the value of current index options. The Exchange believes lower-valued micro-options may appeal to retail investors who currently may not participate in the trading of index options, because index options are generally higher-priced securities due to the high levels of the indexes. The Exchange believes that investors, most notably the average retail investor, will benefit from micro-options, which will make options overlying indexes more readily available as investing and hedging tools at more affordable and realistic prices, which would ultimately reduce investment risk. For example, with SPX at a value of 3629.65 on November 25, 2020, the notional value of an SPX option with an index multiplier of 100 was $362,965. On that date, the Dec 4 SPX 3630 call was traded at $32.05, making the cost of that option $3,205 given the index multiplier of 100. Proportionately equivalent SPX micro-options would have provided investors with the ability to trade at the much lower price of $32.05 per contract.

Additionally, the Exchange believes the additional granularity provided by micro-options with respect to the prices at which investors may execute and exercise index options on the Exchange will appeal to all investors by providing them with an additional exchange-traded tool to manage the positions and associated risk in their portfolios more precisely based on notional value, which currently may equal a fraction of a standard contract. For example, suppose an investor holds a security portfolio of $10,000,000 and desires to hedge its portfolio with SPX options. In order to hedge the entire portfolio with SPX options, the investor would need to trade 27.55 contracts ($10,000,000/$362,965). The nearest whole number of contracts would be 28 contracts, which would have a total notional value of $10,163,020. As a result, the investor could only hedge within $163,020 of its portfolio value with SPX options with an index multiplier of 100. However, with SPX micro-options, the investor would need to trade 2,755.09 contracts ($10,000,000/$3629.65) or equivalently, 27 SPX and 55.09 SPX micro-options. The nearest whole number of contracts would be 2,755 SPX micro-options or 27 SPX and 55 SPX micro-options, which would have a total notional value of $9,999,686.75. This will allow the investor to hedge within $315 of its portfolio value. Therefore, the proposed rule change would permit this investor to hedge its portfolio more effectively with far greater precision.

The Exchange notes investors may currently execute and exercise options with this smaller contract multiplier in the unregulated over-the-counter

[6] Rule 4.11 defines the term ''index multiplier'' as the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract. The Exchange included the proposed index multiplier in rule filings for certain products.

[7] Option specifications are available on the Exchange's public website, *available at cboe.com/tradable_products/*. Currently, the Exchange has designated an index multiplier of 100 for indexes it currently lists for trading.

[8] *See* OCC Bylaws Article I, Section 1, U(5).

[9] The ODD is available at *https://www.theocc.com/about/publications/character-risks.jsp*. The ODD states that the exercise price of a stock option is multiplied by the number of shares underlying the option to determine the aggregate exercise price and aggregate premium of that option. *See* ODD at 18. Similarly, the ODD states that the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier. *See* ODD at 8, 9, and 125.

[10] *See* ODD at 8, 9, and 125.

(''OTC'') options market. The Exchange understands that investors may prefer to trade such options in a listed environment to receive the benefits of trading listing options, including (1) enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options. The Exchange believes the proposed rule change may shift liquidity from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow.

Micro-Options

Currently, the Exchange has designated an index multiplier of 100 for all index options it lists for trading. The proposed rule change amends various rules regarding index options to permit the Exchange to designate an index multiplier of one for indexes on which it may list options. Micro-options will trade in the same manner as index options.[11] The table below demonstrates the differences between a micro-option and a standard index option on the SPX Index:

Term	Standard (index multiplier of 100)	Micro (index multiplier of 1)
Strike Price	3630	3630
Bid or offer	32.05	32.05
Total Value of Deliverable	$363,000	$3,630
Total Value of Contract	$3,205	$32.05

To the extent the Exchange lists a micro-option on an index on which it also lists a standard index option, it will be listed with a different trading symbol than the standard index option with the same underlying index to reduce any potential confusion.[12] The Exchange believes that the clarity of this approach is appropriate and transparent. The Exchange recognizes the need to differentiate micro-option contracts from standard option contracts and believes the proposed rule change will provide the necessary differentiation.

FLEX Micro Options [13]

Currently, Rule 4.21(b)(1) states the index multiplier for FLEX Index Options is 100 (which as noted above is currently the index multiplier designated by the Exchange for all non-FLEX Index Options). The proposed rule change deletes the parenthetical with that provision from current Rule 4.21(b)(1), and instead proposes to describe the index multiplier for FLEX Index Options in proposed Rule 4.20(b). Options with the same underlying but different units of trading or index multipliers, as applicable, are different classes.[14] An index multiplier applies to all series in the class.[15] The Exchange, therefore, believes including the provision regarding the index multiplier of FLEX Index Options in Rule 4.20, which describes which classes the Exchange may authorize for trading, is more appropriate.[16]

The provision in proposed Rule 4.20(b) that states the index multiplier for FLEX Index Options may be 100 merely restates the provision in the parenthetical from current Rule 4.21(b)(1) in a more appropriate part of the Rules, and thus is a nonsubstantive change. Proposed Rule 4.20(b) also provides that the index multiplier for FLEX Index options may also be one (a ''FLEX Micro Option'') (in addition to the current index multiplier of 100).[17] Like non-FLEX Options (as discussed above), 100 contracts for a FLEX Micro Option are economically equivalent to one contract for a FLEX Index Option with a multiplier of 100. FLEX Micro Options will be listed with different trading symbols than FLEX Index Options with a multiplier of 100 with the same underlying to reduce any potential confusion.[18]

Additionally, proposed Rule 4.20(a) states that the unit of trading for FLEX Equity Options is the same as the unit of trading for non-FLEX Equity Options overlying the same equity security. The unit of trading for equity options (both FLEX and non-FLEX) that may be listed on the Exchange is 100,[19] except for mini-options, which have a unit of trading of 10.[20] This is not a substantive change, but rather is merely a clarification in the Rules regarding the current unit of trading for FLEX Equity Options. Therefore, the proposed rule change has no impact on which FLEX

[11] The proposed rule change defines ''micro-options'' in Rule 4.11 as an index option with an index multiplier of one. The proposed rule change adds that references to ''index option'' in the Rules include ''micro-option'' unless the context otherwise requires.

[12] For example, a standard index option for index ABC with an index multiplier of 100 may have symbol ABC, while a micro-option for index ABC with a multiplier of one may have symbol ABC9.

[13] The Exchange notes that SR–CBOE–2020–034 is currently pending with the Securities and Exchange Commission (the ''Commission'') and proposes nearly identical changes to FLEX (except that rule filing applies to full-value indexes only). To the extent the Commission approves that filing prior to this filing, the Exchange will amend this filing to incorporate the approved changes. If the Commission approves this filing prior to that filing, the Exchange would withdraw SR–CBOE–2020–034.

[14] For example, the Exchange may list for trading on five securities mini-options, which are options with a unit of trading of ten shares, which is ten times lower than the standard-sized option of 100 shares. *See* Rule 4.5, Interpretation and Policy .18. While a mini-option has the same underlying as a standard-sized option, they are separate products. *See* Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (SR–CBOE–2013–001). As proposed, the Exchange may list for trading micro-options and standard options on the same indexes, which will be separate products (and thus separate classes).

[15] In other words, SPX micro-options would be a different class than standard SPX options, just as SPX options are a different class than XSP options.

[16] Current Rule 4.20 provides that the Exchange may authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Rules 4.3 and 4.10, respectively, even if the Exchange does not list that non-FLEX Option class for trading. Therefore, if the proposed rule change to adopt micro-options is approved, the Exchange may authorize FLEX Micro Options on an index to be listed for trading even if the Exchange is not listing a micro-option on that same index.

[17] Proposed Rule 4.20(b) also clarifies that references to ''FLEX Index Option'' in the Rules include ''FLEX Micro Option'' unless the context otherwise requires.

[18] For example, a FLEX ABC Index Option with a multiplier of 100 may have symbol 4ABC (the ''4'' is the designation generally used for FLEX Options to distinguish from the non-FLEX Option with the same underlying), while a FLEX ABC Micro Option may have symbol 4ABC9.

[19] *See* OCC By-Laws Article I, Section I(U)(5), which defines ''unit of trading'' in respect of any series of options as the number of units of the underlying interest designated by OCC as the minimum number to be the subject of a single option contract in such series, and stating that in the absence of any such designation for a series of options in which the underlying security is a common stock, the unit of trading is 100 shares.

[20] *See* Rule 4.5, Interpretation and Policy .18(a).

Equity Options may be traded on the Exchange. The ''unit of trading'' in respect of any series of options means the number of units (*i.e.,* shares in the case of equity options) of the underlying interest subject to a single option contract in the series.[21]

When submitting a FLEX Order, the submitting FLEX Trader[22] must include all required terms of a FLEX Option series.[23] Pursuant to current Rule 4.21(b)(1), the submitting FLEX Trader must include the underlying equity security or index (*i.e.,* the FLEX Option class) on the FLEX Order. The proposed rule change amends Rule 4.21(b)(1) to state that if a FLEX Trader specifies an index on a FLEX Order, the FLEX Trader must also include whether the index option has an index multiplier of 100 or 1 when identifying the class of FLEX Order. The Exchange is specifying it may list FLEX Index Option classes with an index multiplier of either one or 100. Therefore, each FLEX Index Option series in a FLEX Micro Option class will include the same flexible terms as any other FLEX Option series, including strike price, settlement, expiration date, and exercise style as required by Rule 4.21(b).[24]

FLEX Micro Options will be traded in the same manner as all other FLEX Options pursuant to Chapter 5, Section F of the Rules. Like micro-options, as demonstrated above, there are two important distinctions between FLEX Index Options with a multiplier of 100 and FLEX Micro Options due to the difference in multipliers. The proposed rule change amends certain Rules describing the exercise prices and bids and offers of FLEX Options to reflect these distinctions, in a similar manner as it proposes to do for non-FLEX Options (as further described below).

The Rules permit trading in a put or call FLEX Option series only if it does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading.[25] In other words, a FLEX Option series may not have identical terms as a non-FLEX Option series listed for trading. Rule 1.1 defines the term ''series'' as all option contracts of the same class that are the same type of option and have the same exercise price and expiration date. Therefore, a FLEX Option series in one class may have the same exercise style, same expiration date, settlement, and same exercise price as a non-FLEX Option series in a different class, even if they are on the same underlying security or index. For example, pursuant to the Exchange's Rules, a FLEX Option overlying Apple stock that is a mini-option (*i.e.* a multiplier of 10) may be listed with the same exercise style, expiration date, settlement, and same exercise price as a non-FLEX Option overlying Apple stock that is not a mini-option (*i.e.* a multiplier of 100). The Exchange may also list a FLEX XSP Option with the same exercise style, expiration date, settlement, and same exercise price as a non-FLEX SPX Option. As these series are in different classes, they are permissible under Rule 4.21(a)(1). Similarly, pursuant to the proposed rule change, an SPX FLEX Micro Option may have the same exercise style, expiration date, settlement, and same exercise price as a standard SPX option with an index multiplier of 100 (which is non-FLEX), as they would be in different classes.

Pursuant to Rule 4.22(a), a FLEX Option position becomes fungible with a non-FLEX option that becomes listed with identical terms. As discussed above, options with different multipliers are different classes, and an option series in one class cannot be fungible with an option series in another classes, even if they are economically equivalent. Fungibility is only possible for series with identical terms. This is similar to how a FLEX XSP Index Option series is not fungible with an economically equivalent non-FLEX SPX Option series. Therefore, a FLEX Micro Option would become fungible with a non-FLEX micro-option with the same terms pursuant to Rule 4.22(a), but would not be fungible with a non-FLEX option overlying the same index with a multiplier of 100 with the same expiration date, settlement, and exercise price.

Trading Hours

Micro-options will be available for trading during the same hours as standard index options pursuant to Rule 5.1(b)(2).[26] Therefore, Regular Trading Hours for micro-options will generally be 9:30 a.m. to 4:15 p.m. Eastern time.[27] To the extent an index option is authorized for trading during Global Trading Hours, the Exchange may also list micro-options during that trading session as well, the hours for which trading session are 3:00 a.m. to 9:15 a.m. Eastern time.

Expiration, Settlement, and Exercise Style

The Exchange may list a micro-option on an index with the same expirations, settlements, and exercise styles as the standard index option overlying the same index.[28] Consistent with existing rules for index options, the Exchange will generally allow up to six standard monthly expirations for micro-options[29] as well as up to 10 expiration months for LEAPS.[30] For certain specified index options (including EAFE, EM, UKXM, the S&P Select Sector Indexes, and SPESG options) and any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index (currently, only SPX options are used by the Exchange to calculate a volatility index), the Exchange may list up to 12 standard monthly expirations for micro-options on those indexes, up to six weekly expirations and up to 12 standard (monthly) expirations in VIX micro-options.[31] The Exchange may also list up to the same maximum number of expirations permitted in Rule 4.13(a)(2) for micro-options on broad-based index options with nonstandard expirations in accordance with the Nonstandard Expirations Pilot Program (as further discussed below).[32] Micro-options on broad-based and narrow-based indexes will be cash-settled contracts with European-style exercise in accordance with the listing criteria for those options.[33] Micro-options, like standard index options, with third-Friday expiration will also be A.M.-settled or P.M.-settled, as applicable, in

[21] *See* Rule 4.21(b)(1); and OCC Bylaws Article I, Section 1, U(5).

[22] A ''FLEX Trader'' is a Trading Permit Holder the Exchange has approved to trade FLEX Options on the Exchange.

[23] These terms include, in addition to the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. *See* Rule 4.21(b). A ''FLEX Order'' is an order submitted in FLEX Options. The submission of a FLEX Order makes the FLEX Option series in that order eligible for trading. *See* Rule 5.72(b).

[24] As discussed below, these are the terms designated by the Commission as those that constitute standardized options, and therefore, the Exchange believes the proposed rule change is consistent with Section 9(b) of the Act. *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993) (''1993 FLEX Approval Order'').

[25] *See* Rule 4.21(a)(1).

[26] Pursuant to Rule 5.1(b)(3)(A) and (c)(1), FLEX Micro Options may trade at the same time as index options with the same underlying index.

[27] Certain indexes close trading at 4:00 p.m. Eastern time. *See* Rule 5.1.

[28] *See* Rule 4.13. In accordance with Rule 4.21(b), FLEX Traders may designate the exercise style, expiration date, and settlement type of FLEX Micro Options.

[29] *See* Rule 4.13(a)(2).

[30] See Rule 4.13(b). Index LEAPS may expire 12 to 180 months from the date of issuance.

[31] *See* Rule 4.13(a).

[32] *See* Rule 4.13(e).

[33] *See* Rule 4.10(b) (narrow-based initial listing criteria), (f) (broad-based initial listing criteria), (h) (EAFE, EM, FTSE Emerging, and FTSE Developed), and (j) (FTSE 100); *see also* Rule 4.13(a)(3).

accordance with the applicable listing criteria.[34]

As it does for certain standard index options, the Exchange may list micro-options over the same indexes with P.M.-settlement in certain instances (in addition to A.M.-settlement in accordance with the generic listing terms). Specifically, pursuant to Rule 4.13(c), the Exchange may open for trading Quarterly Index Expirations (''QIXs'') on certain specified index options. QIXs are index option contracts that expire on the last business day of a calendar quarter, and the Exchange may list up to eight near-term quarterly expirations for trading.[35] Currently, the index multiplier for QIXs may be 100 or 500. The proposed rule change amends Rule 4.13(c) to permit the index multiplier to also be one to accommodate the listing of QIX micro-options on the specified indexes.

In addition, the Exchange's Nonstandard Expirations Pilot Program currently allows it to list Weekly and End of Month (''EOM'') Expirations on any broad-based index.[36] Weekly and EOM options are P.M.-settled and may expire on any Monday, Wednesday, or Friday (other than the third Friday of the month or days that coincide with an EOM expiration) or on the last trading day of the month. Like standard index options with Weekly and EOM Expirations, micro-options on broad-based indexes with Weekly and EOM Expirations will be P.M.-settled and otherwise treated the same as options on the same underlying index that expire on the third Friday of the month. The maximum number of expirations that may be listed for each of Weeklys and EOMs in a micro-option is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) (as described above) for micro-options on the same broad-based index.[37] The Exchange may currently list Weekly and EOM Expirations on broad-based indexes as a pilot, which pilot period currently expires on May 3, 2021. The Exchange currently submits regular reports and data to the Commission regarding the Nonstandard Expirations Pilot Program. To the extent the Exchange lists any micro-options with Weekly or EOM Expirations pursuant to this pilot program, the Exchange will include the same information with respect to micro-options that it does for standard options in the reports it submits to the Commission in accordance with the pilot program.

Similarly, the Exchange also currently has in place a pilot program under Rule 4.13, Interpretation and Policy .13 that allows the Exchange to list options on specified indexes that expire on the third Friday of the month that are P.M.-settled. The Exchange, therefore, may list micro-options on those same indexes pursuant to this pilot program, which pilot period currently expires on May 3, 2021 as well. As it will for the Nonstandard Expirations Pilot Program, to the extent the Exchange lists micro-options on the specified indexes pursuant to this P.M.-settlement pilot program, the Exchange will include the same information with respect to micro-options that it does for standard options in the reports it submits to the Commission in accordance with the pilot program.

Each micro-option will be on an index that already satisfies initial and maintenance listing criteria in Rule 4.10, and thus the underlying index of each micro-option consists of the same components as the underlying index of each standard index option. A micro-option will merely have $1/100^{th}$ the value of a standard option overlying the same index. Because micro-options and standard index options may overlie the same indexes, market participants may use micro-options as a hedging vehicle to meet their investment needs in connection with index-related products and cash positions in a similar manner as they do with standard index options, but as a more manageably sized contract. The smaller-sized contract will also provide market participants with more precision to hedge their portfolios. Additionally, the smaller size makes a micro-option a lower cost option than a standard index option, making it a more affordable and lower risk investment choice for investors, particularly retail investors. Therefore, the Exchange believes it is appropriate to be able to list the same expirations and settlements for micro-options as it may for standard index options.

Exercise Prices

The Exchange proposes to adopt Rule 4.13, Interpretation and Policy .01(l) to provide that, notwithstanding any other provision regarding strike price intervals in Rule 4.13, Interpretation and Policy .01, the interval between strike prices of series of micro-options will be $0.50 or greater. Because of the smaller contract size of micro-options, the Exchange believes it is appropriate to be able to list micro-options with smaller strike price intervals than standard index options.[38] The Exchange believes finer strike intervals will more closely align micro-options with their purpose of being a lower-cost investment tool to investors.[39] The Exchange believes that smaller strike intervals for micro-options will provide market participants with more efficient hedging and trading opportunities. The proposed $0.50 strike setting regime would permit strikes on a more refined scale, which the Exchange believes will allow investors, particularly retail investors, to more affordably and efficiently gain exposure to equity markets, hedge their positions in instrument and cash positions in their portfolios, and more precisely tailor their investment strategies.

As demonstrated above, there are two important distinctions between micro-options and standard options due to the difference in multipliers, one of which is how the total deliverable value is calculated (the other is the meaning of bids and offers, as further discussed below). Proposed Rule 4.13, Interpretation and Policy .01(l) describes the difference between the meaning of the exercise price of micro-option and a standard index option. Specifically, the proposed rule change states that strike prices for micro-options are set at the same level as index options with an index multiplier of 100. For example, a micro-option call series with a strike price of 3250 has a total deliverable value of $3,250 (3250 × $1), while a standard option call series with a strike price of 3250 has a total deliverable value of $325,000 (3250 × $100).[40]

The proposed rule change amends Rule 4.21(b)(6) to describe the difference between the meaning of the exercise price of a FLEX Index Option with a multiplier of 100 and a FLEX Micro Option. Specifically, the proposed rule

[34] *See id.*

[35] *See* Rule 4.13(c).

[36] *See* Rule 4.13(e).

[37] *See id.*

[38] Pursuant to Rule 4.13, Interpretation and Policy .01, the interval between strike prices of standard index options is generally $5.00 except for lower-priced strikes, for which the smallest interval is $2.50, subject to certain exceptions (including reduced-value index options, which may have strike intervals of no less than $0.50 or $1).

[39] This is consistent with lower permissible strike intervals for certain reduced-value index options, which have the same practical effect as index options with a smaller multiplier. *See id.*

[40] This corresponds to the calculation of exercise prices for other types of options with a reduced multiplier. For example, Rule 4.5, Interpretation and Policy .18(b) provides that strike prices for mini-options (which have multipliers of 10 rather than 100, as set forth in Rule 4.5, Interpretation and Policy .18(a)) are set at the same level as for standard options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1,250 (10 × 125) if the strike is 125, while a call series strike price to deliver 100 shares of stock at $125 per share has a total deliverable value of $12,500 (100 × 125).

change states that the exercise price for a FLEX Micro Option series is set at the same level as the exercise price for a FLEX Index Option series in a class with a multiplier of 100. The proposed rule change also adds the following examples to Rule 4.21(b)(6) regarding how the deliverable for a FLEX Micro Option will be calculated (as well as for a FLEX Index Option with a multiplier of 100 and a FLEX Equity Option, for additional clarity and transparency): If the exercise price of a FLEX Option series is a fixed price of 50, it will deliver: (A) 100 shares of the underlying security at $50 (with a total deliverable of $5,000) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times 50 (with a total deliverable value of $5,000) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times 50 (with a total deliverable value of $50) if a FLEX Micro Option. If the exercise price of a FLEX Option series is 50% of the closing value of the underlying security or index, as applicable, on the trade date, it will deliver: (A) 100 shares of the underlying security at a price equal to 50% of the closing value of the underlying security on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Equity Option; (B) cash equal to 100 (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of 100 times that percentage amount) if a FLEX Index Option with a multiplier of 100; and (C) cash equal to one (*i.e.* the index multiplier) times a value equal to 50% of the closing value of the underlying index on the trade date (with a total deliverable of one times that percentage amount) if a FLEX Micro Option. The descriptions of exercise prices for FLEX Equity Options and FLEX Index Options with a multiplier of 100 are true today, and merely add for purposes of clarity examples to the rule regarding the exercise price of a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, the deliverables for which are equal to the exercise price times the 100 contract multiplier to determine the deliverable dollar value. Because a FLEX Micro Option has a multiplier of 1/100 of the multiplier of a FLEX Index Option with a multiplier of 100, the value of the deliverable of a FLEX Micro Option as a result is 1/100 of the value of the deliverable of a FLEX Index Option with a deliverable of 100.

Minimum Increments

The Exchange proposes to amend Rule 5.4 to provide that a micro-option will have the same minimum increment for bids and offers as the minimum increment for a standard index option on the same index.[41] Similar to the proposed rule change above to describe the difference between the meaning of strike prices of micro-options and standard index options, the proposed rule change amends the Rules to describe the difference between the meaning of bids and offers for micro-options and standard index options. Specifically, proposed Rule 5.3(c)(2) provides that notwithstanding Rule 5.3(a),[42] bids and offers for a micro-option must be expressed in terms of dollars per 1/100th part of the total value of the contract. For example, an offer of ''0.50'' represents an offer of $0.50 for a micro-option.[43]

Similarly, the proposed rule change amends Rule 5.3(e)(3) to describe the difference between the meaning of bids and offers for FLEX Equity Options, FLEX Index Options with a multiplier of 100, and FLEX Micro Options. Currently, that rule states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit.[44] As noted above, a FLEX Option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.[45] The proposed rule change clarifies that bids and offers are expressed per unit, if a FLEX Equity Option or a FLEX Index Option with a multiplier of 100, and adds an example (as set forth below). This is true today, and merely adds clarity to the Rules.

The proposed rule change also adds to Rule 5.3(e)(3) the meaning of bids and offers for FLEX Micro Options. Specifically, bids and offers for FLEX Micro Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per 1/100th unit. Additionally, the proposed rule change adds examples of the meaning of bids and offers of FLEX Options: If the exercise price of a FLEX Option series is a fixed price, a bid of ''0.50'' represents a bid of (A) $50 (0.50 times 100 shares) for a FLEX Equity Option; (B) $50 (0.50 times an index multiplier of 100) for a FLEX Index Option with a multiplier of 100; and (C) $0.50 (0.50 times an index multiplier of one) for a FLEX Micro Option.

If the exercise price of a FLEX Option series is a percentage of the closing value of the underlying equity security, a bid of ''0.50'' represents a bid of (A) 50% (0.50 times 100 shares) of the closing value of the underlying equity security on the trade date if a FLEX Equity Option; (B) 50% (0.50 times an index multiplier of 100) of the closing value of the underlying index on the trade date if a FLEX Index Option with a multiplier of 100; and (C) 0.50% (0.50 times an index multiplier of one) of the closing value of the underlying index on the trade date if a FLEX Micro Option. The Exchange believes this approach identifies a clear, transparent description of the differences between FLEX Index Options with a multiplier of 100 and FLEX Micro Options. The proposed rule change also provides additional clarity regarding the meaning of bids and offers of FLEX Equity Options and FLEX Index Options with a multiplier of 100.

The proposed rule change also clarifies that the System rounds bids and offers and offers of FLEX Options to the nearest minimum increment following application of the designated percentage to the closing value of the underlying security or index. This is consistent with current functionality and is merely a clarification in the Rules. For example, suppose a FLEX Trader enters a bid of 0.27 for a FLEX Equity Option, and the underlying security has a closing value of 24.52 on the trade date. Following the close on the trade date, the System calculates the bid to be 6.6204 (0.27×24.52). Because the minimum increment for bids and

[41] *See* Rule 5.4(a). This corresponds to the provision regarding the minimum increment for mini-options.

[42] Rule 5.3(a) states that except as otherwise provided in Rule 5.3, must be expressed in terms of dollar and decimals per unit of the underlying security or index. The Exchange believes that the proposed rule change is consistent with this provision, as a bid of 7 will represent a bid of 7 for an option contract having an index multiplier (*i.e.,* unit of trading) of one. However, the Exchange proposes to add a specific provision regarding the meaning of bids and offers for micro-options to provide complete clarity in the Rules, and to maintain consistency in the Rules, which currently contain a separate provision for mini-options, which as discussed above, have a reduced multiplier compared to standard options as micro-options do.

[43] An offer of ''0.50'' represents an offer of $50 for a standard index option with an index multiplier of 100.

[44] The proposed rule change reorganizes the language in this provision to make clear that the phrase ''if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date'' applies to the entire clause (B) of 5.4(e)(3).

[45] *See* current Rule 4.21(b)(1).

offers in a FLEX Option class is $0.01, the System rounds 6.6204 to the nearest penny, which would be a bid of $6.62.

Appointment Weights

The Exchange proposes to add micro-options each as a Tier AA class with a Market-Maker appointment weight of .001.[46] This is the same appointment weight as a majority of the other Tier AA options classes. The Exchange determines appointment weights of Tier AA classes based on several factors, including, but not limited to, competitive forces and trading volume. The Exchange believes the proposed initial appointment weight of .001 for each micro-option will foster competition by incentivizing Market-Makers to obtain an appointment in these newly listed options and provide increased liquidity in a newly listed class, to the benefit of all investors.

Contract Size Limits

The proposed rule change updates various other provisions in the following Rules to reflect that one-hundred micro-contracts overlying an index will be economically equivalent to one contract for a standard index option overlying the same index:

• *Rules 1.1 (definition of ''complex order'') and 5.65(d) (definition of ''complex trade''):* The definition of ''complex order'' in Rule 1.1 provides, among other things that for purposes of Rules 5.33 and 5.85(b)(1), the term ''complex order'' means a complex order with any ratio equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00), an Index Combo order, a stock-option order, or a security future-option order.[47] Similarly, in Rule 5.65(d), the definition of ''complex trade'' (for purposes of the options linkage plan) means the execution of an order in an option series in conjunction with the execution of one or more related order(s) in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy (for the purpose of applying the aforementioned ratios to complex trades comprised of both mini-option contracts and standard option contracts, ten (10) mini-option contracts will represent one (1) standard option contract. The proposed rule change adds to the definition in each of Rules 1.1 and 5.65(d) that for the purposes of applying these ratios to complex orders comprised of legs for both micro-options and standard options, 100 micro-option contracts represent one standard option contract.[48]

• *Rules 5.37 and 5.38:* Rules 5.37 and 5.38 describe the Exchange's Automated Improvement Mechanism for simple (''AIM'') and complex orders (''C–AIM''), respectively. There is no minimum size for an order submitted into an AIM or C–AIM Auction. However, in an AIM Auction for orders less than 50 standard option contracts (or 500 mini-option contracts), the stop price must be at least one minimum increment better than the then-current national best-bid or offer or the order's limit price (if the order is a limit price), whichever is better. For orders of 50 standard option contracts (or 500 mini-option contracts) or more, the stop price must be at or better than the then-current national best-bid or offer or the order's limit price (if the order is a limit price), whichever is better.[49] The proposed rule change adds to Rule 5.37(b) that 5,000 micro-option contracts is the corresponding size for these stop price restrictions. Additionally, Rule 5.37(c) and 5.38(c) provide that no concurrent AIM or C–AIM Auctions, respectively, are permitted for orders less than 50 standard option contracts (or 500 mini-option contracts) (for C–AIM Auctions, the size is determined by the smallest leg of the complex order), but are permitted for orders of 50 standard option contracts (or 500 mini-option contracts) or greater (for C–AIM Auctions, the size is determined by the smallest leg of the complex order). The proposed rule change adds that 5,000 micro-option contracts is the corresponding size for determining whether concurrent auctions are permissible.

• *Rules 5.39, 5.40, and 5.74:* Rules 5.39, 5.40, and 5.74 describe the Exchange's Solicitation Auction Mechanism for simple (''SAM''), complex (''C–SAM''), and FLEX (''FLEX SAM'') orders, respectively. An order, or the smallest leg of a complex order, must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts or 5,000 mini-option contracts). The proposed rule change adds that 50,000 micro-option contracts or FLEX Micro Options, as applicable, is the corresponding minimum size for orders submitted into SAM, C–SAM, or FLEX SAM Auctions.

• *Rule 5.87:* Rule 5.87(f) describes when a Floor Broker is entitled to cross a certain percentage of an order, subject to the requirements in that paragraph. Under that Rule, the Exchange may determine on a class-by-class basis the eligible size for an order that may be transacted pursuant to this paragraph; however, the eligible order size may not be less than 50 standard option contracts (or 500 mini-option contracts). The proposed rule change adds that 5,000 micro-option contracts is the corresponding minimum size for orders that may be crossed in accordance with this provision. Additionally, Rule 5.87, Interpretation and Policy .07(a) provides that Rule 5.86(e)[50] does not prohibit a Trading Permit Holder (''TPH'') from buying or selling a stock, security

[46] *See* Rule 5.50(g). While the appointment weights of Tier AA classes are not subject to quarterly rebalancing under Rule 5.50(g)(1), the Exchange regularly reviews the appointment weights of Tier AA classes to ensure that they continue to be appropriate. The Exchange determines appointment weights of Tier AA classes based on several factors, including, but not limited to, competitive forces and trading volume.

[47] The proposed rule change also conforms the definition of ''complex order'' in Rule 1.1 to the definition of ''complex trade'' in Rule 5.65 to say that it may be comprised of different series in the same ''underlying security'' rather than the same ''class.'' As discussed above, micro-options will be a different class than standard index options overlying the same index. This accommodates, for example, the fact that a complex order could be comprised of mini-options and standard options overlying the same stock (as contemplated by the current definition) despite being in different classes. The proposed rule change also expands the definitions of complex order in Rule 1.1 and complex trade in Rule 5.65 to provide that it may similarly be comprised of different series in the same ''underlying index.'' The Exchange notes that full-value indexes and reduced-value indexes are separate indexes under the Exchange Rules, so to the extent a multi-legged order whose legs overly different indexes (such as one leg with a full-value index and one leg with a reduced-value index) would not qualify for the definition of ''complex trade.''

[48] This corresponds to the provision in those definitions regarding mini-options, which states that for the purpose of applying these ratios to complex orders comprised of legs for both mini-options and standard options, ten mini-option contracts represent one standard option contract.

[49] *See* Rules 5.37(b).

[50] Rule 5.86(e) provides that it will be considered conduct inconsistent with just and equitable principles of trade for any TPH or person associated with a TPH, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (1) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that Trading Permit Holder or associated person has knowledge are disclosed to the trading crowd or (2) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation. An order to buy or sell a ''related instrument,'' means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

futures or futures position following receipt of an order, including an option order, but prior to announcing such order to the trading crowd, provided that the option order is in a class designated as eligible for ''tied hedge'' transactions and within the eligibility size parameters, which are determined by the Exchange and may not be smaller than 500 standard option contracts (or 5,000 mini-option contracts). The proposed rule change adds that 50,000 micro-option contracts is the corresponding minimum size for orders that may qualify as tied hedge transactions and not be deemed a violation of Rule 5.86(e).

Position and Exercise Limits [51]

Rule 8.31 governs position limits for broad-based index options, and currently provides that there are no position limits for broad-based index option contracts (including reduced-value option contracts) on DJX, OEX, XEO, RUT, and SPX classes (among others). With respect to the other broad-based index options that the Exchange currently lists for trading, the Exchange fixes the position limits, which may not be larger than the limits in the following table:

Broad-based index	Standard limit (on the same side of the market)
Russell 1000 Russell 1000 Growth Russell 1000 Value	50,000 contracts (no more than 30,000 near-term).
MSCI Emerging Markets Index MSCI EAFE Index	50,000 contracts.
Other	25,000 contracts (no more than 15,000 near-term).

The proposed rule change adds Rule 8.31(f) to provide that positions in micro-options (with an index multiplier of one) will be aggregated with positions in standard options (including reduced-value option contracts) (with an index multiplier of 100) on the same broad-based index and, for purposes of determining compliance with the position limits under Rule 8.31, 100 micro-option contracts with an index multiplier of one equal one standard option contract with an index multiplier of 100. This is consistent with Rule 8.31(d), which similarly provides that positions in reduced-value index options are aggregated with positions in full-value index options based on economic equivalent values of those options.[52]

Rule 8.32 governs position limits for industry index options, and currently provides that industry index options are subject to the following position limits:

(1) 18,000 contracts if the Exchange determines, at the time of a review conducted pursuant to Rule 8.32(b),[53] that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or

(2) 24,000 contracts if the Exchange determines, at the time of a review conducted pursuant to Rule 8.32(b), that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or

(3) 31,500 contracts if the Exchange determines that the conditions specified above which would require the establishment of a lower limit have not occurred.[54]

The proposed rule change adds Rule 8.32(g) to provide that positions in micro-options (with an index multiplier of one) will be aggregated with positions in standard options (including reduced-value option contracts) (with an index multiplier of 100) on the same industry index and, for purposes of determining compliance with the position limits under Rule 8.32, 100 micro-option contracts with an index multiplier of one equal one standard option contract with an index multiplier of 100. This is consistent with Rule 8.32(e), which similarly provides that positions in reduced-value index options are aggregated with positions in full-value index options based on economic equivalent values of those options.[55]

Rule 8.42(b) governs exercise limits for index options, and provides that exercise limits for index option contracts will be equivalent to the position limits prescribed for option contracts with the nearest expiration date in Rule 8.31, 8.32, or 8.34. As is the case for certain broad-based index options as noted above, there will be no exercise limits for broad-based index options (including reduced-value option contracts). The proposed rule change adds to Rule 8.42(b) that there will similarly be no exercise limits on micro-option contracts on those same broad-based indexes.

The proposed rule change amends Rule 8.35(a) regarding position limits for FLEX Options to describe how FLEX Micro Options will be counted for purposes of determining compliance with position limits.[56] Because 100 FLEX Micro Options are equivalent to one FLEX Index Option with a multiplier of 100 overlying the same index due to the difference in contract multipliers, proposed Rule 8.35(a)(7)

[51] This discussion focuses on position and exercise limits with respect to indexes on which the Exchange currently lists standard options and may also list micro-options. To the extent the Exchange lists micro-options on other indexes in the future, they would be subject to the same position and exercise limits set forth in the applicable Rules, and similarly aggregated with standard options on the same indexes, as proposed.

[52] As noted above, an index option with a reduced multiplier has the same practical effect as an index option on a reduced-value index. A micro-option is the economic equivalent to a reduced-value index that is 1/100th of the full-value index.

[53] Rule 8.32(b) provides the Exchange will make these determinations with respect to options on each industry index at the commencement of trading of such options on the Exchange and thereafter review the determination semi-annually on January 1 and July 1.

[54] These position limits are subject to Rule 8.32(c), which provides that if the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index is lower than the maximum position limit permitted by the criteria set forth in Rule 8.32(a), the Exchange may effect an appropriate position limit increase immediately. If the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index exceeds the maximum position limit permitted by the criteria set forth in Rule 8.32(a), the Exchange shall reduce the position limit applicable to such options to a level consistent with such criteria; provided, however, that such a reduction shall not become effective until after the expiration date of the most distantly expiring option series relating to the industry index, which is open for trading on the date of the review; and provide further that such a reduction shall not become effective if the Exchange determines, at the next succeeding semi-annual review, that the existing position limit applicable to such options is consistent with the criteria set forth in Rule 8.32(a).

[55] As noted above, an index option with a reduced multiplier has the same practical effect as an index option on a reduced-value index. A micro-option is the economic equivalent to a reduced-value index that is 1/100th of the full-value index.

[56] The proposed rule change also corrects an administrative error in Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

states that for purposes of determining compliance with the position limits under Rule 8.35, 100 FLEX Micro Option contracts equal one FLEX Index Option contract with a multiplier of 100 with the same underlying index. The proposed rule change makes a corresponding change to Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, FLEX Micro Option contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.,* 100 FLEX Micro Options will equal one FLEX Index Option contract with a multiplier of 100 overlying the same index). This is consistent with the current treatment of other reduced-value FLEX Index Options with respect to position limits. The proposed rule change adds paragraph (g) to Rule 8.42 to make a corresponding statement regarding the application of exercise limits to FLEX Micro Options. The margin requirements set forth in Chapter 10 of the Rules will apply to FLEX Micro Options (as they currently do to all FLEX Options).[57]

Capacity

The Exchange has analyzed its capacity and represents that it believes the Exchange and Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of new series that may result from the introduction of the micro-options. Because the proposed rule change is limited to equity index options, which currently represent only 19 of the option classes listed on the Exchange, the Exchange believes any additional traffic that may be generated from the introduction of micro-options will be manageable. The Exchange also understands that the OCC will be able to accommodate the listing and trading of micro-options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[58] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[59] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[60] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change will expand investor choice and flexibility by providing investors with the ability to gain exposure to the market or specific industries using index options with a notional value of $1/100^{th}$ of the value of current index options. The Exchange believes there is unmet market demand from market participants for micro-options. The availability of micro-options may broaden the base of investors that use options to manage their trading and investment risk, as the Exchange believes they will appeal to retail investors who currently may not participate in the trading of index options. Due to the larger-value of indexes (which generally result in options with five and six figure notional values, as demonstrated above), the Exchange believes that investors, most notably average retail investors, would benefit from the availability of micro-options by making currently high-priced options more readily available as an investing tool and at more affordable and realistic prices and thus with reduced investment risk. Micro-options will make available to investors a relatively low-cost method to hedge or speculate on market risk and meet their investment needs associated with index options. The lower cost of micro-options will allow investors to trade index options and hedge their portfolios with a smaller outlay of capital, and thus with less investment risk. This may facilitate overall investor participation in the markets for index options, which may increase the depth and liquidity of these markets, to the benefit of all investors.

Additionally, the Exchange will further remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by providing additional granularity with respect to the prices at which investors may execute and exercise index options on the Exchange. Micro-options will provide investors with an exchange-traded tool to manage more precisely based on notional value the positions and associated risk in their portfolios, which currently may equal a fraction of a standard contract. Because micro-options and standard index options will overlie the same indexes, market participants may use them as hedging vehicles to meet their investment needs in connection with index-related products and cash positions in a similar manner as they currently do with standard index options, but as a more manageably sized contract. The smaller-sized contract will provide all market participants with more precision with respect to hedging their portfolios more effectively with far greater precision. Given the various trading and hedging strategies employed by investors, this additional granularity may provide investors with more control over the trading of their investment strategies and management of their positions and risk associated with option positions in their portfolios.

Additionally, micro-options will provide investors with the ability to execute and exercise options with a smaller index multiplier in a listed market environment as opposed to in the unregulated OTC options market. The proposed rule change may shift liquidity from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow to the benefit of all investors. By permitting index options to trade with the same multiplier currently available to customized options in the OTC market, the Exchange believes the proposed rule change will also promote competition and remove impediments to and perfects the mechanism of a free and open market and a national market system by further improving a comparable alternative to the OTC market in customized options. By enhancing our Exchange products to provide additional terms available in the OTC market but not currently available in the listed options market,

[57] Pursuant to Rule 8.43(j), FLEX Index Options with a multiplier of one will be aggregated with non-FLEX Index Options on the same underlying index in the same manner as all other FLEX Index Options.

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(5).

[60] *Id.*

the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the OCC as issuer and guarantor of all listed options.

The Exchange believes the ability to list micro-options is consistent with several current rules. Particularly, the underlying indexes on which micro-options (and FLEX Micro Options) would be listed satisfied the initial listing standards for index in the Exchange's current Rules and would need to continue to satisfy the maintenance listing criteria in the Rules.[61] Pursuant to the definition of index multiplier[62] in Rule 4.11, the Exchange may determine the index multiplier of an option, which it generally does in the specifications for an index option.[63] Similarly, Article I, Section 1, I(3) of the OCC By-Laws defines ''index multiplier'' as the dollar amount (as specified by the Exchange on which such contract is traded) by which the current index value is to be multiplied to obtain the aggregate current index value. Unlike the definition of a unit of trading in the OCC By-Laws, which states the unit of trading in is designated by OCC but is 100 shares if not otherwise specified, the definition of index multiplier includes no such default.[64] Therefore, the Exchange believes the current index multiplier definition in the OCC By-Laws (which would have previously been filed with the Commission) permits any index multiplier specified by the listing Exchange given the lack of a default index multiplier for index options (and the inclusion of a default unit of trading for equity options). This is consistent with the lack of default number in Exchange's definition of index multiplier and the ability for the Exchange to specify the index multiplier, as noted above. Additionally, the Exchange believes any potential risks of index options with a multiplier of one are covered by disclosures of the ODD, as it considers the possibility of differing values of index multipliers.[65] However, certain other Rules reflect an index multiplier of 100, and the proposed rule change updates those Rules to reflect the potential listing of an index option with an index multiplier of one.

The listing of micro-options has the same practical effect as the listing of reduced-index value options, which the Exchange (and other options exchanges) currently has the authority to do with respect to several indexes (in accordance with previously Commission-approved rules). For example, the Exchange may list options on both the S&P 500 Index (SPX options) and the Mini-S&P 500 Index (XSP options), which is 1/10th the value of the S&P 500 Index.[66] This is economically equivalent to if the Exchange listed an S&P 500 Index option with an index multiplier of 100 and with an index multiplier of 10, respectively. The proposed rule change will permit the Exchange to make reduced-value options on all indexes available without relying on a reporting authority to create and disseminate a reduced-value index at a reduced-value level that the Exchange believes may be beneficial to the marketplace. The Commission also previously approved a proposed rule change of at least one other options exchange to list reduced-value options on a ''micro-index''(which has 1/100th the value of the full index) as well as the full-value index and ''mini-index'' (which has 1/10th the value of the full index).[67] Similarly, designated contract markets also list index futures (with which the Exchange's options contracts compete) with varying multipliers. For example, the Chicago Mercantile Exchange currently lists standard, mini-, and micro- futures on the S&P 500 Index, the Russell 2000, and the DJIA with multipliers of $250, $50 and $5 (which is 1/50th the size of the full-size future), respectively.[68] Therefore, the Exchange believes the availability of micro-options will increase investor choice and promote competition in the listed derivatives markets.

As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion. For example, micro-options will be designated by different trading symbols from their related standard contracts. Additionally, the proposed rule change describes in the Rules the differences regarding the meanings of bids and offers, exercise prices (and thus deliverables), and minimum sizes of index options contracts with a multiplier of one and a multiplier of 100, all of which are adjusted proportionately to reflect the difference in multiplier, and thus the difference in the deliverable value of the underlying.[69] The Exchange believes the transparency and clarity the proposed rule change adds to the Rules regarding the distinctions between index options due to the different multipliers will benefit investors. These proposed changes are not novel, as they correspond to similar rule provisions regarding other reduced-value options.[70]

Other than these differences, micro-options will trade in the same manner as index options (and FLEX Micro Options will trade in the same manner

[61] *See* Rule 4.10.

[62] Rule 4.11 defines the term ''index multiplier'' as the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

[63] Option specifications are available on the Exchange's public website, *available at cboe.com/tradable_products/.*

[64] *See* OCC Bylaws Article I, Section 1, U(5).

[65] The ODD is available at *https://www.theocc.com/about/publications/character-risks.jsp.* The ODD states that the exercise price of a stock option is multiplied by the number of shares underlying the option to determine the aggregate exercise price and aggregate premium of that option. *See* ODD at 18. Similarly, the ODD states that the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier. *See* ODD at 8, 9, and 125.

[66] The Exchange notes if it desired to list a reduced-value index option on other indexes, or list an option on a micro-level index (*i.e.,* an index with 1/100th the value of the full-sized index), it could do so without Commission approval if the underlying index satisfied the generic listing criteria in Rule 4.12.

[67] *See, e.g.,* Securities Exchange Act Release No. 53484 (March 14, 2006), 71 FR 14268 (March 21, 2006) (SR–ISE–2005–25) (order approving proposed change to permit International Securities Exchange (''ISE'') to list and trade options on the FTSE 100 Index and FTSE 250 Index based on the full-value of the indexes, one-tenth of the value of the indexes, and one-hundredth of the value of the indexes.

[68] *See* CME contract specifications, *available at https://www.cmegroup.com/trading/equity-index/us-index/e-mini-sandp500_contract_specifications.html.* In addition to these indexes, CME also lists index futures with multipliers of $250 and $50 on several other indexes on which the Exchange also lists index options (and on which the Exchange would be able to list micro-options pursuant to the proposed rule change, including the FTSE Developed Europe Index, the FTSE Emerging Markets Index, the S&P Select Sector Indexes, the Russell 1000 Index, the Russell 1000 Growth Index, and the Russell 1000 Value Index.

[69] These proposed changes correspond to similar provisions for mini-options, which also have a smaller multiplier than standard-sized options.

[70] *See, e.g.,* Rules 4.5, Interpretation and Policy .18 (description of strike prices for mini-options, which have a multiplier of 10), 5.3(c) (description of bids and offers for mini-options), and 5.74(a)(4) (description of minimum size of FLEX Agency Order for mini-options). Just as terms for mini-options, which have a multiplier of 1/10th the size of standard options, equal 1/10th of the same terms for standard options, the proposed terms for FLEX Index Options with a multiplier of one, which have a multiplier 1/100th the size of FLEX Index Options with a multiplier of 100, equal 1/100th of the same terms as FLEX Index Options with a multiplier of 100.

as all other FLEX Index Options). Each micro-option will be on an index consisting of the same components as the underlying index of standard index options that may currently be listed on the Exchange, but with 1/100th the value of those indexes. Because micro-options and standard index options overlie the same indexes, market participants may use micro-options as hedging vehicles to meet their investment needs in connection with index-related products and cash positions in a similar manner as they do with standard index options, but as a more manageably sized contract. The smaller-sized contract may provide market participants with more precision with respect to hedging their portfolios. Additionally, the smaller size makes micro-options a lower cost option, making it a more affordable and lower risk option for investors, particularly retail investors. Therefore, the Exchange believes it is reasonable and appropriate to be able to list the same expirations and settlements for micro-options as it may for standard index options.

The Exchange believes the proposed rule change for the minimum price increment for micro-options to be the same as the minimum price increment for index options overlying the same index will benefit investors, as it may lessen investor and marketplace confusion. While price protection between micro-options and standard options on the same index is not required, the Exchange believes that consistency between micro-options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price increment between micro-options and standard options on the same index would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying index traded in different minimum price increments. Similarly, the Exchange believes matched minimum pricing may generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for micro-options and standard options on the same index would attract additional liquidity providers who would make markets in micro-options and standard options on the same index. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote micro-options and standard options on the same index in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same index. Finally, having the same minimum increment for micro-options and standard options would be beneficial from a logistical perspective since firms' existing systems are generally configured using the ''root symbol'' of an underlying index, and it may be difficult and resource-intensive for firms to assign different minimum pricing to micro-options and standard options on the same index.

The Exchange believes the proposed rule change regarding the treatment of micro-options with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Index options with a multiplier of one will be counted for purposes of those limits in a proportional manner to index options (including reduced-value indexes) with a multiplier of 100 and aggregated with options overlying the same index (including reduced-value indexes) in the same manner as index options currently are. This is equivalent to current limits imposed on reduced-value options. As noted above, while the multipliers of reduced-value indexes are $100, a reduced-value index option has an economically equivalent effect to an index option with a smaller multiplier. An index option with a multiplier of one corresponds to an option overlying a reduced-valued index that is 1/100th the value of the full-value index. It just uses a different multiplier rather than a different value of the underlying index.[71] The Exchange believes its surveillances continue to be designed to deter and detect violations of Exchange Rules, including position and exercise limits and possible manipulative behavior, and those surveillance will apply to index options with a multiplier of one that the Exchange determines to list for trading. Ultimately, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index (including reduced-value indexes)) and reporting requirements—would continue to apply.

The Exchange also believes the proposed initial low appointment weight for micro-options will promote competition and efficiency by incentivizing more Market-Makers to obtain an appointment in each micro-option the Exchange lists. The Exchange believes this may result in liquidity and competitive pricing in this class, which ultimately benefits investors. The Exchange does not believe that the proposed rule change is unfairly discriminatory, as the appointment weight will apply to all Market-Makers in the class. Additionally, the proposed appointment weight is the same as the appointment weight for a majority of other Tier AA options classes, as well as a recently listed index option classes to likewise promote Market-Maker appointment, liquidity and competitive

Finally, the Exchange represents that it has the necessary systems capacity to support the new option series given these proposed specifications. The Exchange believes that its existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading micro-options. The Exchange further notes that current Exchange Rules that apply to the trading of other index options traded on the Exchange will also apply to the trading of micro-options, such as Exchange Rules governing customer accounts, margin requirements and trading halt procedures. The Exchange understands that market participants may currently, and currently do, execute orders in options like the ones being proposed in the unregulated OTC options market, where neither the Exchange nor the Commission has oversight over market participants that may be purposely trading at prices through the listed market. As discussed below, the proposed rule change may encourage these orders to be submitted to the Exchange, which could bring these orders into a regulated market and be subject to surveillance and oversight to which they are currently not subject with respect to execution of these option orders.

A robust and competitive market requires that exchanges respond to investors' evolving needs by constantly improving their offerings. When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.[72] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and

[71] This is also similar to position limits for other options with multipliers less than 100. *See, e.g.,* Rule 8.30, Interpretation and Policy .08 (describing position limits for mini-options).

[72] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

services in the securities markets.[73] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the life-blood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes that the proposed rule change will help further competition by providing market participants with yet another investment option for the listed options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as any micro-options the Exchange lists for trading will be available for all market participants in the same manner who wish to trade such options. The Exchange may list micro-options on all indexes currently authorized to be listed on the Exchange, subject to the same listing criteria. These options will trade in the same manner as index options and FLEX Index Options, as applicable, with a multiplier of 100, with certain terms proportionately adjusted to reflect the different contract multipliers. Additionally, the Exchange believes that the proposed rule change will enhance competition by allowing products on the same index to be priced in the same minimum price increments. The Exchange also believes the proposed initial low Market-Maker appointment cost for micro-options will apply equally to all Market-Makers with an appointment in micro-options and will promote competition by incentivizing more Market-Makers to obtain an appointment in the newly listed class, resulting in liquidity and competitive pricing within the class.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because micro-options may only be listed for trading on the Exchange. To the extent that the availability of these products makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange. As noted above, other derivative products related to these indexes are listed for trading on other exchanges. Additionally, the Exchange notes that listing and trading micro-options on the Exchange will subject such options to transparent exchange-based rules as well as price discovery and liquidity, as opposed to alternatively trading these products in the OTC market.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. The proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change encourages competition amongst market participants to provide lower-priced (and thus lower risk) and more granular option products, which may appeal to all market participants, including retail investors.

Additionally, the Exchange believes this is an enhancement to a comparable alternative to the OTC market in customized options. By enhancing our trading platform to provide additional contract granularity that available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants will benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of all listed options.

The proposed nonsubstantive changes (to move and clarify the current contract multiplier for FLEX Equity Options and FLEX Index Options with a multiplier of 100 in Rule 4.21(b) and to correct the numbering of subparagraphs in Rule 8.35(a), as well as examples of the exercise prices and the meanings of bids and offers) will have no impact on competition, as they merely clarify or correct, as applicable, information in the Rules and make no changes to how FLEX Options trade.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[73] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

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–CBOE–2020–117 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–CBOE–2020–117. 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–CBOE–2020–117, and should be submitted on or before February 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00199 Filed 1–8–21; 8:45 am]

BILLING CODE 8011–01–P

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90849; File No. SR–MEMX–2020–17]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.8(b) Relating to the Handling of Limit Orders When the National Best Bid or Offer Is Not Available

January 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2020, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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

The Exchange is filing with the Commission a proposed rule change to amend Exchange Rule 11.8(b) as it relates to the System's[5] handling of Limit Orders[6] when the national best bid or offer (''NBBO'') is not available. The text of the proposed rule change is provided in Exhibit 5.

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

On May 4, 2020, the Commission approved the Exchange's Form 1 application for registration as a national securities exchange, including the initial Rules of the Exchange.[7] In preparation for the Exchange's launch on September 21, 2020, the Exchange adopted in August 2020 certain additional Rules relating to the System's handling of Market Orders[8] and Limit Orders when the NBBO is not available.[9] Specifically, the Exchange adopted Exchange Rule 11.8(a)(7), which provides that a Market Order received by the System when the NBBO is not available will be rejected or cancelled back to the entering User, and Exchange Rule 11.8(b)(9), which similarly provides that a Limit Order received by the System when the NBBO is not available will be rejected or cancelled back to the entering User. These Rules were based on language applicable to Pegged Orders[10] set forth in Exchange Rule 11.8(c)(7) and were intended to match the handling of Market Orders and Limit Orders with the handling of Pegged Orders when the NBBO is not available under that Rule (*i.e.,* that such orders will be rejected or cancelled back to the entering User).[11] The Exchange noted in the proposal to adopt Exchange Rules 11.8(a)(7) and 11.8(b)(9) that it believed that, at least in connection with the launch of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] As defined in Rule 1.5(gg), the Exchange's ''System'' is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing. As defined in Rule 1.5(jj), a ''User'' is a member of the Exchange (''Member'') or sponsored participant of a Member who is authorized to obtain access to the System pursuant to Rule 11.3.

[6] Limit Orders are described in Exchange Rule 11.8(b) and generally defined as an order to buy or sell a stated amount of a security at a specified price or better.

[7] *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451

(May 8, 2020) (the ''Approval Order'').

[8] Market Orders are described in Exchange Rule 11.8(a) and generally defined as an order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.

[9] *See* Securities Exchange Act Release No. 89581 (August 17, 2020), 85 FR 51799 (August 21, 2020) (SR–MEMX–2020–04).

[10] In addition to Market Orders and Limit Orders, Pegged Orders are the third of three primary order types offered by the Exchange. Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the NBBO. The two types of peg instructions for Pegged Orders are: (1) Primary Peg, which pegs to the NBB (NBO) for buy (sell) orders; and (2) Midpoint Peg, which pegs to the midpoint of the NBBO.

[11] *See* Exchange Rule 11.8(c)(7).

Exchange, it should not accept orders (of any type) when there is no available NBBO in the applicable security, as the Exchange believed that the absence of an NBBO may be indicative of a potential market problem and that many of the protections in place for the protection of investors may be absent when there is no NBBO.[12]

The Exchange now proposes to delete Exchange Rule 11.8(b)(9) to allow the System to accept Limit Orders when the NBBO is not available and handle such orders in accordance with the User's instructions and the Rules of the Exchange. Since its launch, the Exchange has had direct experience with handling orders when the NBBO is not available, and the Exchange believes that potential problems applicable to Market Orders and Pegged Orders when the NBBO is not available are not applicable to Limit Orders. For instance, with respect to Market Orders, the Exchange believes that the absence of an NBBO may be problematic because such orders must, by definition, be executed at the NBBO or better when the order reaches the Exchange, and thus when no NBBO is available the System is not able to execute at the NBBO and does not have a price to reference for determining what constitutes an appropriate price.[13] Moreover, because Market Orders are not subject to any further price limitations entered by the User, the System could execute an accepted Market Order when no NBBO is available against a marketable contra-side order resting on the Exchange that is priced far away from the last sale price or last disseminated NBBO, which the Exchange believes would rarely be intended. Therefore, to protect against executions of Market Orders at unintended price levels, the Exchange believes that rejecting or cancelling such orders is still appropriate. With respect to Pegged Orders, the Exchange believes that the absence of an NBBO may be problematic because such orders, by definition, must be pegged to (i) the NBB (NBO) for buy (sell) orders for a Primary Peg instruction, or (ii) the midpoint of the NBBO for a Midpoint Peg instruction, and thus when no NBBO is available there is no reference price to which such orders can be pegged. Therefore, the Exchange believes that rejecting or cancelling such orders is still appropriate. Accordingly, the Exchange believes the protection afforded by Exchange Rules 11.8(a)(7) and 11.8(c)(7) for Market Orders and Pegged Orders when the NBBO is not available (*i.e.,* that such orders will be rejected or cancelled back to the entering User) is still appropriate and the Exchange does not propose to delete or amend these Rules.

Unlike Market Orders and Pegged Orders, a Limit Order requires the entering User to specify a dollar price that the System must execute the order at or better than instead of execution of the order being based on the NBBO. Therefore, for Limit Orders, the entering User is able to establish its own protection in the form of a specified price limitation. Thus, even when the NBBO is not available, the possibility of executing at an unintended price is not present for a Limit Order because the User must specify the most aggressive price at which it is willing to execute. Additionally, the Exchange believes that the proposed change would result in Members sending additional liquidity in the form of Limit Orders to the Exchange when there is otherwise no available NBBO, which would deepen the liquidity on the Exchange and potentially establish the NBBO to the benefit of all Members and the market generally.

The Exchange also notes that its initial Rules previously approved by the Commission in the Approval Order did not contain Exchange Rule 11.8(b)(9). Rather, as noted above, this provision was subsequently adopted by the Exchange in connection with the Exchange's initial launch so the Exchange could evaluate the necessity of this functionality while gaining operational experience and data. The Exchange now believes that the rejection of Limit Orders when no NBBO is available pursuant to Exchange Rule 11.8(b)(9) is unnecessary for the reasons stated above. The Exchange also notes that deletion of Exchange Rule 11.8(b)(9) is consistent with the existing rules and functionality of other exchanges.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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 Section 6(b)(8) of the Act,[16] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

As noted above, the proposed change is intended to revert the System's handling of Limit Orders when there is no available NBBO to the functionality contemplated by the Exchange's initial Rules previously approved by the Commission in the Approval Order. The Exchange believes that permitting Members to submit Limit Orders to the Exchange when the NBBO is not available is appropriate and consistent with the Act as the Exchange believes that its Members would want to utilize this functionality, thereby resulting in additional liquidity in the form of Limit Orders being sent to the Exchange when there is otherwise no available NBBO, which would deepen the liquidity on the Exchange and potentially establish the NBBO to the benefit of all Members and the market generally. Furthermore, the proposed change would make the System's functionality consistent with the functionality offered by certain other exchanges with respect to accepting Limit Orders when no NBBO is available.[17] Thus, the Exchange believes the proposed changes in this regard would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change would revert the System's functionality to that contemplated by the Exchange's initial Rules previously approved by the Commission in the Approval Order, which is also consistent with the functionality offered by other exchanges.[18] The Exchange believes that the proposed rule change would not burden intramarket competition because the ability to submit Limit Orders to the Exchange when the NBBO is not available would be open to all Members. The Exchange believes that the proposed rule change would not burden, but rather increase,

[12] *See supra* note 9 at 51805.

[13] *See* Exchange Rule 11.8(b)(9).

[14] *See, e.g.,* Cboe EDGX Exchange, Inc. Rule 11.8(b) regarding limit orders, which does not have a comparable provision to Exchange Rule 11.8(b)(9); Cboe EDGA Exchange, Inc. Rule 11.8(b) regarding limit orders, which does not have a comparable provision to Exchange Rule 11.8(b)(9).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] *See supra* note 14.

[18] *See supra* note 14.

intermarket competition as the Exchange belives [sic] that permitting Members to submit Limit Orders to the Exchange when the NBBO is not available would ultimately enable the Exchange to better compete with other exchanges that offer this same functionality. Thus, the Exchange believes this proposed rule change will facilitate fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will all benefit Members and market participants in that the change would allow for additional orders, particularly when there is not already an active market in a particular security, to be sent to the Exchange, thereby deepening the Exchange's liquidity and possibly establishing the NBBO when it is not otherwise available.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [21] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The proposed change will allow the Exchange to accept Limit Orders when the NBBO is not available, in which case the Exchange will handle such orders in accordance with the User's instructions and the Rules of the Exchange. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed functionality will allow market participants to submit limit orders to MEMX when the NBBO is not available, just as they can do to other exchanges, which can provide additional liquidity on MEMX and contribute to the formation of two-sided quotes that are publicly available. In addition, the Exchange states in its filing that its proposal is consistent with the initial applicable rule for the Exchange that was previously approved by the Commission in connection with its initial exchange registration, and also is consistent with existing rules and functionality offered by other exchanges.[23] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as 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 under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number

SR–MEMX–2020–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2020–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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–MEMX–2020–17 and should be submitted on or before February 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00196 Filed 1–8–21; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 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.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *See supra* note 14. In its filing, the Exchange stated that it proposes to implement the proposed rule change on or about January 15, 2021.

[24] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90852; File No. SR–FINRA–2020–046]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

January 5, 2021.

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 22, 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, to October 26, 2021, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance[6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and medium-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration to reduce potential uncertainty in the Covered Agency Transaction market. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, to March 25, 2021 (the ''March 25, 2021 implementation date'').[8] FINRA noted that, as FINRA stated in Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA would monitor the impact of the requirements pursuant to that rulemaking and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, FINRA would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[9]

FINRA is considering, in consultation with industry participants and other regulators, potential amendments to the requirements of SR–FINRA–2015–036, and anticipates submitting a proposed rule change to the SEC. FINRA believes that this is appropriate in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. As

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: *www.finra.org.*

[6] Available at: *www.finra.org/rules-guidance/guidance/faqs.* Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: *www.finra.org/rules-guidance/guidance/faqs.*

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 2017).

[8] *See* Securities Exchange Act Release No. 87441 (November 1, 2019), 84 FR 60132 (November 7, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2019–026).

[9] *See* Partial Amendment No. 3 to SR–FINRA–2015–036, available at: *www.finra.org.*

such, FINRA is proposing to extend the March 25, 2021 implementation date to October 26, 2021 while FINRA considers potential amendments. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016 and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness 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. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] 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 provides FINRA additional time to consider potential amendments to the requirements pursuant to SR–FINRA–2015–036 and helps to reduce potential uncertainty in the Covered Agency Transaction market while FINRA considers such amendments. FINRA believes that providing additional time is consistent with the Act because this provides FINRA, in consultation with industry participants and other regulators, additional opportunity to consider whether amendments to the requirements would improve their effectiveness and thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the March 25, 2021 implementation date to October 26, 2021, so as to provide additional time for FINRA to consider, in consultation with industry participants and other regulators, whether any amendments to the requirements pursuant to SR–FINRA–2015–036 are appropriate will benefit all parties.

[10] 15 U.S.C. 78*o*–3(b)(6).

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 Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule change is to allow FINRA additional time to consider potential revisions to the requirements of SR–FINRA–2015–036, and to consult with industry participants and other regulators whether any revisions are appropriate, in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend the implementation date of the requirements of Rule 4210 does not raise any new or novel issues and will help to facilitate the implementation of the margin requirements for Covered Agency Transactions. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[15]

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.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–046 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–2020–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR–FINRA–2020–046 and should be submitted on or before February 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–00198 Filed 1–8–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16706 and #16707; LOUISIANA Disaster Number LA–00105]

Presidential Declaration Amendment of a Major Disaster for the State of Louisiana

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4570–DR), dated 10/16/2020.

Incident: Hurricane Delta.

Incident Period: 10/06/2020 through 10/10/2020.

DATES: Issued on 12/23/2020.

Physical Loan Application Deadline Date: 12/15/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2021.

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 President's major disaster declaration for the State of Louisiana, dated 10/16/2020, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes (Physical Damage and Economic Injury Loans): Allen, Iberia.

Contiguous Parishes (Economic Injury Loans Only): None

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–00228 Filed 1–8–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16547 and #16548; NORTH DAKOTA Disaster Number ND–00081]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of North Dakota

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–4553–DR), dated 07/09/2020.

Incident: Flooding.

Incident Period: 04/01/2020 through 04/25/2020.

DATES: Issued on 07/09/2020.

Physical Loan Application Deadline Date: 09/08/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 04/09/2021.

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 President's major disaster declaration for Private Non-Profit organizations in the State of North Dakota, dated 07/09/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Kidder, Wells

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–00224 Filed 1–8–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16826 and #16827; OKLAHOMA Disaster Number OK–00144]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of OKLAHOMA (FEMA–4575–DR), dated 12/21/2020.

Incident: Severe Winter Storm.

Incident Period: 10/26/2020 through 10/29/2020.

DATES: Issued on 12/21/2020.

Physical Loan Application Deadline Date: 02/19/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 09/21/2021.

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: Notice is hereby given that as a result of the President's major disaster declaration on 12/21/2020, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Caddo, Canadian, Cleveland, Dewey, Grady, Kingfisher, Kiowa, Logan, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16826B and for economic injury is 168270.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–00226 Filed 1–8–21; 8:45 am]

BILLING CODE 8026–03–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: December 1–31, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR 806, Subpart E for the time period specified above:

Grandfathering Registration Under 18 CFR part 806, subpart E:

1. First Investors General, Inc.—Cool Creek Golf Club, GF Certificate No. GF–202012136, Hellam Township, York County, Pa.; Kreutz Creek; Issue Date: December 4, 2020.
2. Jersey Shore Area Joint Water Authority—Public Water Supply System, GF Certificate No. GF–202012137, Pine Creek Township, Clinton County, Pa.; Pine Creek Well 1; Issue Date: December 4, 2020.
3. Lycoming County Recreation Authority—White Deer Golf Courses, GF Certificate No. GF–202012138, Brady Township, Lycoming County, Pa.; Well 2 and Irrigation Pond; Issue Date: December 11, 2020.
4. South Middleton Township Municipal Authority—Public Water Supply System, GF Certificate No. GF–202012139, South Middleton Township, Cumberland County, Pa.; Wells 1 and 2; Issue Date: December 14, 2020.
5. Beech Creek Borough Authority—Public Water Supply System, GF Certificate No. GF–202012140, Beech Creek Borough, Clinton County, Pa.; Well 1; Issue Date: December 21, 2020.
6. Borough of Lititz—Public Water Supply System, GF Certificate No. GF–202012141, Lititz Borough, Lancaster County, Pa.; Wells 1, 2, 3, 4, 5, and 6; Issue Date: December 21, 2020.
7. Arendtsville Municipal Authority—Public Water Supply System, GF Certificate No. GF–202012142, Arendtsville Borough and Menallen Township, Adams County, Pa.; Wells 1 and 2; Issue Date: December 21, 2020.
8. Elmira Water Board, GF Certificate No. GF–202012143, City of Elmira, Town of Elmira, Town of Southport, and Town of Horseheads, Chemung County, N.Y.; Chemung River, Hoffman Reservoir, Hudson Street Wellfield (Wells 1A and 2), and Sullivan Street Wellfield (Wells 1 and 2); Issue Date: December 22, 2020.
9. Lake Meade Municipal Authority—Public Water Supply System, GF Certificate No. GF–202012144, Reading Township, Adams County, Pa.; Wells 1 and 2; Issue Date: December 30, 2020.
10. Village of Painted Post—Public Water Supply System, GF Certificate No. GF–202012145, Village of Painted Post, Steuben County, N.Y.; Wells 2, 3, and 4; Issue Date: December 30, 2020.
11. Walden Oaks Country Club, Inc., GF Certificate No. GF–202012146, Town of Cortlandville, Cortland County, N.Y.; Spring-fed Irrigation Ponds; Issue Date: December 30, 2020.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: January 6, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–00313 Filed 1–8–21; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: December 1–31, 2020.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries May be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (e) and 18 CFR 806.22 (f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(e)

1. The Hershey Company; Hazleton Plant; ABR–202012002; Hazle Township, Luzerne County, Pa.; Consumptive Use of Up to 0.0990 mgd; Approval Date: December 11, 2020.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C.; Pad ID: Burkmont Farms; ABR–201012007.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 11, 2020.
2. Seneca Resources Company, LLC; Pad ID: Byrne 510; ABR–201009059.R2; Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 11, 2020
3. Cabot Oil & Gas Corporation; Pad ID: Black P1; ABR–20080708.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 11, 2020.
4. Cabot Oil & Gas Corporation; Pad ID: Costello P1; ABR–20080707.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 11, 2020.
5. Cabot Oil & Gas Corporation; Pad ID: Costello P2; ABR–20080804.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 11, 2020.
6. Cabot Oil & Gas Corporation; Pad ID: Lewis P2; ABR–20080802.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 11, 2020.
7. Inflection Energy (PA), LLC; Pad ID: Hensler Well Pad; ABR–201506004.R1; Hepburn Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 11, 2020.
8. Tilden Bradford, LLC; Pad ID: JENKINS 1H; ABR–20100426.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: December 13, 2020.
9. Tilden Bradford, LLC; Pad ID: BEARDSLEE 2H; ABR–201008085.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: December 13, 2020.
10. Tilden Bradford, LLC; Pad ID: Olsyn 1H; ABR–201509004.R1; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: December 13, 2020.

11. Seneca Resources Company, LLC; Pad ID: PHC Pad S; ABR–201009023.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 13, 2020.

12. Chief Oil & Gas, LLC; Pad ID: B & B Investment Group Drilling Pad #1; ABR–201010068.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: December 13, 2020.

13. Chief Oil & Gas, LLC; Pad ID: Bahl Drilling Pad; ABR–201510007.R1; Forks Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: December 13, 2020.

14. Chesapeake Appalachia, L.L.C.; Pad ID: Baltzley; ABR–201012020.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 13, 2020.

15. ARD Operating, LLC; Pad ID: Gayla D Loch Pad A; ABR–201009083.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 13, 2020.

16. EXCO Resources (PA), LLC; Pad ID: Wistar-Shaffer Tracts Drilling Pad #1; ABR–201009071.R2; Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: December 13, 2020.

17. Cabot Oil & Gas Corporation; Pad ID: Lewis P1; ABR–20080803.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 13, 2020.

18. Cabot Oil & Gas Corporation; Pad ID: Teel P4; ABR–20080701.R2; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 13, 2020.

19. XTO Energy, Inc.; Pad ID: Lucella 8564H; ABR–201009074.R2; Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 14, 2020.

20. Chesapeake Appalachia, L.L.C.; Pad ID: DGSM; ABR–201012038.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 24, 2020.

21. Seneca Resources Company, LLC; Pad ID: SGL 90A Pad; ABR–201008049.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: December 24, 2020.

22. Seneca Resources Company, LLC; Pad ID: Appold 493; ABR–201008126.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 24, 2020.

23. Pennsylvania General Energy Company, L.L.C.; Pad ID: SUSQ Huckleberry—Pad D; ABR–202012001; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: December 24, 2020.

24. Rockdale Marcellus, LLC; Pad ID: Heuer 701; ABR–201010010.R2; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: December 27, 2020.

25. Rockdale Marcellus, LLC; Pad ID: East Point Fish & Game Club 726; ABR–201010014.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: December 27, 2020.

26. Chief Oil & Gas, LLC; Pad ID: Hart North Drilling Pad; ABR–201510006.R1; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: December 27, 2020.

27. BKV Operating, LLC; Pad ID: Shaskas South; ABR–201011022.R2; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 27, 2020.

28. BKV Operating, LLC; Pad ID: Baker North; ABR–201012040.R2; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 27, 2020.

29. Chief Oil & Gas, LLC; Pad ID: M & M Estates; ABR–201011013.R2; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 27, 2020.

30. Chief Oil & Gas, LLC; Pad ID: PMG God Drilling Pad #1; ABR–201011068.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: December 27, 2020.

31. Chesapeake Appalachia, L.L.C.; Pad ID: Comstock; ABR–201011053.R2; Rome Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 27, 2020.

32. Chesapeake Appalachia, L.L.C.; Pad ID: Gregory; ABR–201011004.R2; Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 27, 2020.

33. Chesapeake Appalachia, L.L.C.; Pad ID: Primrose; ABR–201011035.R2; Standing Stone Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: December 27, 2020.

34. SWN Production Company, LLC; Pad ID: Ross Pad; ABR–201009086.R1; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: December 27, 2020.

35. SWN Production Company, LLC; Pad ID: GU–S ROEHRIG SMITH Pad; ABR–201009085.R1; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: December 27, 2020.

36. XPR Resources, LLC; Pad ID: Alder Run LP #5H; ABR–201512001.R1; Cooper Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9990 mgd; Approval Date: December 27, 2020.

37. Seneca Resources Company, LLC; Pad ID: Burke 285; ABR–201009096.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 27, 2020.

38. SWN Production Company, LLC; Pad ID: WR–68 Depue Pad; ABR–201009098.R1; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 30, 2020.

39. SWN Production Company, LLC; Pad ID: Behrend Pad; ABR–201010031.R1; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: December 30, 2020.

40. SWN Production Company, LLC; Pad ID: Hollenbeck ABR; ABR–201010017.R1; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 30, 2020.

41. Seneca Resources Company, LLC; Pad ID: Patterson 570; ABR–201009097.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 30, 2020.

42. Seneca Resources Company, LLC; Pad ID: Redl 600; ABR–201010013.R2; Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 30, 2020.

43. Cabot Oil & Gas Corporation; Pad ID: Daniels Pad; ABR–201010018.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 30, 2020.

44. ARD Operating, LLC; Pad ID: Kenneth T Schriner Pad A; ABR–201009107.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 30, 2020.

45. Repsol Oil & Gas USA, LLC; Pad ID: DECRISTO (05 022) D; ABR–201010026.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: December 30, 2020.

46. Rockdale Marcellus, LLC; Pad ID: Guindon 706; ABR–201009029.R2; Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: December 31, 2020.

47. Cabot Oil & Gas Corporation; Pad ID: MyersR P1; ABR–201511004.R1; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 31, 2020.

48. Cabot Oil & Gas Corporation; Pad ID: StalterD P1; ABR–201011030.R2; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 31, 2020.

49. Cabot Oil & Gas Corporation; Pad ID: RomeikaJ P1; ABR–201511005.R1; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 31, 2020.

50. Cabot Oil & Gas Corporation; Pad ID: JHHC P1; ABR–201511009.R1; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: December 31, 2020.

51. Seneca Resources Company, LLC; Pad ID: Smithgall 293; ABR–201010055.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 31, 2020.

52. Seneca Resources Company, LLC; Pad ID: Hudson 575; ABR–201010029.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 31, 2020.

53. Seneca Resources Company, LLC; Pad ID: Westbrook 487; ABR–201010040.R2; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: December 31, 2020.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: January 6, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–00311 Filed 1–8–21; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 4, 2021. Due to the COVID–19 situation and the relevant orders in place in the Commission's member jurisdictions, the Commission will hold this hearing telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 12, 2021, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The Commission will also hear testimony on its draft Comprehensive Plan during this hearing.

DATES: The public hearing will convene on February 4, 2021, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments on the list of projects subject to action and the Comprehensive Plan is February 19, 2021.

ADDRESSES: This hearing will be held by telephone rather than at a physical location. Conference Call #1–888–387–8686, the Conference Room Code #9179686050.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423; fax: (717) 238–2436.

Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Additional supporting documents and the draft Comprehensive Plan are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: On December 16, 2020, the Susquehanna River Basin Commission released for public review and comment a proposed 2021 Update of the Comprehensive Plan for the Water Resources of the Susquehanna River Basin. As part of the public comment process, the Commission will receive testimony on the updated Comprehensive Plan. The public hearing will be held on February 4, 2021 at 2:30 p.m. This hearing will be held by telephone rather than at a physical location. The conference call number is 1–888–387–8686, and the conference room code is 9179686050. Written comments may also be submitted at any time during the public comment period, which ends on February 19, 2021.

The public hearing will also cover the following projects.

Projects Scheduled for Action

1. *Project Sponsor and Facility:* Beech Resources, LLC (Lycoming Creek), Lycoming Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

2. *Project Sponsor and Facility:* Geneva Farm Golf Course, Inc., Dublin District, Harford County, Md. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 19910104).

3. *Project Sponsor and Facility:* Greenfield Township Municipal Authority, Greenfield Township, Blair County, Pa. Application for groundwater withdrawal of up to 0.499 mgd (30-day average) from Well PW–4.

4. *Project Sponsor and Facility:* Hastings Municipal Authority, Elder Township, Cambria County, Pa. Application for groundwater withdrawal of up to 0.260 mgd (30-day average) from Mine Spring Well 1.

5. *Project Sponsor and Facility:* Montgomery Water Authority, Clinton Township, Lycoming County, Pa. Application for renewal of groundwater withdrawal of up to 0.220 mgd (30-day average) from Well 3 (Docket No. 19910705).

6. *Project Sponsor and Facility:* Renovo Energy Center LLC, Renovo Borough, Clinton County, Pa. Modification to extend the project commencement date of the approval (Docket No. 20160608).

7. *Project Sponsor and Facility:* Village of Sidney, Town of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2–88.

8. *Project Sponsor:* SUEZ Water Pennsylvania Inc. Project Facility: Dallas Operation, Dallas Township, Luzerne County, Pa. Application for renewal of groundwater withdrawal of up to 0.168 mgd (30-day average) from the Schooley Well (Docket No. 19881103).

9. *Project Sponsor and Facility:* Upstate Niagara Cooperative, Inc., Town of Campbell, Steuben County, N.Y. Applications for groundwater withdrawals (30-day averages) of up to 0.510 mgd from Well 1 and renewal of up to 1.100 mgd from Well 4.

10. *Project Sponsor:* Weaverland Valley Authority. Project Facility: Blue Ball Water System, East Earl Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Well 4.

Commission-Initiated Project Approval Modification

1. *Project Sponsor and Facility:* Empire Kosher Poultry, Inc., Walker Township, Juniata County, Pa. Conforming the grandfathered amount with the forthcoming determination for consumptive use of up to 0.049 mgd (30-day average).

Opportunity To Appear and Comment

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be subject of a public hearing. Given the telephonic nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the hearing via telephone will begin at 2:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/.* Comments mailed or electronically submitted on the list of projects and the draft Comprehensive Plan must be received

by the Commission on or before February 19, 2021 to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: January 6, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–00314 Filed 1–8–21; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, State Route 60 (SR–60)/World Logistics Center Parkway (WLC Pkwy) Interchange Project in the City of Moreno Valley, in Riverside County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 10, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Antonia Toledo, Senior Environmental Planner, California Department of Transportation-District 8, 464 W 4th Street, MS–820, San Bernardino, CA 92401. Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone, (909) 806–2541 or email *Antonia.Toledo@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The City of Moreno Valley, in cooperation with Caltrans proposes to reconstruct and improve the SR–60/WLC Pkwy interchange between the Post Mile (PM) 20.0 and PM 22.0. The project is located in the City of Moreno Valley, in the northeast quadrant located within an unincorporated section of Riverside County within the City's sphere of influence. The purpose of the project is to provide standard vertical clearance for the WLC Pkwy overcrossing, to alleviate existing and future traffic congestion at the SR–60/WLC Pkwy interchange ramps during peak hours, and to improve traffic flow along the freeway and through the interchange. The project also adds one auxiliary lane in each direction on SR–60 between the Redlands Boulevard and Gilman Springs Road interchanges. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for the project, approved on December 18, 2020, and in other documents in the Caltrans project records. The FEA/FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA and FONSI and other project records can be viewed and downloaded from the following website: *http://www.moval.org/pubreview.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality (CEQ) regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C 4331(b)(2)
3. Federal Highway Act of 1970, U.S.C 772
4. Federal Clean Air Act 1990, as amended
5. Clean Water Act of 1977 and 1987
6. Federal Water Pollution Control Act of 1972
7. Safe Drinking Water Act of 1944, as amended
8. Executive Order 11988, Floodplain Management
9. Historic Sites Act of 1935
10. Endangered Species Act of 1973
11. Executive Order 11990, Protection of Wetlands
12. Executive Order 13112, Invasive Species
13. Fish and Wildlife Coordination Act of 1934, as amended
14. Migratory Bird Treaty Act of 1918, as amended
15. Title VI of the Civil Rights Act of 1964, as amended
16. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
17. National Historic Preservation Act of 1966, as amended
18. Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)
19. Farmland Protection Policy Act of 1994
20. Americans with Disabilities Act (ADA), 1990
21. Rehabilitation Act, Section 504
22. Comprehensive Environmental Response, Compensation and Liability Act of 1980
23. Resource Conservation and Recovery Act of 1976
24. Occupational Safety and Health Act of 1970
25. Toxic Substances Control Act of 1976
26. Executive Order 12088, Federal Compliance with Pollution Control Standards

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: January 5, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2021–00252 Filed 1–8–21; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Collin County, Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway. Administration (FHWA), Department of Transportation.

ACTION: Federal notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FHWA, on behalf of TxDOT, is issuing this notice to advise the public that an EIS will be prepared for a proposed transportation project to construct the Spur 399 Extension, an

eight-lane freeway on new location connecting United States (US) Highway 75 (south of McKinney) to US 380 (east of McKinney), in Collin County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Endres, Project Manager, TxDOT Dallas District, 4777 E. US Highway 80, Mesquite, Texas 75150; Phone (214) 320–4469 or email: at *Stephen.Endres@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

The purpose of the proposed project is to improve north-south mobility and connectivity for travelers from eastern Collin County to destinations south of McKinney, including the Dallas Metroplex. The project is needed because of the reduced mobility and connectivity provided by the existing arterial roadway network and the lack of regionally significant arterials to address the demands that current and forecasted population growth has on the existing transportation system. Project alternatives would extend existing Spur 399, a half mile-long roadway that transitions traffic among US 75, State Highway (SH) 5, and the Sam Rayburn Tollway (SH 121) just south of McKinney. The alternatives range in length from approximately 4.8 miles to 6.5 miles and would pass through the city of McKinney and unincorporated areas of Collin County. The proposed project would provide an access-controlled freeway with one-way frontage roads on each side within an anticipated right-of-way width of 320 to 400 feet. The typical freeway section would consist of four 12-foot (ft.) travel lanes in each direction and 10 ft. inside and outside shoulders. Grade-separated interchanges would include 14 ft. ramps with 2 ft. inside shoulders and 6 ft. outside shoulders, with curb & gutter. Bridges and overpasses along the main lanes would have a desired vertical clearance of 18.5 ft with vertical clearance over railroads desired at 23.5 ft. Sections of the new roadway may be elevated or not include frontage roads to lessen impacts.

In April 2020, TxDOT completed the US 380 Feasibility Study for Collin County, which recommended an alignment for the Spur 399 Extension between US 75 and US 380. One of the alternatives under consideration, the Purple Alternative, was part of the recommended alignment from the US 380 Feasibility Study.

The Purple Alternative begins at US 75 south of McKinney and would extend existing Spur 399 to the east somewhat parallel to Farm to Market Road (FM) 546 to approximately 500 feet west of the intersection of FM 546 and Couch Drive/Old Mill Road. The alignment would then begin to turn northward and run somewhat parallel to Airport Drive along the west side of the McKinney National Airport. The alignment would tie into US 380 east of McKinney near the existing US 380 and Airport Drive intersection.

The Orange Alternative would match the alignment of the Purple Alternative from US 75 to approximately 500 feet west of the intersection of FM 546 and Couch Drive/Old Mill Road, where it would continue south and east around the south end of the McKinney National Airport. The alignment would turn to the north as it crosses FM 546 at the southeast corner of the Airport and continue to the north crossing the East Fork of the Trinity River to tie into US 380 near FM 1827.

Both build alternatives share a common segment from US 75 to approximately 500 feet west of the intersection of FM 546 and Couch Drive/Old Mill Road. This segment is severely constrained due to the right-of-way for FM 546, existing and planned major water pipelines, the McKinney landfill, and a number of industrial developments. Both build alternatives would result in potential impacts to wetlands and waters of the US, floodplain/floodway encroachment and need for compensatory storage, conversion of farmland to transportation use, cultural resources, wildlife/habitat, air quality, traffic noise, the visual environment, induced growth, and cumulative effects.

The proposed action may require issuance of an Individual or Nationwide Permit under Section 404 of the Clean Water Act, Section 401 Water Quality Certification, Section 402/Texas Pollution Discharge Elimination System Permit; conformance with Executive Orders on Environmental Justice (12898), Limited English Proficiency (13166), Wetlands (11990), Floodplain Management (11988), Invasive Species (13112); and compliance with Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, the Migratory Bird Treaty Act, Section 4(f) of the DOT Act (49 U.S.C. 303), Section 6(f) of the Land and Water Conservation Act (16 U.S.C. 4601), Title VI of the Civil Rights Act, and other applicable Federal and State regulations.

TxDOT anticipates completing the study process for this proposed action by January 2023.

TxDOT will issue a single Final Environmental Impact Statement and Record of Decision document pursuant to 23 U.S.C. 139(n)(2), unless TxDOT determines statutory criteria or practicability considerations preclude issuance of a combined document.

In accordance with 23 U.S.C. 139, cooperating agencies, participating agencies, and the public will be given an opportunity for continued input on project development. A virtual public scoping meeting is planned to be held on February 23, 2021. The meeting materials will be posted on *http://www.drive380.com* starting February 23, 2021 and will remain available through March 10, 2021, which is the date the comment period ends. The meeting will be hosted online and provide an opportunity for the public to review and comment on the draft coordination plan and schedule, the project purpose and need, the range of alternatives, and methodologies and level of detail for analyzing alternatives. It will also allow the public an opportunity to provide input on any expected environmental impacts, anticipated permits or other authorizations, and any significant issues that should be analyzed in depth in the EIS. In addition to the public scoping meeting, a public meeting will be held during development of the draft EIS, and a public hearing will be held after the draft EIS is prepared. Public notice will be given of the time and place of the meeting and hearing.

The public scoping meeting, public meeting, and public hearing will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to participate in the public scoping meeting, please contact Mr. Patrick Clarke, Public Information Officer, Dallas District at (214) 320–4483 no later than 4 p.m. (central time), on February 16, 2021. Please be aware that advance notice is required as some services and accommodations may require time for the Texas Department of Transportation to arrange.

The public is requested to identify in writing potential alternatives,

information, and analyses relevant to this proposed project. Such information may be provided by email to Mr. Stephen Endres, TxDOT Project Manager at *Stephen.Endres@txdot.gov,* or by mail to the TxDOT Dallas District, 4777 E. US Highway 80, Mesquite, Texas 75150. Such information must be received by March 10, 2021.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2021–00188 Filed 1–8–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2020–0004]

Pipeline Safety; Request for Special Permit; Natural Gas Pipeline Company of America, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Natural Gas Pipeline Company of America, L.L.C. (NGPL). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by February 10, 2021.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E/Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION:

PHMSA received a special permit request from NGPL seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and § 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines. This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) special permit segment of 1,390 feet (0.263 miles) on the NGPL Gulf Coast Line 3 pipeline system. The proposed special permit segment is located in Angelina County, Texas. The NGPL pipeline class location in the special permit segment has changed from a Class 1 to a Class 3 location. The NGPL pipeline special permit segment is a 36-inch diameter pipeline with an existing maximum allowable operating pressure of 858 pounds per square inch gauge. The installation of the special permit segment occurred in 1966.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the NGPL pipeline are available for review and public comment in Docket No. PHMSA–2020–0004. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–00192 Filed 1–8–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2017–0010]

Request for Extension and Revision of a Currently Approved Information Collection: Annual Tank Car Survey

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Bureau of Transportation Statistics (BTS) intention to request that the Office of Management and Budget (OMB) approve a 3-year extension of a currently approved information collection for the ''Annual Tank Car Survey.''

DATES: Interested persons are invited to submit comments on or before March 12, 2021.

ADDRESSES: You may submit comments identified by Docket No. DOT–OST–2017–0010 through the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. You may also submit comments identified by DOT Docket ID Number DOT–OST–2017–0010 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket Management System, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above. Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket DOT–OST–2017–0010.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal Rulemaking Portal: *http://www.regulations.gov*.

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/*.

FOR FURTHER INFORMATION CONTACT: Clara Reschovsky, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, Department of Transportation 1200 New Jersey Avenue SE, Room E36–324, Washington, DC 20590, Telephone (202) 366–2857.

SUPPLEMENTARY INFORMATION:

Title: Annual Tank Car Survey

OMB Control #: 2138–0047

Background: In accordance with the requirements of 44 U.S.C. Section 3506(c)(2)(A) (the Paperwork Reduction Act of 1995), this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) extension of the currently approved information collection related to Section 7308 of the Fixing America's Surface Transportation Act (Pub. L. 114–94; the ''FAST Act''). Specifically, Section 7308(c) of the FAST ACT directs the Secretary of Transportation to conduct a data collection of tank car facilities to obtain an estimate of tank cars projected to be modified or built to the new safer Department of Transportation (DOT) Specification 117 or 117R.

On December 4, 2015, President Barack Obama signed legislation entitled ''Fixing America's Surface Transportation Act of 2015,'' or the ''FAST Act.'' See Public Law 114–94. The FAST Act includes the ''Hazardous Materials Transportation Safety Improvement Act of 2015'' (see Sections 7001 through 7311) and instructs the Secretary of Transportation to make specific regulatory amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), including requirements for certain persons to report the progress toward modifying rail tank cars used for the transportation of Class 3 flammable liquids in accordance with the timeline established in Section 7304 of the FAST Act.

In order to satisfy the FAST Act requirements, BTS has been conducting the data collection. BTS invites comments on its intention to continue collecting information from tank car retrofitting and manufacturing facilities on the planned and projected number of tank cars to be retrofitted or manufactured during the calendar year, annually. Any facility identified with the capacity to modify or build new tank cars to the 117 or 117R specification, as described in Section 7308(c) of the FAST Act will be included in the data collection identified in this notice and submit the results to the Bureau of Transportation Statistics (BTS) no later than 60 days upon request. Individual responses to the data collection will be kept confidential and a summary report of aggregate findings will be provided to:

(1) The Committee on Commerce, Science, and Transportation of the Senate; and

(2) The Committee on Transportation and Infrastructure of the House of Representatives.

In addition, this summary report will also be published to the BTS web page.

This notice is applicable to Section 7308(c) of the FAST Act which directs the Secretary to conduct an annual data collection of tank car shops to acquire projections of the number of tank cars to be built or manufactured to the new safer specifications. This includes those tank cars modified to the DOT Specification 117R, or equivalent, as well as any new tank cars built to the DOT Specification 117, or equivalent. Modified tank cars will include, but may not be limited to, those previously built to Specifications: DOT105, DOT109, DOT111, DOT112, DOT114, DOT115, and DOT120.

Additionally, per Executive Order 13868, issued on April 10, 2019, BTS will ask Tank Car shops certified to build DOT–113, capable of carrying liquified natural gas how many tank cars they anticipate building in the calendar year. This information will be kept confidential and a summary report of aggregate findings will be provided to the Pipeline and Hazardous Materials Administration.

Respondents: Across the nation there are approximately 400 tank car facilities that are currently registered or certified to build or modify tank cars. However, the majority of these do not have the capacity to modify or build to the 117 or 117R specifications or the 113 specification. It is estimated that, at most, 175 tank car shops possess the required capacity to build or modify to these new safer requirements.

Estimated Average Burden per Response: It is estimated that 175 facilities will provide one response each

to this request for information on an annual basis, and that it will take approximately 30 minutes to complete, including record keeping and reporting. This notice is intended to accurately account for the annual burden.

Estimated Total Annual Burden: The estimated burden is equal to 88 annual burden hours (*i.e.,* 175 responses per year x 0.5 hour per response). The total burden cost is estimated at $4,371 (*i.e.,* 88 burden hours x $49.67 per hour for a manager in Transportation, Storage, and Distribution).

Frequency: Annually.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Issued in Washington, DC on January 5, 2021.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2021–00197 Filed 1–8–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Examination 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 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 renewal of its information collection titled, ''Examination Survey.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted by February 10, 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, 1557–0199, 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 ''1557–0199'' 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. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice 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, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0199'' or ''Examination 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. 3501–3520), 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.

The OCC is asking OMB to extend its approval of the following information collection:

Title: Examination Survey.

OMB Control No.: 1557–0199.

Affected Public: Businesses or other for-profit.

Type of Review: Regular.

Abstract: The OCC provides each national bank, Federal savings association, and Federal branch or agency (bank) with an Examination Survey at the end of its supervisory cycle (12- or 18-month period). This information collection permits banks to assess the OCC's bank supervisory activities, including the:

- Effectiveness of OCC communications with the bank;
- Reasonableness of OCC requests for data and information;
- Quality of OCC decision making during the exam process;
- Professionalism of OCC examining staff; and
- Responsiveness of OCC examiners.

The OCC developed the survey in 1994, at the suggestion of banking industry members who expressed a desire to provide examination-related feedback to the OCC. The Comptroller of the Currency and OCC supervisory staff considered that expressed desire and concurred. The information collection continues to be an important tool for the OCC to measure OCC examination performance, design more efficient and effective examinations, and target examiner training.

This information collection continues to formalize and promote a long-

[1] On October 5, 2020 the OCC published a 60-day notice for this information collection, 85 FR 62801.

standing OCC program. The OCC always has given the institutions it supervises the opportunity to provide input regarding the examination process.

Burden Estimates:

Estimated Number of Respondents: 1,714.

Estimated Annual Burden: 286 hours.

On October 5, 2020, the OCC issued a notice for 60 days of comment concerning the collection, 85 FR 62801. No comments were received. Comments continue to be 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. 2021–00238 Filed 1–8–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Recordkeeping and Disclosure Requirements—Consumer Financial Protection Bureau Regulations B, E, M, Z, and DD and Board of Governors of the Federal Reserve System Regulation CC

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 the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. 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 an information collection titled, ''Record and Disclosure Requirements—Consumer Financial Protection Bureau Regulations B, E, M, Z, and DD and Board of Governors of the Federal Reserve System Regulation CC.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before February 10, 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, 1557–0176, 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 ''1557–0176'' 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. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice 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, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0176'' or ''Record and Disclosure Requirements—Consumer Financial Protection Bureau Regulations B, E, M, Z, and DD and Board of Governors of the Federal Reserve System Regulation CC.'' 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, OCC 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: The OCC asks that OMB renew its approval of the following information collection:

Title: Record and Disclosure Requirements—Consumer Financial Protection Bureau Regulations B, E, M, Z, and DD and Board of Governors of the Federal Reserve System Regulation CC.

OMB Control No.: 1557–0176.

Type of Review: Regular review.

Description: This information collection covers Consumer Financial Protection Board Regulations B, E, M, Z, and DD and Board of Governors of the Federal Reserve System (FRB) Regulation CC. The CFPB and FRB Regulations include the following provisions:

Regulation B—12 CFR 1002—Equal Credit Opportunity Act

This regulation prohibits lenders from discriminating against credit applicants on certain prohibited bases. The regulation also requires creditors to notify applicants of action taken on their credit application, to report credit history in the names of both spouses on an account, to retain records of credit applications, to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans, and to provide applicants with copies of appraisal reports used in connection with credit transactions.

[1] On October 2, 2020, the OCC published a 60-day notice for this information collection, 85 FR 62367.

Regulation E—12 CFR 1005—Electronic Fund Transfers [2]

This regulation carries out the purposes of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfers and remittance transfer services and of financial institutions or other persons that offer these services.

Regulation M—12 CFR 1013—Consumer Leasing

This regulation implements the consumer leasing provisions of the Truth in Lending Act, including by requiring meaningful disclosure of leasing terms.

Regulation Z—12 CFR 1026—Truth in Lending

This regulation is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost, including to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs. The regulation gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. Other provisions include rules specific to credit card accounts, certain dwelling-secured transactions, home-equity plans, and private education loans.

Regulation DD—12 CFR 1030—Truth in Savings

This regulation requires depository institutions to provide disclosures to enable consumers to make meaningful comparisons among accounts at depository institutions.

Regulation CC—12 CFR 229—Availability of Funds and Collection of Checks

This regulation includes timeframes to govern the availability of funds deposited in checking accounts, rules to govern the collection and return of checks and electronic checks, and general provisions to govern the use of substitute checks.

[2] This notice does not apply to the Prepaid Account Provisions of Regulation E, which are approved under OMB Control No. 1557–0346.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,110.

Estimated Annual Burden: 2,937,280 hours.

Frequency of Response: On occasion.

Comments: The OCC issued a notice for 60 days of comment on October 2, 2020, 85 FR 62367. No comments were received. Comments continue to be 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. 2021–00240 Filed 1–8–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Fair Housing Home Loan Data System Regulation

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 take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and the 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 the information collection titled ''Fair Housing Home Loan Data System Regulation.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before February 10, 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, 1557–0159, 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 ''1557–0159'' 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. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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.

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice 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, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0159'' or ''Fair Housing Home Loan Data System Regulation.'' Upon

[1] On November 5, 2020, the OCC published a 60-day notice for this information collection, 84 FR 70711.

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, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, 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. 3501–3520), 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. The OCC asks that it renew the collection in this notice.

Title: Fair Housing Home Loan Data System Regulation.

OMB Control No.: 1557–0159.

Type of Review: Regular review.

Description: Part 27 requires certain national banks to record certain information, and all national banks to retain certain information. Specifically, national banks must record certain home loan data if they: (1) Are otherwise required to maintain and report data pursuant to Regulation C,[2] which implements the Home Mortgage Disclosure Act (HMDA),[3] in which case they are HMDA reporters, or (2) receive more than 50 home loan applications annually.[4] Specifically, national banks that are HMDA reporters meet the part 27 requirement by recording HMDA data along with the reasons for denying any loan application on the HMDA Loan Application/Register (LAR).[5] A national bank that is not a HMDA reporter but that receives more than 50 home loan applications annually must comply with part 27 by either: (1) Recording and reporting HMDA data and denial reasons on the LAR as if they were a HMDA reporter,[6] or (2) recording and maintaining part 27-specified activity data relating to aggregate numbers of certain types of loans by geography and action taken.[7] Part 27 also requires that all national banks, including those not subject to the recording requirements, to maintain certain application and loan information in loan files. It further provides that the OCC may require national banks to maintain and submit additional information if there is reason to believe that the bank engaged in discrimination.

The requirements in part 27 are as follows:

• 12 CFR 27.3(a)(1) requires provision of the data that national banks are required to collect on home loans pursuant to Regulation C.

• Section 27.3(a)(2) requires national banks that receive more than 50 applications but are not HMDA reporters to collect certain information quarterly.

• Section 27.3(a) also lists exceptions to the HMDA–LAR recordkeeping requirements.

• 12 CFR 27.3(b) lists the information national banks must attempt to obtain from an applicant as part of a home loan application and sets forth the information that banks must disclose to an applicant.

• 12 CFR 27.3(c) sets forth additional information national banks must maintain in each of their home loan files.

• 12 CFR 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 including if: (1) There is reason to believe that the bank is prescreening, or otherwise engaging in discriminatory practices on a prohibited basis, (2) complaints filed with the Comptroller or letters in the Community Reinvestment Act file are found to be substantive in nature, indicating that the bank's home lending practices are, or may be, discriminatory, or (3) analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and Regulation C indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

• 12 CFR 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action taken on an application or after withdrawal of an application.

• 12 CFR 27.7 requires a national bank to submit to the OCC, upon request prior to a scheduled examination, the information required by §§ 27.3(a) and 27.4. Non-HMDA reporters with more than 50 applications are required to submit this data using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Submission Form in Appendix IV to part 27, except that there is an additional exclusion for national banks with fewer than 75 applications. Specifically, section 27.7(c)(3) states that a bank with fewer than 75 home loan applications in the preceding year is not required to submit such forms unless the home loan activity is concentrated in the few months preceding the request for data, indicating the likelihood of increased activity over the subsequent year, or there is cause to believe that a bank is not in compliance with the fair housing laws based on prior examinations and/or complaints, among other factors.

• § 27.7(d) provides that if there is cause to believe that a national bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals than specified.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 956.

Estimated Annual Burden: 19,864 hours.

Frequency of Response: On occasion.

Comments: On November 5, 2020, the OCC published a 60-day notice for this information collection, 84 FR 70711. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are 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 estimates 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

[2] 12 CFR part 1003.

[3] 12 U.S.C. 2801 *et seq.*

[4] The OCC issued part 27 as part of a settlement agreement in a case in which the plaintiffs alleged that Federal agencies, including the OCC, were obligated to exercise supervisory and regulatory powers to prevent discrimination in home mortgage lending under Title VIII of the Civil Rights Act of 1968 (Fair Housing Act). *See National Urban League, et al.* v. *Office of the Comptroller of the Currency, et al.,* 78 FRD. 543, 544 (D.D.C. May 3, 1978) (Defendants were the OCC, FRB, FDIC, and FHLBB). For discussion of this case, *see* 44 FR 63084, 63084 (Nov. 2, 1979).

[5] 12 CFR 27.3(a)(1)(i).

[6] 12 CFR 27.3(a)(5).

[7] 12 CFR 27.3(a)(2).

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. 2021–00239 Filed 1–8–21; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; U.S. Business Income Tax Return Forms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before February 10, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: Today, over 90 percent of all business entity tax returns are prepared using software by the taxpayer or with preparer assistance. The forms and related schedules and regulations approved under OMB Control Number 1545–0123 are used by business taxpayers. These include Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL, and related schedules, that business entity taxpayers attach to their tax returns (see Appendix A for this notice). In addition, there are numerous OMB numbers that report burden already included in this OMB number. In order to eliminate this duplicative burden reporting, 163 OMB numbers are being obsoleted. See Appendix B for information on the obsoleted OMB numbers and the burden that was previously reported under those numbers.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Control Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There has been additions and removals of forms included in this approval package. These changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of the 60-day **Federal Register** notice on November 3, 2020 (85 FR 69687). The estimated burden figures have been updated and summarized below.

Type of Review: Revision of currently approved collections.

Affected Public: Corporations and Pass-Through Entities.

Estimated Number of Respondents: 11,800,000.

Total Estimated Time: 1.085 billion hours.

Estimated Time per Respondent: 85 hours (partnerships), 135 hours (corporations), 80 hours (pass-through corporations).

Total Estimated Out-of-Pocket Costs: $44.279 billion.

Estimated Out-of-Pocket Cost per Respondent: $3,800 (partnerships), $5,700 (corporations), $3,000 (pass-through corporations).

Total Monetized Burden: $95.803 billion.

Estimated Total Monetized Burden per Respondent: $7,700 (partnerships), $14,100 (corporations), $6,200 (pass-through corporations).

Note: Amounts below are for estimates for FY 2021. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Totals may not add due to rounding.

FISCAL YEAR 2021 ESTIMATES FOR FORM 1120 AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES

	FY 20	Change in burden	FY 21
Number of Taxpayers	12,000,000	(200,000)	11,800,000
Burden in Hours	3,344,000,000	(2,259,000,000)	1,085,000,000
Burden in Dollars	$61,558,000,000	($17,279,000,000)	$44,279,000,000
Monetized Total Burden	$190,981,000,000	$(95,178,000,000)	$95,803,000,000

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers: Partnerships (Table 1), corporations (Table 2) and S corporations (Table 3). As the tables show, the average filing compliance is different for the three forms of business. Showing a combined average burden for all businesses would understate the burden for corporations and overstate the burden for the two pass-through

entities (partnerships and S corporations). In addition, the burden for small and large businesses is shown separately for each type of business entity in order to clearly convey the substantially higher burden faced by the largest businesses.

TABLE 1—TAXPAYER BURDEN FOR ENTITIES TAXED AS PARTNERSHIPS

[Forms 1065, 1066, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Partnerships	4.5	85	$3,800	$7,700
Small	4.2	75	2,700	5,200
Other *	0.3	245	20,100	44,900

*''Other'' is defined as one having end-of-year assets greater than $10 million. A large business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 2—TAXPAYER BURDEN FOR ENTITIES TAXED AS TAXABLE CORPORATIONS

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Taxable Corporations	2.0	135	$5,700	$14,100
Small	1.9	90	3,000	6,100
Large *	0.1	920	48,100	14,800

* A ''large'' business is defined as one having end-of-year assets greater than $10 million. A ''large'' business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 3—TAXPAYER BURDEN FOR ENTITIES TAXED AS PASS-THROUGH CORPORATIONS

[Forms 1120–REIT, 1120–RIC, 1120–S, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Pass-Through Corporations	5.3	80	$3,000	$6,200
Small	5.2	80	2,700	5,500
Large *	0.1	325	23,400	56,100

* A ''large'' business is defined as one having end-of-year assets greater than $10 million. A ''large'' business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

Tables 1A—3A show the average burden estimate for business entities by *total positive income.* Total positive income is defined as the sum of all positive income amounts reported on the return.

TABLE 1A—TAXPAYER BURDEN FOR PARTNERSHIPS

[Forms 1065, 1066, and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<$100,000	65	1,425	2,571
$100,000 to $999,999	82	3,952	7,605
$1,000,000 to 9,999,999	124	10,244	22,224
$10,000,000 to $99,999,999	425	35,128	77,928
>$100,000,000	1,850	136,090	322,521

TABLE 2A—TAXPAYER BURDEN FOR TAXABLE CORPORATIONS

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<$100,000	72	1,239	2,330

TABLE 2A—TAXPAYER BURDEN FOR TAXABLE CORPORATIONS—Continued

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
$100,000 to $999,999	100	3,801	7,358
$1,000,000 to 9,999,999	138	9,904	22,866
$10,000,000 to $99,999,999	571	40,910	98,491
>$100,000,000	5,173	201,463	722,794

TABLE 3A—TAXPAYER BURDEN PASS-THROUGH CORPORATIONS

[Forms 1120–REIT, 1120–RIC, 1120–S and all attachments]

Total positive income *	Average time (hrs)	Average money ($)	Total average monetized burden ($)
<$100,000	65	1,096	1,990
$100,000 to $999,999	80	2,866	5,503
$1,000,000 to 9,999,999	99	6,906	15,909
$10,000,000 to $99,999,999	327	23,828	56,813
>$100,000,000	1,342	93,016	228,241

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 6, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

APPENDIX A

Form No.	Form name
Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
Form 1042–S	Foreign Person's U.S. Source Income Subject to Withholding.
Form 1042–T	Annual Summary and Transmittal of Forms 1042–S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B–1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B–2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M–3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.
Form 1065 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc..
Form 1065 (SCH M–3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit-Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M–3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation's Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M–3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million of More.
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120–C	U.S. Income Tax Return for Cooperative Associations.
Form 1120F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120–F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861–8.
Form 1120–F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882–5.
Form 1120–F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120–F (SCH M–3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More.
Form 1120–F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120–F(SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.

APPENDIX A—Continued

Form No.	Form name
Form 1120–F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120–FSC	U.S. Income Tax Return of a Foreign Sales Corporation.
Form 1120FSC (SCH P)	Transfer Price or Commission.
Form 1120H	U.S. Income Tax Return for Homeowners Associations.
Form 1120–IC–DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120–IC–DISC (SCH K)	Shareholder's Statement of IC–DISC Distributions.
Form 1120–IC–DISC (SCH P)	Intercompany Transfer Price or Commission.
Form 1120–IC–DISC (SCH Q)	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120–L	U.S. Life Insurance Company Income Tax Return.
Form 1120–L (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More.
Form 1120–ND*	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120–PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120–PC (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More.
Form 1120–POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120–REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120–RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120S	U.S. Income Tax Return for an S Corporation.
Form 1120S (SCH B–1)	Information on Certain Shareholders of an S Corporation.
Form 1120S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120S (SCH K–1)	Shareholder's Share of Income, Deductions, Credits, etc..
Form 1120S (SCH M–3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More.
Form 1120–SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120–W	Estimated Tax for Corporations.
Form 1120–X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.
Form 1125–A	Cost of Goods Sold.
Form 1125–E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
Form 2848	Power of Attorney and Declaration of Representative.
Form 3115	Application for Change in Accounting Method.
Form 3468	Investment Credit.
Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
Form 3520–A	Annual Return of Foreign Trust With a U.S. Owner.
Form 3800	General Business Credit.
Form 4136	Credit for Federal Tax Paid on Fuels.
Form 4255	Recapture of Investment Credit.
Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
Form 4562	Depreciation and Amortization (Including Information on Listed Property).
Form 4684	Casualties and Thefts.
Form 4797	Sales of Business Property.
Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Form 4876A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I–1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
Form 56	Notice Concerning Fiduciary Relationship.
Form 56F	Notice Concerning Fiduciary Relationship of Financial Institution.
Form 5713	International Boycott Report.
Form 5713 (SCH A)	International Boycott Factor (Section 999(c)(1)).
Form 5713 (SCH B)	Specifically, Attributable Taxes and Income (Section 999(c)(2)).

APPENDIX A—Continued

Form No.	Form name
Form 5713 (SCH C)	Tax Effect of the International Boycott Provisions.
Form 5735	American Samoa Economic Development Credit.
Form 5735 Schedule P	Allocation of Income and Expenses Under Section 936(h)(5).
Form 5884	Work Opportunity Credit.
Form 5884–A	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
Form 6198	At-Risk Limitations.
Form 6478	Biofuel Producer Credit.
Form 6627	Environmental Taxes.
Form 6765	Credit for Increasing Research Activities.
Form 6781	Gains and Losses From Section 1256 Contracts and Straddles.
Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form 8275	Disclosure Statement.
Form 8275R	Regulation Disclosure Statement.
Form 8283	Noncash Charitable Contributions.
Form 8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288B	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8300	Report of Cash Payments Over $10,000 Received In a Trade or Business.
Form 8302	Electronic Deposit of Tax Refund of $1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
Form 8329	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453–C	U.S. Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–I	Foreign Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 8453–S	U.S. S Corporation Income Tax Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
Form 8586	Low-Income Housing Credit.
Form 8594	Asset Acquisition Statement Under Section 1060.
Form 8609	Low-Income Housing Credit Allocation and Certification.
Form 8609–A	Annual Statement for Low-Income Housing Credit.
Form 8611	Recapture of Low-Income Housing Credit.
Form 8621	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Form 8621–A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
Form 8655	Reporting Agent Authorization.
Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
Form 8703	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804–C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.
Form 8804–W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
Form 8813	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8816	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
Form 8819	Dollar Election Under Section 985.
Form 8820	Orphan Drug Credit.
Form 8822B	Change of Address—Business.
Form 8824	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
Form 8826	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax-Corporations.
Form 8830	Enhanced Oil Recovery Credit.
Form 8832	Entity Classification Election.
Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
Form 8834	Qualified Electric Vehicle Credit.
Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
Form 8838	Consent to Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.

APPENDIX A—Continued

Form No.	Form name
Form 8838–P	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
Form 8844	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).
Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).
Form 8858 (SCH M)	Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer or Other Related Entities.
Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721(c).
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
Form 8865 (SCH K–1)	Partner's Share of Income, Deductions, Credits , etc..
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
Form 8873	Extraterritorial Income Exclusion.
Form 8874	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
Form 8878–A	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879–C	IRS e-file Signature Authorization for Form 1120.
Form 8879–I	IRS e-file Signature Authorization for Form 1120–F.
Form 8879–PE	IRS e-file Signature Authorization for Form 1065.
Form 8879–S	IRS e-file Signature Authorization for Form 1120S.
Form 8881	Credit for Small Employer Pension Plan Startup Costs.
Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
Form 8883	Asset Allocation Statement Under Section 338.
Form 8886	Reportable Transaction Disclosure Statement.
Form 8896	Low Sulfur Diesel Fuel Production Credit.
Form 8900	Qualified Railroad Track Maintenance Credit.
Form 8902	Alternative Tax on Qualified Shipping Activities.
Form 8903	Domestic Production Activities Deduction.
Form 8906	Distilled Spirits Credit.
Form 8908	Energy Efficient Home Credit.
Form 8910	Alternative Motor Vehicle Credit.
Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M–3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916–A	Supplemental Attachment to Schedule M–3.
Form 8918	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
Form 8925	Report of Employer-Owned Life Insurance Contracts.
Form 8927	Determination Under Section 860(e)(4) by a Qualified Investment Entity.
Form 8932	Credit for Employer Differential Wage Payments.
Form 8933	Carbon Oxide Sequestration Credit.
Form 8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
Form 8937	Report of Organizational Actions Affecting Basis of Securities.
Form 8938	Statement of Foreign Financial Assets.
Form 8941	Credit for Small Employer Health Insurance Premiums.
Form 8947	Report of Branded Prescription Drug Information.
Form 8966	FATCA Report.
Form 8966–C	Cover Sheet for Form 8966 Paper Submissions.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI)..
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII)and Global Intangible Low-Taxed Income (GILTI)..
Form 8994	Employer Credit for Paid Family and Medical Leave.
Form 8996	Qualified Opportunity Fund.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.
Form 965	Inclusion of Deferred Foreign Income Upon Transition to Participation Exemption System.
Form 965–B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and REIT Report of Net 965 Inclusion.

APPENDIX A—Continued

Form No.	Form name
Form 965 (SCH–A)	U.S. Shareholder's Section 965(a) Inclusion Amount.
Form 965 (SCH–B)	Deferred Foreign Income Corporation's Earnings and Profits (E&P).
Form 965 (SCH–C)	U.S. Shareholder's Aggregate Foreign Earnings and Profits Deficit.
Form 965 (SCH–D)	U.S. Shareholder's Aggregate Foreign Cash Position.
Form 965 (SCH–E)	U.S. Shareholder's Aggregate Foreign Cash Position Detail.
Form 965 (SCH–F)	Foreign Taxes Deemed Paid by Domestic Corporation (for U.S. Shareholder Tax).
Form 965 (SCH–G)	Foreign Taxes Deemed Paid by Domestic Corporation (for U.S. Shareholder Tax Year Ending in 2017).
Form 965 (SCH–H)	Disallowance of Foreign Tax Credit and Amounts Reported on Forms 1116 and 1118.
Form 966	Corporate Dissolution or Liquidation.
Form 970	Application to Use LIFO Inventory Method.
Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 973	Corporation Claim for Deduction for Consent Dividends.
Form 976	Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
Form SS–4	Application for Employer Identification Number.
Form SS–4PR	Solicitud de Número de Identificación Patronal (EIN).
Form T (TIMBER)	Forest Activities Schedule.
Form W–8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual).
Form W–8BEN(E)	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities).
Form W–8ECI	Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
Form W–8IMY	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

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BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; U.S. Income Tax Return Forms for Individual Taxpayers

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before February 10, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *Title:* U.S. Income Tax Return for Individual Taxpayers.

OMB Control Number: 1545–0074.

Regulation Project Number: Form 1040 and affiliated return forms.

Abstract: IRC sections 6011 & 6012 of the Internal Revenue Code require individuals to prepare and file income tax returns annually. These forms and related schedules are used by individuals to report their income subject to tax and compute their correct tax liability. This information collection request (ICR), covers the actual reporting burden associated with preparing and submitting the prescribed return forms, by individuals required to file Form 1040 and any of its affiliated forms as explained in the attached table.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There have been additions and removals of forms included in this approval package. These changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of the 60-day **Federal Register** notice on October 30, 2020 (85 FR 68956). The estimated burden figures have been updated and summarized below.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or Households, Farms.

Estimated Number of Respondents: 164,500,000.

Estimated Time per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 1.955 billion.

Total Estimated Out-of-Pocket Costs: $37.960 billion.

Estimated Out-of-Pocket Cost per Respondent: $231.

Total Monetized Burden: $71.943 billion.

Estimated Total Monetized Burden per Respondent: $437.

Note: Amounts below are estimates for FY 2021. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Totals may not add due to rounding.

TABLE 1—ICB ESTIMATES FOR THE 1040/SR/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES FY2021

	FY20	Program change due to adjustment	Program change due to new legislation	Program change due to agency	FY 21
Number of Taxpayers	159,300,000	5,200,000			164,500,000
Burden in Hours	1,717,000,000	279,000,000			1,995,000,000
Burden in Dollars	33,267,000,000	4,695,000,000		(1,000,000)	37,960,000,000
Monetized Total Burden	60,997,000,000	10,951,000,000		(4,000,000)	71,943,000,000

Table 2 below provides information specific to taxpayer burden incurred by Form 1040 filers.

TABLE 2—ALL FORM 1040 FILERS

Primary form filed or type of taxpayer		Time burden					Money burden	
		Average time burden (hours) ***						
	Percentage of returns	Total time	Recordkeeping	Tax planning	Form completion and submission	All other	Average cost (dollars)	Total monetized burden (dollars)
All Taxpayers	100	12	5	2	4	1	$230	$440
Type of Taxpayer:								
Nonbusiness **	70	8	3	1	3	1	140	270
Business **	30	21	11	3	5	2	440	840

Note: This table does not include 1040NR, 1040NR–EZ, and 1040X filers.
Detail may not add to total due to rounding. Dollars rounded to the nearest $10.
** A ''business'' filer files one or more of the following with Form 1040: Schedule C, C–EZ, E, F, Form 2106, or 2106–EZ. A ''non-business'' filer does not file any of these schedules or forms with Form 1040.
*** Times are rounded to nearest hour.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 6, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

APPENDIX A

Form No.	Form name
Form 1040	U.S. Individual Tax Return.
Form 1040 Schedule 1	Form 1040 Schedule 1 Additional Income and Adjustments to Income.
Form 1040 Schedule 1 (SP)	Additional Income and Adjustments to Income in Spanish.
Form 1040 Schedule 2	Form 1040 Schedule 2 Tax.
Form 1040 Schedule 2 (SP)	Additional Taxes in Spanish.
Form 1040 Schedule 3	Form 1040 Schedule 3 Nonrefundable Credits.
Form 1040 Schedule 3 (SP)	Additional Credits and Payments in Spanish.
Form 1040 Schedule 4	Form 1040 Schedule 4 Other Taxes.
Form 1040 Schedule 5	Form 1040 Schedule 5 Other payments and Refundable Credits.
Form 1040 Schedule 6	Form 1040 Schedule 6 Foreign Address and Third-Party Designee.
Form 1040–C	U.S. Departing Alien Income Tax Return.
Form 1040 X	Amended U.S. Individual Income Tax Return.
Form 1040 NR	U.S. Nonresident Alien Income Tax Return.
Form 1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents.
Form 1040–PR	Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico.
Form 1040–SR	U.S. Income Tax Return for Seniors.
Form 1040–SS	U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).
Schedule A (1040)	Itemized Deductions.
Schedule B (Form 1040)	Interest and Ordinary Dividends.
Schedule C (Form 1040)	Profit or Loss from Business.
Schedule C–EZ (Form 1040)	Net Profit from Business.
Schedule D (Form 1040)	Capital Gains and Losses.
Schedule E (Form 1040)	Supplemental Income and Loss.
Schedule EIC (Form 1040)	Earned Income Credit.
Schedule EIC (SP) (F. 1040)	Earned Income Credit (Spanish version).
Schedule F (Form 1040)	Profit or Loss from Farming.
Schedule H (Form 1040) and Sch H(PR)	Household Employment Taxes.

APPENDIX A—Continued

Form No.	Form name
Schedule J (Form 1040)	Income Averaging for Farmers and Fishermen.
Schedule LEP	Request for Alternative Language Products by Taxpayers with Limited English Proficiency (LEP).
Schedule LEP (SP)	Schedule LEP Limited English Proficiency (SP).
Schedule R (Form 1040)	Credit for the Elderly or the Disabled.
Schedule SE (Form 1040)	Self-Employment Tax.
Form 1040 V	Payment Voucher.
Form 1040 ES/OCR	Estimated Tax for Individuals (Optical Character Recognition with Form 1040V).
Form 1040 ES	Estimate Tax for Individuals.
Form 1040 ES (NR)	U.S. Estimated Tax for Nonresident Alien Individuals.
Form 1040 ES (PR)	Federales Estimadas del Trabajo por Cuenta Propia y sobre el Impleo de Empleados Domestocs-Puerto Rico.
Form 461	Limitation on Business Losses.
Form 673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.
Form 965–A	Individual Report of Net 965 Tax Liability.
Form 965–C	Transfer Agreement Under 965(h)(3).
Form 970	Application to Use LIFO Inventory Method.
Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
Form 1045	Application for Tentative Refund.
Form 1098–F	Fines, Penalties and Other Amounts.
Form 1116	Foreign Tax Credit.
Form 1127	Application for Extension of Time for Payment of Tax.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1310	Statement of Person Claiming Refund Due to a Deceased Taxpayer.
Form 2106	Employee Business Expenses.
Form 2106–EZ	Unreimbursed Employee Business Expenses.
Form 2120	Multiple Support Declaration.
Form 2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
Form 2210–F	Underpayment of Estimated Tax by Farmers and Fishermen.
Form 2350	Application for Extension of Time to File U.S. Income Tax Return.
Form 2350 SP	Solicitud de Prorroga para Presentar la Declaracion del Impuesto Personal sobre el Ingreso de lose Estados Unidos.
Form 2441	Child and Dependent Care Expenses.
Form 2555	Foreign Earned Income.
Form 2555 EZ	Foreign Earned Income Exclusion.
Form 3115	Application for Change in Accounting Method.
Form 3468	Investment Credit.
Form 3520	Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.
Form 3800	General Business Credit.
Form 3903	Moving Expenses.
Form 4070	Employee's Report of Tips to Employer.
Form 4070A	Employee's Daily Record of Tips.
Form 4136	Credit for Federal Tax Paid on Fuels.
Form 4137	Social Security and Medicare Tax on Underreported Tip Income.
Form 4255	Recapture of Investment Credit.
Form 4361	Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
Form 4562	Depreciation and Amortization.
Form 4563	Exclusion of Income for Bona Fide Residents of American Samoa.
Form 4684	Causalities and Thefts.
Form 4797	Sale of Business Property.
Form 4835	Farm Rental Income and Expenses.
Form 4852	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions from Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc..
Form 4868	Application for Automatic Extension of Time to File Individual U.S. Income Tax Return.
Form 4868 SP	Solicitud de Prorroga Automatica para Presentar la Declaracion del Impuesto sobre el Ingreso Personal de los Estados Unidos.
Form 4952	Investment Interest Expense Deduction.
Form 4970	Tax on Accumulation Distribution of Trusts.
Form 4972	Tax on Lump-Sum Distributions.
Form 5074	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
Form 5213	Election to Postpone Determination as to Whether the Presumption Applies that an Activity is Engaged in for Profit.
Form 5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
Form 5405	First-Time Homebuyer Credit.
Form 5471	Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

APPENDIX A—Continued

Form No.	Form name
Schedule J (Form 5471)	Accumulated Earnings and Profits (E&P) and Taxes of Controlled Foreign Corporations.
Schedule M (Form 5471)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Schedule O (Form 5471)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5695	Residential Energy Credits.
Form 5713	International Boycott Report.
Schedule A (Form 5713)	International Boycott Factor (Section 999(c)(1)).
Schedule B (Form 5713)	Specifically Attributable Taxes and Income (Section 999(c)(2)).
Schedule C (Form 5713)	Tax Effect of the International Boycott Provisions.
Form 5884	Work Opportunity Cost.
Form 5884–A	Credits for Affected Disaster Area Employees.
Form 6198	At-Risk Limitations.
Form 6251	Alternative Minimum Tax-Individuals.
Form 6252	Installment Sale Income.
Form 6478	Biofuel Producer Credit.
Form 6765	Credit for Increasing Research Activities.
Form 6781	Gains and Losses from Section 1256 Contracts and Straddles.
Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form 8275	Disclosure Statement.
Form 8275–R	Regulation Disclosure Statement.
Form 8283	Noncash Charitable Contributions.
Form 8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
Form 8379	Injured Spouse Claim and Allocation.
Form 8396	Mortgage Interest Credit.
Form 8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
Schedule LEP	Request for Alternative Language Products by Taxpayers with Limited English Proficiency (LEP).
Schedule LEP (SP)	Schedule LEP Limited English Proficiency (SP).
Schedule 1 (SP) (F. 1040)	Additional Income and Adjustments to Income in Spanish.
Schedule 2 (SP) (F. 1040)	Additional Taxes in Spanish.
Schedule 3 (SP) (F. 1040)	Additional Credits and Payments in Spanish.
Schedule EIC (SP) (F. 1040)	Earned Income Credit (Spanish version).
8915–D	Qualified 2019 Disaster Retirement Plan Distributions and Repayments.
Form 8453(SP)	U.S. Individual Income Tax Declaration for an IRS e-file Return (Spanish version).
Form 8582	Passive Activity Loss Limitation.
Form 8582–CR	Passive Activity Credit Limitations.
Form 8586	Low-Income Housing Credit.
Form 8594	Asset Acquisition Statement Under Section 1060.
Form 8606	Nondeductible IRAs.
Form 8609–A	Annual Statement for Low-Income Housing Credit.
Form 8611	Recapture of Low-Income Housing Credit.
Form 8615	Tax for Certain Children Who Have Investment Income of More than $1,800.
Form 8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Form 8621–A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
Form 8689	Allocation of Individual Income Tax to the Virgin Islands.
Form 8697	Interest Computations Under the Look-Back Method for Completed Long-Term Contracts.
Form 8801	Credit for Prior Year Minimum Tax-Individuals, Estates, and Trusts.
Schedule 8812 (Form 1040)	Additional Child Tax Credit.
Schedule 8812(SP) (Form 1040)	Additional Tax Credit (Spanish version).
Form 8814	Parents' Election to Report Child's Interest and Dividends.
Form 8815	Exclusion of Interest from Series EE and I U.S. Savings Bonds Issued After 1989.
Form 8818	Optional Form to Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
Form 8820	Orphan Drug Credit.
Form 8824	Like-Kind Exchanges.
Form 8826	Disabled Access Credit.
Form 8828	Recapture of Federal Mortgage Subsidy.
Form 8829	Expenses for Business Use of Your Home.
Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
Form 8834	Qualified Electric Vehicle Credit.
Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.
Form and Instruction	Form 8838.
Form	Form 8839.
Form 8840	Closer Connection Exception Statement for Aliens.
Form 8843	Statement for Exempt Individuals and Individuals with a Medical Condition.
Form 8844	Empowerment Zone and Renewal Community Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8853	Archer MSA's and Long-Term Care Insurance Contracts.

APPENDIX A—Continued

Form No.	Form name
Form 8854	Initial and Annual Expatriation Information Statement.
Form 8858	Information Return of U.S. Persons with Respect to Foreign Disregarded Entities.
Schedule M (Form 8858)	Transactions Between controlled Foreign Disregarded Entity and Filer or Other Related Entities.
Form 8859	District of Columbia First-Time Homebuyer Credit.
Form 8862	Information to Claim Earned Income Credit After Disallowance.
Form 8862(SP)	Information to Claim Earned Income Credit After Disallowance (Spanish Version).
Form 8863	Education Credits.
Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.
Schedule K–1 (Form 8865)	Partner's Share of Income Deductions, Credits, etc.
Schedule O (Form 8865)	Transfer of Property to a Foreign Partnership.
Schedule P (Form 8865)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
Form 8866	Interest Corporation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8873	Extraterritorial Income Exclusion.
Form 8874	New Markets Credit.
Form 8878	IRS e-file Signature Authorization for Form 4686 or Form 2350.
Form 8878 SP	Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868 (SP) o el Formulario 2350 (SP).
Form 8879	IRS e-file Signature Authorization.
Form 8879 SP	Autorizacion de firm para presentar la Declaracion por medio del IRS e-file.
Form 8880	Credit for Qualified Retirement Savings Contributions.
Form 8881	Credit for Small Employer Pensions Plan Startup Costs.
Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
Form 8885	Health Coverage Tax Credit.
Form 8886	Reportable Transaction Disclosure Statement.
Form 8888	Direct Deposit of Refund to More than One Account.
Form 8889	Health Savings Accounts (HSAs).
Form 8891	Beneficiaries of Certain Canadian Registered Retirement Plans.
Form 8896	Low Sulfur Diesel Fuel Production Credit.
Form 8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
Form 8900	Qualified Railroad Track Maintenance Credit.
Form 8903	Domestic Production Activities Deduction.
Form 8906	Distills Spirits Credit.
Form 8908	Energy Efficient Home Credit.
Form 8910	Alternative Motor Vehicle Credit.
Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8915–A	Qualified 2016 Disaster Retirement Plan Distributions and Repayments.
Form 8915–B	Qualified 2017 Disaster Retirement Plan Distributions and Repayments.
Form 8915–C	Qualified 2018 Disaster Retirement Plan Distributions and Repayments.
Form 8915–D	Qualified 2019 Disaster Retirement Plan Distributions and Repayments.
Form 8917	Tuition and Fees Deduction.
Form 8919	Uncollected Social Security and Medicare Tax on Wages.
Form 8925	Report of Employer-Owned Life Insurance Contracts.
Form 8932	Credit for Employer Differential Wage Payments.
Form 8933	Carbon Dioxide Sequestration Credit.
Form 8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
Form 8941	Credit for Small Employer Health Insurance Premiums.
Form 8949	Sales and other Dispositions of Capital Assets.
Form 8958	Allocation of Tax Amounts Between Certain Individuals in Community Property States.
Form 8962	Premium Tax Credit.
Form 8965	Health Coverage Exemptions.
8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).
Form 8994	Employer Credit for Paid Family and Medical Leave.
Form 9000	Alternative Media Preference.
Form 9465	Installment Agreement Request.
Form 9465 SP	Solicitud para un Plan de Pagos a Plazos.
Form T (Timber)	Forest Activities Schedules.
Form W–4	Employee's Withholding Allowance Certificate.
FormW—4 P	Withholding Certificate for Pension or Annuity Payments.
Form W–4 S	Request for Federal Income Tax Withholding from Sick Pay.
Form W–4 V	Voluntary Withholding Request.
Form W–4 (SP)	Certificado de Exencion de la Retencion del Empleado.
Form W–7	Application for IRS Individual Taxpayer Identification Number.
Form W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
Form W–7 (SP)	Solicitud de Numero de Indenticacion Personal del Contribuyente del Servico de Impuestos Internos.
Form W–7 (COA)	Certificate of Accuracy for IRS Individual Taxpayer Identification Number.

[FR Doc. 2021–00316 Filed 1–8–21; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held Wednesday, March 3, 2021, via WebEx. The meeting will be held between 1:00–1:30 p.m. EST. The meeting will be partially closed to the public from 1:10–1:30 p.m. EST for the discussion, examination and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), as amended by Public Law 94–409, closing the committee meeting is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA Rehabilitation Research and Development program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members advise the Director, Rehabilitation Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance and the protection of human and animal subjects of Rehabilitation Research and Development proposals. The Board does not consider grants, contracts or other forms of extramural research.

Members of the public who wish to attend the open portion of the meeting from 1:00–1:10 p.m. EST may join via WebEx at: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m040113b8b785ef365a05d20daf46c147,* Meeting Number 199 306 7346; or by phone 1–404–397–1596 USA Toll Number, Access Code 199 306 7346.

Written comments from the public must be sent to Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, Department of Veterans Affairs (14RDR), 810 Vermont Avenue NW, Washington, DC 20420, or to *Tiffany.Asqueri@va.gov* prior to the meeting. Those who plan to attend the open portion of the meeting must contact Mrs. Asqueri at least 5 days before the meeting. For further information, please call Mrs. Asqueri at 202–443–5757.

Dated: January 6, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–00294 Filed 1–8–21; 8:45 am]
BILLING CODE P

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Part II

Commodity Futures Trading Commission

17 CFR Part 38

Electronic Trading Risk Principles; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AF04

Electronic Trading Risk Principles

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting final rules amending its part 38 regulations to address the potential risk of a designated contract market's (''DCM'') trading platform experiencing a market disruption or system anomaly due to electronic trading. The final rules set forth three principles applicable to DCMs concerning: The implementation of exchange rules applicable to market participants to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading; the implementation of exchange-based pre-trade risk controls for all electronic orders; and the prompt notification of Commission staff by DCMs of any significant market disruptions on their electronic trading platforms. In addition, the final rules include acceptable practices (''Acceptable Practices''), which provide that a DCM can comply with these principles by adopting and implementing rules and risk controls reasonably designed to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading.

DATES:

Effective date: The rules are effective on January 11, 2021.

Compliance date: DCMs must be in full compliance with the requirements of this rule no later than July 12, 2021.

FOR FURTHER INFORMATION CONTACT: Marilee Dahlman, Special Counsel, *mdahlman@cftc.gov* or 202–418–5264; Joseph Otchin, Special Counsel, *jotchin@cftc.gov* or 202–418–5623, Division of Market Oversight; Esen Onur, *eonur@cftc.gov* or 202–418–6146, Office of the Chief Economist; in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

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I. Background

A. Purpose and Structure of the Risk Principles

The Commission is adopting final rules establishing a set of principles (''Risk Principles'') and related Acceptable Practices applicable to DCMs for the purpose of preventing, detecting, and mitigating market disruptions and system anomalies associated with the entry of electronic orders and messages into DCMs' electronic trading platforms. Such market disruptions or anomalies originating at a market participant may negatively impact the proper functioning of a DCM's trading platform by limiting the ability of other market participants to trade, engage in price discovery, or manage risk.

The Commission, DCMs, and market participants all have an interest in the effective prevention, detection, and mitigation of market disruptions and system anomalies associated with electronic trading. As discussed in the notice of proposed rulemaking for the Electronic Trading Risk Principles (''NPRM'') [1] and noted by several NPRM commenters, the Commission believes that DCMs are addressing most, if not all, of the electronic trading risks currently presented to their trading platforms. DCMs and other market participants have worked together to better understand electronic trading risks and adapt risk control systems through the use of new technological tools and safety procedures, such as ''fat finger'' controls, dynamic price collars, kill switches, cancel-on-disconnect, drop copy feeds, self-match prevention, and granular pre-trade controls to manage limits within a product group.[2] Since April 2010, FIA has published six papers proposing industry best practices and guidelines related to identifying risks and strengthening safeguards related to electronic trading in the futures markets.[3]

The Risk Principles will require DCMs to continue to monitor these risks as they evolve along with the markets, and make reasonable modifications as appropriate. The Risk Principles reflect a flexible approach that complements industry-led initiatives and previous Commission measures to address market disruption risk. The Risk Principles provide further regulatory clarity to market participants while preserving the DCMs' ability to adapt to evolving technology and markets.

B. TAC Meeting

At the Commission's Technology Advisory Committee (''TAC'') meeting on July 16, 2020, the TAC's Subcommittee on Automated and Modern Trading Markets (''Subcommittee'') presented the Subcommittee's position regarding the proposed Risk Principles.[4] The

[1] Electronic Trading Risk Principles, 85 FR 42761 (July 15, 2020). NPRM commenters were as follows: Americans for Financial Reform Education Fund (''AFR''), Better Markets, Inc. (''Better Markets''), CBOE Futures Exchange, LLC (''CFE''), CME Group Inc. (''CME''), Commercial Energy Working Group (''CEWG''), Futures Industry Association and FIA Principal Traders Group (''FIA/FIA PTG''), Institute for Agriculture and Trade Policy (''IATP''), Intercontinental Exchange Inc. (''ICE''), International Swaps and Derivatives Association, Inc. and Securities Industry and Financial Markets Association (''ISDA/SIFMA''), Managed Funds Association (''MFA''), Minneapolis Grain Exchange, Inc. (''MGEX''), and Optiver US LLC (''Optiver''). In addition, the Commission received a thirteenth comment letter from Robert Rutkowski (''Rutkowski'') after the comment period closed.

[2] FIA/FIA PTG NPRM Letter, at 2; *see also* CME NPRM Letter, at 1; ICE NPRM Letter, at 3. *See also* CME Group, Market Regulation Advisory Notice RA2006–5, ''Disruptive Trading Practices'' (effective Aug. 10, 2020), *available at https://www.cmegroup.com/notices/market-regulation/2020/08/CME-Group-RA2006-5.html* (prohibiting any market participant from intentionally or recklessly submitting or causing to be submitted an actionable or non-actionable message(s) that has the potential to disrupt exchange systems).

[3] FIA/FIA PTG NPRM Letter, at 1.

[4] Automated and Modern Trading Markets Subcommittee, ''Discussion of the CFTC's Proposed

Subcommittee stated that it broadly supports the rulemaking.[5] The Subcommittee also indicated support for how the Commission characterized the concepts of ''electronic trading'' and ''market disruption.''[6] However, the Subcommittee described the second part of the definition of ''market disruption''—*i.e.,* disruption of the ability of other market participants to trade on the DCM on which the market participant is trading—as ''amorphous.''[7] The Subcommittee noted that it is difficult to define in advance whether or not a trade halt is disruptive.[8] The Subcommittee stated ''a positive part of the principles-based approach'' is that it allows the Commission and DCMs to define events in accordance with a principle as opposed to a list.[9]

The Subcommittee anticipated that many procedures and rules adopted by DCMs would be similar, but it is nevertheless important to allow for flexibility, given that DCM trading systems have different architectures and features.[10] The Subcommittee concluded that flexibility allows for market resilience and best practices that will improve over time.[11]

C. Existing Part 38 Framework and the Risk Principles Proposal

As discussed in the NPRM, the Risk Principles supplement existing DCM Core Principle 4 regulations in part 38, namely Commission regulations §§ 38.251 and 38.255.[12] Existing Commission regulation § 38.251(c) requires each DCM to demonstrate an effective program for conducting real-time monitoring of market conditions, price movements, and volumes, in order to detect abnormalities and, when necessary, to make a good-faith effort to resolve conditions that are, or threaten to be, disruptive to the market.[13] In addition, existing Commission regulation § 38.255 requires each DCM to establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed by the DCM.[14]

Building on the requirements under existing Commission regulation § 38.251 to conduct real-time monitoring and resolve conditions that are disruptive to the market, the Risk Principles, together with the Acceptable Practices, require DCMs to take reasonable steps to prevent, detect, and mitigate material market disruptions or system anomalies associated with electronic trading. Existing Commission regulations do not fully and explicitly address the risks of market disruptions or system anomalies associated with electronic trading, and the Risk Principles fill those gaps by establishing exchange rule and risk control requirements, as well as notification requirements, explicitly applicable to electronic trading. Additionally, while there may be some overlap between the Risk Principles and existing Commission regulation § 38.255, the Commission believes the Risk Principles are distinguishable from existing Commission regulation § 38.255 because they focus on DCM rules, risk controls, and notification requirements, and are not limited to the application of risk controls as exists in regulation § 38.255. The Commission also submits that the Risk Principles will provide greater certainty to DCMs regarding their obligations to address certain situations associated with electronic trading.

D. Framework of This Final Rulemaking

The proposed rulemaking was subject to a 60-day comment period, which closed on August 24, 2020. As noted above, the Commission received 13 substantive comments and held one *ex parte* meeting.[15] The following section addresses comments that generally apply to all three Risk Principles and Acceptable Practices. Comments that relate to individual Risk Principles and Acceptable Practices will be addressed in Section II.C–E.

1. Principles-Based Approach

In the NPRM, the Commission proposed a principles-based approach. The purpose of this approach was to provide DCMs with the flexibility to impose the most efficient and effective rules and pre-trade risk controls for market participants subject to the DCMs' respective jurisdictions. The Commission believes that a principles-based approach in connection with electronic trading requirements provides DCMs with flexibility to adapt and evolve with changing technologies and markets.[16]

a. Summary of Comments

Most commenters, including CME, CFE, CEWG, FIA/FIA PTG, ICE, ISDA/SIFMA, MFA, and Optiver supported a principles-based approach.[17] In particular, FIA/FIA PTG, ISDA/SIFMA, and MFA noted that such an approach provides flexibility and takes into account future technological advances.[18] Commenters also stated that the principles-based approach is preferable to the prescriptive nature of prior proposals.[19] ICE supported the Commission's view that each DCM should have discretion to identify market disruptions and system anomalies as they relate to the DCM's market and participants' trading activity.[20] ICE stated that what constitutes a market disruption will not only vary from exchange to exchange, but also from market to market. Therefore, tolerance levels and thresholds must be set for each market.[21]

In contrast, AFR, Better Markets, IATP, and Rutkowski disagreed with the Commission's principles-based approach, and asserted that the incentives of DCMs and public regulators are not fully aligned.[22] Better Markets commented that the principles are too imprecise and unenforceable, and lack key definitions.[23] IATP emphasized that principles-based rules

Rule on Electronic Trading Risk Principles,'' (July 16, 2020) (''Subcommittee PowerPoint''), *available at https://www.cftc.gov/About/CFTCCommittees/TechnologyAdvisory/tac_meetings.html.*

[5] *See* July 16, 2020 TAC Meeting Transcript at 54:5.

[6] As discussed in further detail below, the NPRM described ''electronic trading'' as all trading and order messages submitted by electronic means to the DCM's electronic trading platform, including both automated and manual order entry. The NPRM described ''market disruption'' as generally including an event originating with a market participant that significantly disrupts the: (1) Operation of the DCM on which such participant is trading; or (2) ability of other market participants to trade on the DCM on which such participant is trading. *See* NPRM at 42765.

See id. at 54:11–55:14, 56:6–16; Subcommittee PowerPoint at 3.

[7] *See* July 16, 2020 TAC Meeting Transcript at 55:21–56:10.

[8] *See id.* at 58:6–17.

[9] *See id.*

[10] *See id.* at 6; July 16, 2020 TAC Meeting Transcript at 62:13–63:15.

[11] *See id.*

[12] *See* NPRM, *supra* note 1 at 42762.

[13] 17 CFR 38.251(c).

[14] 17 CFR 38.255.

[15] *See supra* note 1.

[16] *See* NPRM at 42762.

[17] CME NPRM Letter, at 1, 12, 16; CFE NPRM Letter, at 1; CEWG NPRM Letter, at 2; FIA/FIA PTG NPRM Letter, at 2–4; ICE NPRM Letter, at 2, 9; ISDA/SIFMA NPRM Letter, at 1–2; MFA NPRM Letter, at 1–2; Optiver NPRM Letter, at 1.

[18] FIA/FIA PTG NPRM Letter, at 2–4; ISDA/SIFMA NPRM Letter, at 1; MFA NPRM Letter, at 1–2.

[19] CME NPRM Letter, at 1, 12; CFE NPRM Letter, at 1; CEWG NPRM Letter, at 2.

[20] ICE NPRM Letter, at 2.

[21] *See id.*

[22] AFR NPRM Letter, at 1–2; Better Markets NPRM Letter, at 2, 6, 9, 10–12; IATP NPRM Letter, at 1, 4, 8; Rutkowski NPRM Letter, at 1.

[23] Better Markets NPRM Letter, at 2, 9.

must be enforceable.[24] IATP also asserted principles-based rules that the Commission cannot effectively supervise and enforce would surrender, not delegate, the Commission's authority, and could legalize trading misconduct due to lack of resources.[25] AFR, Better Markets, and Rutkowski further commented that the proposed regulations provide too much deference to DCMs and that the Commission failed to address conflicts of interest concerns that may impede DCM and self-regulatory organization (''SRO'') independence.[26]

Finally, IATP made several comments addressing the potential for market disruption caused by ''idiosyncratic'' events, and suggested further study on the impact of electronic trading on intraday price volatility.[27]

b. Discussion

The Commission considered the comments and is adopting the principles-based approach to the Risk Principles as discussed in the NPRM. The Commission believes that a principles-based approach provides appropriate flexibility to allow DCMs to adopt and implement effective and efficient measures reasonably designed to achieve the objectives of the Risk Principles. The Commission submits that prescriptive rules may not be sufficiently flexible to enable DCMs to adopt appropriate measures for their particular market, and therefore, would not be as effective in preventing market disruptions or system anomalies.

The principles-based nature of the Risk Principles does not mean they are unenforceable. The Risk Principles will be enforceable regulations that allow the Commission to require all DCMs to implement appropriate, reasonable risk controls and rules to prevent, detect, and mitigate market disruptions. The Commission has brought enforcement actions relating to violations of Core Principles set forth in Commission regulations. Recently, in 2019, the Commission brought an action against Options Clearing Corporation (''OCC''), a derivatives clearing organization (''DCO''), for violations of DCO Core Principles under part 39.[28] In particular, the Commission determined ''OCC failed to fully comply with the specified DCO Core Principles by failing to establish, implement, and enforce certain policies and procedures reasonably designed to (1) consider and produce margin levels commensurate with every potential risk and particular attribute of each relevant product cleared by OCC; (2) effectively measure, monitor and manage its credit exposure and liquidity risk; and (3) protect the security of certain of its information systems.'' [29]

While the final rules do not formally define terms such as ''market disruption'' or ''electronic trading'' in rule text, the Commission provided a general discussion of those terms in the NPRM. The Commission is providing additional clarity concerning relevant terms in this preamble, in order for DCMs and other market participants to have a sufficient understanding of how the Commission will interpret and enforce the Risk Principles.[30] Further, by not defining the terms in a static way, the Commission intends to allow for DCMs' application of the Risk Principles to evolve over time alongside market developments.[31]

The Commission believes that DCMs are incentivized to have risk controls to promote the integrity of their markets, and existing risk controls in place across DCMs indicate that they have implemented such measures. As FIA/FIA PTG pointed out, ''[a]ll market participants have a shared interest in strengthening risk controls. The interconnectedness of the listed derivatives markets means that all market participants are vulnerable when risk controls fail. It is no surprise, then, that the industry has worked diligently to enhance and extend risk controls over the years.'' [32]

The Risk Principles will require all DCMs to implement an appropriate standard for risk controls. DCMs are best positioned to determine what risk controls and rules are appropriate to prevent, detect, and mitigate disruptions on their respective markets. Permitting them to do so is consistent with Congressional intent to serve the public interests of the CEA ''through a system of effective self-regulation of trading facilities . . . under the oversight of the Commission.'' [33] Any conflict of interest concerns, where DCMs might prioritize profitability over reasonable controls, will be addressed through regular Commission oversight of DCMs, including examinations.[34] For example, in an examination, Commission staff may consider whether a DCM is allocating sufficient financial and staff resources to the compliance function, the background and qualifications of the DCM's regulatory oversight committee members and compliance officers, and any role non-compliance personnel might be taking in the DCM's market monitoring and investigations processes.[35]

Regarding IATP's comments, the Commission acknowledges that market risks, like the markets themselves, are always evolving. The principles-based approach provides DCMs with flexibility to address risks to markets as they evolve, including any idiosyncratic events. Prescriptive regulations may

[24] IATP NPRM Letter, at 1.

[25] *See id.* at 8.

[26] AFR NPRM Letter, at 1–2; Better Markets NPRM Letter, at 2, 6, 9, 10–12; Rutkowski NPRM Letter, at 1.

[27] *See supra* note 25 at 2–5, 8.

[28] *See* Order, CFTC Docket No. 19–19, at 3–5 (Sept. 4, 2019), *available at https://www.cftc.gov/media/2396/enfoptionsclearingorder090419/download.*

[29] *Id.* at 2. The order stated the Commission found OCC had failed to comply with Core Principles in Section 5b(c)(2)(B), (D), and (I) of the Commodity Exchange Act (''CEA'' or ''Act''), and Commission regulations §§ 39.11(a) and (c), 39.13(a), (b), (f), and (g)(l) and (2), and 39.18(b)(l) and (e)(l). *See id.* at 3–5. The Commission issued a press release regarding the enforcement action stating: '' 'As this case shows, principles-based regulation does not mean lax oversight,' said CFTC Chairman Heath P. Tarbert. 'While clearing agencies have some discretion in crafting their risk management policies and procedures, those policies and procedures must be reasonable and take into consideration relevant risks.' '' *See* Press Release, ''SEC and CFTC Charge Options Clearing Corp. with Failing to Establish and Maintain Adequate Risk Management Policies'' (Sept. 4, 2019), *available at https://www.cftc.gov/PressRoom/PressReleases/8000-19.*

Additionally, in 2015, the Commission brought an enforcement action against TeraExchange LLC, a provisionally registered swap execution facility (''SEF''), for violations of Core Principles requiring SEFs to enact and enforce rules prohibiting certain types of trade practices, including wash trading and prearranged trading. *See* Press Release, ''CFTC Settles with TeraExchange LLC for Failing to Enforce Prohibitions on Wash Trading and Prearranged Trading in Bitcoin Swap'' (Sept. 24, 2015), *available at https://www.cftc.gov/PressRoom/PressReleases/7240-15.*

[30] *See* Section II.A.

[31] *See* NPRM at 42765.

[32] FIA/FIA PTG NPRM Letter, at 4. *See also* CME NPRM Letter, at 1 (''. . . the integrity and reliability of our markets are cornerstones of our business model—market participants choose to manage their risk on the CME Group Exchanges because we offer fair, efficient, transparent, liquid, and dynamic markets that are conducted and operated in accordance with the highest standards.''; ICE NPRM Letter, at 2 (''DCMs have proactively developed a substantial suite of risk controls, as well as financial, operational and supervisory controls to protect their markets and comply with existing regulations.'').

[33] Section 3(b) of the CEA. 7 U.S.C. 5(b).

[34] The Commission notes that DCMs are already subject to Commission regulation § 38.850 (Core Principle 16, Conflicts of Interest), which requires DCMs to minimize conflicts of interest in the DCM's decision-making process and establish a process for resolving those conflicts of interest. 17 CFR 38.850.

[35] *See* Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles, Core Principle 16 (Subparagraph (b)) (''To comply with this Core Principle, contract markets should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies.'').

lack the flexibility to address such idiosyncratic events, while principles-based regulations would provide DCMs with a framework through which they can change their rules and risk controls to address such unforeseen events. The Commission or industry organizations may conduct studies relevant to electronic trading in the future, and the Commission expects that the results will inform regulatory oversight of DCMs and enforcement of the Risk Principles. The Commission notes that the Division of Market Oversight produced a report in 2019 examining trading functionality across markets and found a consistent increase in the percentage of trading that was identified as ''automated'' relative to ''manual.'' [36] Further, the report also showed no general correlation (and in some instances an inverse correlation) between the increase in automated trading activity in these markets and daily volatility.[37]

2. Issues Related to a DCM-Focused Approach

The Commission proposed the Risk Principles should focus specifically on DCMs.[38] The NPRM stated the Commission will continue to monitor whether Risk Principles of this nature may be appropriate for other markets such as SEFs or foreign boards of trade (''FBOTs'').[39] The Commission also encouraged the National Futures Association to evaluate whether it should provide additional supervisory guidance to its members.[40] As noted in the NPRM, each DCM may have a different risk management program based on its unique business model and market, and this may result in some degree of differences in DCM rules implementing the Risk Principles.[41]

a. Summary of Comments

CEWG, FIA/FIA PTG, and Optiver supported the Risk Principles' focus on DCMs and addressed issues relating to DCM discretion in implementing the Risk Principles.[42] FIA/FIA PTG stated that DCMs are the gatekeeper and overseer of electronic trading platforms and are therefore uniquely positioned to apply pre-trade controls uniformly to all participants and trading in their markets.[43] Optiver similarly noted that each DCM has a unique technology stack on which its platform is built and must be afforded latitude to develop rules and risk controls.[44] In contrast, AFR, Better Markets, IATP, and Rutkowski commented that the proposed regulations provide too much deference to DCMs, in allowing them to decide for themselves how to address prevention, detection, and mitigation of undefined market disruptions and system anomalies.[45]

CME stated the Risk Principles should apply to SEFs and FBOTs, in addition to DCMs.[46] CFE stated any Commission assessments of DCM controls should be across all DCMs, and the Commission should not seek to hold all DCMs to what the larger DCMs may have in place.[47] CME commented that each DCM may implement different rules and risk controls without harming market liquidity or integrity.[48] In contrast, Better Markets commented that the Risk Principles ensure a lack of uniformity in DCM policies, procedures, and controls and potentially would punish responsible DCMs.[49] Similarly, IATP asserted competition among DCMs for over-the-counter trading and for trading in new products, such as digital coins, could result in lax risk control design or updating under competitive pressures.[50] IATP asked the Commission to explain why the lack of any uniform standard by which DCMs should develop rules and risk controls presents no risk of regulatory arbitrage or migration of market disruptions from one DCM to another.[51]

While the Risk Principles apply to DCMs, CEWG commented on their potential effect on market participants. In particular, CEWG requested the final rules clarify that market participants without access to source code used to operate trading systems would not be subject to DCM-imposed requirements to implement updates, test or monitor the operation of such software, or DCM-imposed requirements under Risk Principle 3 to implement remediation measures for software.[52]

Finally, IATP commented that the Risk Principles indiscriminately apply to asset classes, financial speculators, and commercial hedgers.[53] IATP further stated that the Commission should issue a term sheet for a study to investigate the feasibility of revising the demutualization rule to create tiers of DCMs with respect to physical and financial derivatives contracts, to which a rule on automated trading would apply.[54] IATP also commented that the Commission should distinguish what additional pre-trade and post-trade risk controls the DCMs must maintain from what is required of futures commission merchants (''FCMs'') prescriptively.[55]

b. Discussion

The Commission believes that a regulatory approach focusing on Risk Principles applicable only to DCMs is the correct approach. All participants and intermediaries have a responsibility to address the risks of electronic trading. However, trading occurs on DCM platforms and DCM-implemented rules and risk controls will be most effective in preventing, detecting, and mitigating system anomalies and market disruptions. As noted above, conflict of interest concerns will be addressed through regular Commission oversight. DCMs are subject to Commission regulation § 38.850 (Core Principle 16, Conflicts of Interest), which requires DCMs to minimize conflicts of interest in the DCM's decision-making process and establish a process for resolving those conflicts of interest.[56] The Commission believes that DCMs, and other market participants, do have an interest in maintaining market integrity, and this is evidenced through existing measures. In its comment, FIA/FIA PTG addressed DCM tools and procedures adopted to address electronic trading risk, including basic ''fat finger'' controls, dynamic price collars, kill switches, cancel-on-disconnect, drop copy feeds, and self-match prevention, as well as granular pre-trade controls to manage limits within a product group.[57] FIA/FIA PTG noted that development of

[36] Staff of the Market Intelligence Branch, ''Impact of Automated Orders in Futures Markets'' (Mar. 2019) at 4, 7, 13, *available at https://www.cftc.gov/MarketReports/StaffReports/index.htm.*

[37] *See id.*

[38] *See* NPRM at 42763.

[39] *See id.* at 42763 n.6.

[40] *See id.* at 42764.

[41] *See id.* at 42765.

[42] CEWG NPRM Letter, at 3–4; FIA/FIA PTG NPRM Letter, at 3; Optiver NPRM Letter, at 1.

[43] FIA/FIA PTG NPRM Letter, at 3.

[44] Optiver NPRM Letter, at 1.

[45] AFR NPRM Letter, at 1–2; Better Markets NPRM Letter, at 2, 6, 9, 10–12; IATP NPRM Letter, at 6–11; Rutkowski NPRM Letter, at 1.

[46] CME NPRM Letter, at 2, 13.

[47] CFE NPRM Letter, at 4.

[48] CME NPRM Letter, at 13.

[49] Better Markets NPRM Letter, at 9.

[50] IATP NPRM Letter, at 9.

[51] IATP NPRM Letter, at 11.

[52] CEWG NPRM Letter, at 7.

[53] IATP NPRM Letter, at 4–5.

[54] *See id.*

[55] IATP NPRM Letter, at 13.

[56] 17 CFR 38.850. *See also* David Reiffen and Michel A. Robe, Demutualization and Customer Protection at Self-Regulatory Financial Exchanges, Journal of Futures Markets, Vol. 31, 126–164, Feb. 2011 (in many circumstances, an exchange that maximizes shareholder (rather than member) income has a greater incentive to enforce aggressively regulations that protect participants from dishonest agents); and Kobana Abukari and Isaac Otchere, Has Stock Exchange Demutualization Improved Market Quality? International Evidence, Review of Quantitative Finance and Accounting, Dec 09, 2019, *https://doi.org/10.1007/s11156-019-00863-y* (demutualized exchanges have realized significant reductions in transaction costs in the post-demutualization period).

[57] FIA/FIA PTG NPRM Letter, at 2.

risk control measures ''has been an evolving, iterative process, with market participants, FCMs, technology vendors and DCMs working together to build the safeguards needed to protect our markets. After all, it is in everyone's interest to have efficient, reliable markets.'' [58]

The Commission acknowledges IATP's points concerning the possibility of creating different tiers of DCMs, and distinguishing controls required of DCMs from those required of FCMs. However, the Commission believes it is preferable to have the same regulations apply to all DCMs, and, in the enforcement of such regulations, recognize that each DCM has a unique market, technological infrastructure, and market participants. In addition, DCMs may require different controls from FCMs and the Commission will not specify particular required controls. This will serve the goal of ensuring that all DCMs, whatever their size or products, are subject to the same Commission regulations while allowing sufficient flexibility for each DCM to adopt risk controls and rules that are reasonably appropriate for its market.

As noted in the NPRM, the Commission will continue to monitor whether Risk Principles of this nature may be appropriate for other markets such as SEFs or FBOTs.[59] The Commission initially proposed the Risk Principles with a focus on DCMs due to their prominent nature in the futures market. Application of the Risk Principles to SEFs and FBOTs requires further study and consideration regarding the risks and unique attributes of those other markets, and the Commission expects to do so in the future to determine whether SEFs and/or FBOTs should be subject to the Risk Principles or similar regulations.

The Commission acknowledges that DCMs might implement different rules and risk controls given differences in their respective markets. Ongoing Commission oversight is expected to identify differences in DCM policies, procedures, and controls. Differences between and among DCMs would be acceptable under the Risk Principles so long as their policies, procedures, and controls are objectively reasonable. The Risk Principles will require DCMs to establish rules and risk controls reasonably designed to prevent, detect, and mitigate market disruptions, and this should, in turn, help prevent the migration of market disruptions from one DCM to another.

[58] *See id.*

[59] *See* NPRM at 42763 n.6.

The Commission acknowledges CEWG's request that the final rules clarify that market participants without access to source code used to operate trading systems would not be subject to any DCM rules to implement updates, test or monitor the operation of such software, or DCM rules under Risk Principle 3 to implement remediation measures for software.[60] While these points are reasonable, the Commission believes the extent to which market participants would be expected to implement software updates, tests, operation monitoring, or remediation measures should be left to individual DCM reasonable discretion. The Commission can envision unique arrangements involving market participant use of third-party software and therefore believes DCMs are the appropriate entity to adopt reasonable rules to govern those arrangements. The Commission notes that under existing Commission regulation § 38.151, DCMs must provide their members, persons with trading privileges, and independent software vendors with impartial access to their markets and services, including access criteria that are impartial, transparent, and applied in a non-discriminatory manner.[61]

3. Issues Related to Codification in Core Principle 4 and Overlap With Existing Commission Regulations

The NPRM noted several areas where the Risk Principles may overlap with existing Commission regulations, including regulations related to the prevention of market disruptions and financial risk controls.[62] The Commission explained that because DCMs have developed robust and effective processes for identifying and managing risks, both because of their incentives to maintain markets with integrity, as well as for purposes of compliance with existing Commission regulations, the Risk Principles may not necessitate the adoption of additional measures by DCMs.[63] The Commission further stated that the proposed Risk Principles will result in DCMs continuing to monitor risks as they evolve along with the markets and make reasonable modifications as appropriate.[64] Finally, the Commission proposed codifying the Risk Principles as part of Core Principle 4.[65]

[60] CEWG NPRM Letter, at 7.

[61] 17 CFR 38.151.

[62] *See* NPRM 42762, 42764.

[63] *See* NPRM 42762.

[64] *See id.*

[65] *See id.*

a. Summary of Comments

CME, ICE, and Better Markets asserted that the Risk Principles are redundant of existing regulations.[66] In particular, CME commented that the Risk Principles overlap with existing regulations that require DCMs to have controls, tools, and rule sets to prevent and mitigate market and system disruptions.[67] CME stated that its messaging controls, for example, are already arguably subject to Commission oversight pursuant to certain existing regulations under Core Principles 2 and 4.[68] CME suggested the Commission take an alternative approach of simply relying on existing regulations rather than adopting new ones.[69] CME also addressed where in the part 38 regulations the Risk Principles should be codified if adopted. CME suggested the Risk Principles be codified as part of Core Principle 2, particularly Risk Principle 1, because that Core Principle requires a DCM to adopt and implement rules.[70] CME also pointed out that Core Principle 4 addresses manipulation, price distortion, and disruptions of the delivery or cash-settlement process and that a ''market disruption'' or ''system anomaly'' does not fit within those elements.[71]

ICE commented that the proposed risk principles largely duplicate existing Core Principle 4 guidance and acceptable practices.[72] ICE suggested amending existing regulations, such as Commission regulation § 38.255, to refer to electronic trading, rather than create a new set of principles that may unintentionally conflict with or create duplicative and overlapping standards.[73] ICE stated this would track the Commission's approach to regulating financial risk controls in existing Commission regulation § 38.607, which it believes has proven effective.[74]

Better Markets similarly commented that the proposed regulations are redundant of existing Commission regulations. Specifically, Better Markets pointed to Commission regulations §§ 38.157, 38.251(a), 38.255, 38.607, 38.1050, and 38.1051, as well as Core Principle 4 guidance and acceptable practices.[75] Better Markets stated the Risk Principles give the public the false

[66] CME NPRM Letter, at 12–13; ICE NPRM Letter, at 3; Better Markets NPRM Letter, at 4–9.

[67] CME NPRM Letter, at 12–13.

[68] *See id.* at 7.

[69] *See id.* at 12.

[70] *See id.* at 12–13.

[71] *See id.*

[72] ICE NPRM Letter, at 3.

[73] *See id.*

[74] *See id.*

[75] Better Markets NPRM Letter, at 4–9.

impression that the CFTC is taking meaningful regulatory action.[76] Better Markets also considered the Commission's distinction that the new principles are ''anticipatory'' to be unclear and possibly inaccurate.[77] Better Markets further commented that existing Commission regulation § 38.255 squarely focuses on risk controls for the prevention and mitigation of market disruptions.[78] Better Markets stated that existing Commission regulation § 38.255 and the proposed Risk Principles are so similar that it is unreasonable, if not deceptive, to finalize them under the pretext that the Commission is setting forth a new and improved electronic trading framework.[79]

CME, CEWG, FIA/FIA PTG, ICE, and MFA commented that DCMs already implement controls and address risks to their platforms.[80] MFA believes the Risk Principles will help encourage DCMs to continue to monitor risks as they evolve along with the markets, and to make reasonable modifications as appropriate.[81] AFR and Rutkowski disagreed, commenting that the NPRM does not contain any systematic analysis demonstrating that current DCM practices are effective in controlling the risks of market disruptions due to electronic trading.[82]

b. Discussion

As noted in the NPRM, the Risk Principles supplement existing Commission regulations governing DCMs by directly addressing certain risks associated with electronic trading in Core Principle 4 and its implementing regulations, namely Commission regulations §§ 38.251 and 38.255.[83] Commission regulation § 38.251(c) requires DCMs to conduct real-time monitoring and resolve conditions that are disruptive to the market. The Risk Principles supplement this regulation by specifically requiring actions by DCMs to prevent, detect, and mitigate market disruptions and systems anomalies. While the anticipatory nature of the Risk Principles (involving prevention, in addition to detection and mitigation) is not the only justification for these new rules, the Commission believes it is important to clarify that DCMs are obligated to do more than monitor and resolve disruptive conditions, as required by existing Commission regulation § 38.251. In particular, Risk Principle 1 specifically requires the adoption of exchange-based ''rules'' that are reasonably designed to address electronic trading risk to the extent that such rules are not already in place.

The NPRM further acknowledged that the Risk Principles largely overlap with Commission regulation § 38.255, which requires DCMs to ''establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed'' by the DCM.[84] Compared to existing Commission regulation § 38.255, the Risk Principles specifically address material market disruptions and system anomalies associated with electronic trading (*e.g.,* excessive messaging that may materially limit participant access), not only market disruptions involving market halts or price distortions.

The Commission disagrees with comments asserting the Risk Principles would be more appropriately implemented under Core Principle 2 rather than Core Principle 4. Various regulations promulgated under Core Principle 4 already address market disruptions, including Commission regulations §§ 38.251(c) and 38.255. The Commission believes that the Risk Principles, each dealing with market disruptions, should likewise be codified under Core Principle 4.

The Commission believes that it must do more than rely on existing regulations or add the words ''electronic trading'' to existing regulations. For this reason, the Commission notes that the final Risk Principles specifically will apply to electronic trading, thereby requiring adoption of a DCM rule (if not already implemented) and risk control and notification requirements regarding market disruptions, that is expected to ensure the development and implementation of reasonable measures to address the threat of market disruptions caused by electronic trading. The Commission expects that these Risk Principles will enhance the Commission's ability to hold DCMs to a standard of reasonably-designed rules and appropriate risk controls, whether those rules and controls were already in place or are implemented pursuant to the Risk Principles.[85]

The NPRM noted several examples of exchange-based risk controls and several commenters elaborated further on these risk controls.[86] The Commission continues to believe most DCMs already have effective controls in place to address electronic trading market disruptions. These Risk Principles will require DCMs to continue to implement such reasonable controls as markets and risks evolve.

II. The Final Risk Principles

A. Key Terms

The NPRM stated that the Risk Principles focus on market disruptions or system anomalies associated with electronic trading activities.[87] While not defined in the regulation text, the preamble broadly discussed the goals of the Risk Principles through these terms. The NPRM further stated by not defining the terms in a static way, the Commission intends that the application of the Risk Principles by DCMs and the Commission will evolve over time along with market developments.[88] The NPRM stated that a general discussion of those terms in the context of today's electronic markets would provide the public and, in particular, DCMs, guidance for applying the Risk Principles.[89]

1. Electronic Trading

a. Proposal

For purposes of this rulemaking, the Commission described electronic trading as encompassing a wide scope of trading activities, including all trading and order messages submitted by electronic means to a DCM's electronic trading platform.[90] This includes both automated and manual order entry.[91]

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.*

[80] CME NPRM Letter, at 4–7; CEWG NPRM Letter, at 4; FIA/FIA PTG NPRM Letter, at 3; ICE NPRM Letter, at 1; MFA NPRM Letter, at 2.

[81] MFA NPRM Letter, at 2.

[82] AFR NPRM Letter, at 2; Rutkowski NPRM Letter, at 2.

[83] *See* NPRM at 42768.

[84] NPRM at 42768.

[85] The Commission notes that it does not intend or expect larger DCM pre-trade risk controls to be the standard for all DCMs, although there may be risk controls that are common to all DCMs.

[86] NPRM at 42768. CME commented it has a vested interest in preserving the integrity of its markets, and has done so through market integrity controls such as order messaging throttles, price limits, automated port closures, kill switches, velocity logic controls and dynamic circuit breakers, as well as trade practice, disciplinary and administrative rules. CME NPRM Letter, at 4. ICE pointed out that prior to giving a participant access to its trading platform, ICE requires the participant to undergo conformance testing, which is designed to and has been successful in detecting system anomalies. ICE NPRM Letter, at 2. ICE additionally stated it has developed pre-trade risk controls, such as messaging throttles, interval price limits (price velocity collars), individual maximum order quantities, and order reasonability limits. *See id.* CFE commented it has extensive rule provisions that provide for risk controls applicable to all orders. CFE NPRM Letter, at 2.

[87] NPRM at 42765.

[88] *See id.*

[89] *See id.*

[90] *See id.*

[91] *See id.*

b. Summary of Comments

CME and ICE addressed whether the Commission should modify its description of the term electronic trading. CME believed that the term was sufficiently clear.[92] In contrast, ICE commented that the term is used in Risk Principles 1 and 2 to ''include all trading and order messages submitted by electronic means to the DCM's electronic trading platform, including both automated and manual order entry.'' [93] ICE stated that the inclusion of ''trading'' messages is unnecessary.[94] Because participants only submit ''order'' messages to the central limit order book and not trades, ICE believes that the term ''electronic trading'' captures off-facility transactions, such as exchange for related positions (''EFRPs'') and block transactions.[95] ICE stated off-facility transactions are privately negotiated and have a low likelihood of disrupting the central limit order book.[96]

c. Discussion

The Commission clarifies that the term ''electronic trading'' includes block and EFRP transactions, if such transactions are submitted electronically to the DCM's trading platform. The Commission believes that DCMs should have reasonable discretion to decide what rules and controls—if any—should be applied to off-exchange transactions such as block trades and EFRPs under Risk Principles 1 and 2. The Commission expects DCMs to make such a determination based on: (a) The risk such off-exchange transactions will disrupt DCM platforms or markets; and (b) the rules and controls that would be most effective to address that risk. The Commission acknowledges that such trades are privately negotiated and currently may carry little risk of market disruption. However, it is unknown how much risk off-exchange trading will pose as markets evolve over time. In particular, off-exchange transactions could become increasingly electronic or automated, impact price formation and, consequently, pose greater risk to DCM markets. The Risk Principles allow DCM discretion in assessing this risk and how best to address it.

2. Market Disruption and System Anomaly

a. Proposal

In the NPRM, the Commission stated it considers the term ''market disruption,'' for purposes of the Risk Principles, to generally mean an event originating with a market participant that significantly disrupts the: (1) Operation of the DCM on which such participant is trading; or (2) the ability of other market participants to trade on the DCM on which such participant is trading.[97] For the purposes of the Risk Principles, ''system anomalies'' are unexpected conditions that occur in a market participant's functional system that cause a similar disruption to the operation of the DCM or the ability of market participants to trade on the DCM.[98]

b. Summary of Comments

ICE, CME, CEWG, MFA, IATP, Better Markets, and MGEX addressed whether the Commission should modify its description of the terms market disruption and system anomaly.[99]

ICE requested clarification on whether the term ''significant'' qualifies ''market disruption.'' [100] ICE also commented that the description of ''market disruption'' is overly broad, noting that the Commission uses the term to refer to an incident that disrupts the ability of other market participants to trade on the DCM.[101] ICE asserted this could include a range of subjective interpretations and possibilities, including a disruption resulting in prices not reflective of market fundamentals.[102] ICE commented that the term could also be interpreted to include entering orders in a disorderly manner, quote stuffing, causing illiquid markets where one would not occur otherwise, or causing the artificial widening of markets.[103] ICE stated these scenarios could result from volatility but not a market disruption, and, because of the ambiguities in the Risk Principles, market participants may be reluctant to trade if pricing appears aberrant or erroneous.[104] CEWG commented that the Commission should provide further high-level guidance with respect to events constituting ''market disruptions'' or ''system anomalies'' to minimize the potential for regulatory uncertainty.[105]

CME commented that the term ''market disruption'' is sufficiently clear.[106] Similarly, MFA agreed with the Commission's approach to defining ''market disruption,'' which MFA believes focuses correctly on events impacting the operations of the DCM and/or the ability of other market participants to trade on the DCM, rather than the impact on trading of a single firm whose electronic trading was the source of the disruption.[107] MFA also commented it supports that the Risk Principles allow a DCM to exercise discretion in identifying market disruptions and system anomalies as they relate to the DCM's particular market and the trading activities of participants in that market.[108]

CME cautioned that no specific type of market halt should be considered a *per se* ''market disruption'' because some halts prevent and mitigate market disruptions.[109] Similarly, ICE commented that an unscheduled trading halt caused by a market participant, which could not readily be attributed to market volatility or fundamental conditions in underlying or related markets, could constitute a market disruption.[110] CME stated that the Commission should not characterize any specific period of latency as *per se* disruptive, because latency can occur due to bona fide market activity, or be based on a participant's own system.[111] CME stated that a fact-specific inquiry is necessary to determine if there has been a market disruption.[112] Similarly, ICE stated that latency incorporates many factors outside a DCM's processing of order messages.[113] As such, the Commission should be cautious when interpreting latency as an indication of a market disruption.[114] ICE stated it is more meaningful to quantify the impact on the market rather than to calculate a subjective impact to latency.[115] CEWG commented that a disruptive event could have a significant impact on the market in one context, but not in another.[116] For example, a one or two second delay in processing and execution may constitute a market disruption to automated trading firms but not to manual traders.[117]

CME commented regarding the preamble's assertion that ''system anomalies'' are unexpected conditions

[92] CME NPRM Letter, at 10.
[93] ICE NPRM Letter, at 2, 3–4, 5.
[94] *See id.*
[95] *See id.*
[96] *See id.*
[97] NPRM at 42765.
[98] *See id.*
[99] ICE NPRM Letter, at 5–6; CME NPRM Letter, at 3–4, 10–11; CEWG NPRM Letter, at 4, 5; MFA NPRM Letter, at 3; IATP NPRM Letter, at 6; Better Markets NPRM Letter, at 9, 10; MGEX NPRM Letter, at 1–2, 3.
[100] ICE NPRM Letter, at 5.
[101] *See id.*
[102] *See id.*
[103] *See id.*
[104] *See id.*
[105] CEWG NPRM Letter, at 4.
[106] CME NPRM Letter, at 10–11.
[107] MFA NPRM Letter, at 3.
[108] *See id.*
[109] CME NPRM Letter, at 10–11.
[110] ICE NPRM Letter, at 5–6.
[111] CME NPRM Letter, at 10–11.
[112] *See id.*
[113] ICE NPRM Letter, at 6.
[114] *See id.*
[115] *See id.*
[116] CEWG NPRM Letter, at 5.
[117] *See id.*

that occur in a participant's functional system ''which cause a similar disruption to the operation of the DCM or the ability of market participants to trade on the DCM.'' [118] CME stated one could interpret the preamble language to mean the disruptions to the DCM must be similar to the disruptions to the originating participant.[119] CME suggested if the phrase ''which cause a similar disruption'' is actually referring to the Commission's definition of ''market disruption'' described earlier in the NPRM preamble, then the Commission should clarify accordingly.[120]

CME further commented that both definitions relate to the ability of other participants ''to trade.'' [121] CME stated that sections of the preamble reference participants' inability to trade, engage in price discovery, or manage risk.[122] CME asked the Commission to clarify whether it always means all three situations, or any of those situations.[123] CME further commented that the Commission reconsider using the word ''ability.'' [124] CME pointed out that not all the examples of market disruptions cited in the NPRM involved a disruption to the operation of the DCM and a participant being unable to trade, engage in price discovery, or manage risk.[125] CME suggested that a clearer and more objective standard would be that the event ''must significantly disrupt other participants' *access* to the DCM.'' [126] CME believes this standard captures the risks identified in the rulemaking and is something DCMs can typically identify on their own.[127]

IATP commented that the Commission grants too much discretion to DCMs to interpret the terms of the NPRM and to determine what is or is not a ''market disruption'' or ''system anomaly'' and whether to mitigate it.[128] Better Markets commented that terms such as ''significant'' and ''disruption'' are ambiguous and will lead to divergent practices.[129] Better Markets also commented that the Risk Principles provide essentially unfettered discretion to each DCM in terms of how to define market disruptions and system anomalies as they relate to their particular markets, and permitting differing definitions will undermine comparative analyses of market disruptions across exchanges.[130]

MGEX commented that the Commission should continue with its principles-based approach to broadly define ''market disruption'' and ''system anomalies'' associated with electronic trading and ensure the reasonableness standard is approached with ample discretion.[131] MGEX considered the general definitions of ''market disruption'' and ''system anomalies'' stated in the NPRM to be acceptable, with the caveat that each DCM operates differently, and the Commission should recognize this during its rule enforcement reviews.[132]

c. Discussion

The NPRM described a market disruption as an event originating with a market participant that significantly disrupts the operation of the DCM on which such participant is trading. The proposed regulation text for Risk Principle 3 expressly included the term ''significant,'' while the regulation text for Risk Principles 1 and 2 did not. The Commission clarifies that the term ''market disruption,'' for DCMs' definitional and rule implementation purposes to satisfy Risk Principles 1 and 2, refers specifically to disruptions that *materially* impact the proper functioning of a DCM's trading platform. The term ''market disruption'' does not encompass disruptions that have only a *de minimis* effect on a DCM's trading platforms or the ability of other market participants to trade, engage in price discovery, or manage risk. For example, a technical malfunction at a market participant might cause excessive messaging in a product before a DCM's risk controls limit trading in that product. If the trading halt has a material impact on other market participants' ability to trade in that product, then that would constitute a market disruption. However, if trading is only halted for a *de minimis* amount of time, and market participants can quickly resume trading in that product, that may not rise to the level of a material ''market disruption'' of the DCM's trading platform for purposes of the Risk Principles.

CME indicated that a specific disruption cited in the NPRM (namely a malfunction that prompted the selling of e-mini Nasdaq 100 Index futures on the Chicago Mercantile Exchange, and another malfunction that caused a rapid buying of oil futures on NYMEX) was not necessarily a ''market disruption,'' because the event did not disrupt the operation of the DCM or limit market participants' ability to trade.[133] The Commission acknowledges that DCMs will have some discretion to determine whether an event constitutes a market disruption for purposes of the Risk Principles. However, if the malfunctions described in the 2011 CME disciplinary actions were to cause a material change in price that deviated from prevailing market prices, and the DCMs were required to cancel numerous trades, the Commission would likely view such a scenario as a material market disruption that DCMs should have reasonable rules and risk controls in place to prevent, detect, and mitigate. The materiality of a market disruption would depend on, for example, in the context of trade errors, how quickly the DCM can correct erroneous prices, and how many contracts are affected. In the event of a market disruption involving a trading halt, materiality generally would depend on how quickly trading is able to resume.

Under Risk Principle 3, DCMs only have to report market disruptions under Risk Principles 1 and 2 that are ''significant.'' All significant market disruptions under Risk Principle 3 are also market disruptions under Risk Principles 1 and 2, but the converse is not true: Some market disruptions under Risk Principles 1 and 2 will not be sufficiently significant to trigger the reporting requirement under Risk Principle 3. Thus, the standard for a significant market disruption under Risk Principle 3 is higher than the standard for a market disruption under Risk Principles 1 and 2. The Commission emphasizes that DCMs have reasonable discretion to determine whether a given market disruption had a ''significant'' impact on the trading platform, so as to trigger Risk Principle 3 reporting.[134]

[118] CME NPRM Letter, at 3.

[119] *See id.*

[120] *See id.*

[121] *See id.*

[122] *See id.*

[123] *See id.*

[124] CME NPRM Letter, at 3–4.

[125] *See id.* In particular, CME referenced 2011 disciplinary actions involving the same trading firm, where an automated trading system malfunction prompted selling e-mini Nasdaq 100 Index futures on the Chicago Mercantile Exchange, and another malfunction caused a rapid buying in oil futures on the New York Mercantile Exchange (''NYMEX'').

[126] *See id.* (emphasis added).

[127] *See id.*

[128] IATP NPRM Letter, at 6.

[129] Better Markets NPRM Letter, at 9.

[130] *See id.* at 10. Better Markets cited ''the Flash Crash, recent WTI trading anomalies in the oil markets, and the Knight Capital meltdown'' as examples demonstrating that electronic trading presents ''varied, complex, and potentially extensive risks to market integrity, orderly trading, fair competition, and the price discovery process across the financial markets.'' *See id.* at 3.

[131] MGEX NPRM Letter, at 1–2.

[132] *See id.* at 3.

[133] CME NPRM Letter, at 3.

[134] ''Reasonable discretion'' shall be interpreted in the same manner as it has been used elsewhere in the Commission's regulations. *See, e.g.,* Part 38 Core Principle 1, which provides that unless otherwise determined by the Commission by rule or regulation, a board of trade described in paragraph

Continued

Further, as to each Risk Principle, the Commission clarifies that the terms ''market disruption'' and ''system anomaly'' are intended to capture scenarios where a participant's ability to trade, engage in price discovery, *or* manage risk are materially impacted. All three scenarios do not have to occur for an event to be considered a market disruption or system anomaly. In addition, the Commission clarifies that ''system anomalies'' are unexpected conditions that occur in a market participant's functional system that cause a disruption to the operation of the DCM or the ability of market participants to trade on the DCM, engage in price discovery, or manage risk. The disruption on the DCM need not be similar in nature to the disruption in a participant's system.

The Commission understands that many examples of a market participant's ability to trade on the DCM, engage in price discovery, or manage risk may involve the limitation of participant access to the DCM. However, the Commission declines to limit the definitions of ''market disruption'' or ''system anomaly'' to a limitation of access, as there may be situations where market participants cannot engage in price discovery, regardless of whether they have access to the DCM. For example, a market participant may have access to trade in a particular product, but the product's price has been impacted by inadvertent rapid selling or buying.

The Commission believes the term ''market disruption'' is not overly broad. While one commenter asserted that ''market disruption'' could include various events that involve prices not reflecting market fundamentals, such as entering orders in a disorderly manner, quote stuffing, causing illiquid markets where one would not occur otherwise, or causing the artificial widening of markets, the Commission clarifies that *intentionally or recklessly* disruptive trading behavior is not meant to be within the scope of the Risk Principles.[135] Rather, the focus of the Risk Principles is to address *unintentional* technological malfunctions that disrupt the operation of the DCM or the ability of market participants to trade, engage in price discovery, or manage risk. A situation where prices do not reflect market fundamentals is not sufficient, on its own, to constitute a material market disruption for purposes of the Risk Principles.

The Commission agrees that no specific market halt should be considered a *per se* ''market disruption,'' because certain halts effectively prevent and mitigate market disruptions. Further, the Commission will not characterize any specific period of latency as *per se* disruptive due to the various causes of latency, not all of them relating to market disruptive events. The Commission emphasizes that DCMs have discretion in determining whether a trading halt is disruptive.

In response to comments relating to DCM discretion, the Commission reiterates DCMs are best-positioned to assess the material market disruption and system anomaly risks posed by their markets and market participant activity, and to design appropriate measures to address those risks. However, while DCMs may differ in what they consider to be a ''market disruption'' or ''system anomaly,'' and whether and how to mitigate such an event, this is not unlimited discretion. The Commission will oversee and enforce the Risk Principles in accordance with an objective reasonableness standard. In other words, while a DCM has discretion to determine what rules and risk controls are appropriate, the Commission as part of its oversight responsibility will consider the objective reasonableness of those measures in light of the DCM's products, volume, market participants and other factors, and how similarly positioned DCMs address similar risks.

Due to differences among DCMs, the Commission acknowledges DCMs may have different determinations of what constitutes a ''market disruption'' or ''system anomaly.'' In response to the comment from Better Markets, the Commission does not believe this will hinder any ''comparative'' analysis of market disruptions across exchanges. When assessing material market disruptions, the Commission will consider differences among DCM markets, technology, products, and market participants as part of its oversight.

As to MGEX's comment that each DCM operates differently, the Commission acknowledges that each DCM operates unique markets, with unique market participants, products, and technology. The Commission already takes this into account with respect to its routine oversight, including examinations.

B. The Reasonableness Standard

1. Proposal

The Commission proposed Acceptable Practices to Risk Principles 1 and 2, which provide that a DCM can comply with those principles by adopting rules, and subjecting all electronic orders to exchange-based pre-trade risk controls, that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.[136]

2. Summary of Comments

ICE, MGEX, CME, Better Markets, and IATP commented on the reasonableness standard.[137] ICE supported the Commission's approach to give DCMs reasonable discretion to adopt rules that prevent, detect, and mitigate market disruptions.[138] ICE stated DCMs are best-positioned to adopt the rules, procedures, and system controls that fit their market and technology.[139] ICE further commented that the proposed Acceptable Practice for Commission regulation § 38.251(e) provides DCMs with sufficient discretion to adopt the rules appropriate for their platform.[140] ICE believes the supervisory obligations set out in exchange rules, along with requirements relating to disruptive trading practices, have been effective in preventing market disruptions.[141] Similarly, MGEX commented that the Commission should accept that DCMs may differ in the rules they establish based on the unique and different markets and products, and DCMs must have discretion to ensure that the rules are ''objectively reasonable'' to address a market disruption or system anomaly.[142]

CME commented that the Commission should add ''reasonably designed'' to the regulation text, not just acceptable practices, just as it is in at least 40 other existing Commission regulations.[143] CME believes this is especially important for Risk Principle 2, which requires controls to ''prevent'' system anomalies.[144] CME stated that the word ''prevent'' creates an impossible

(a) of this section shall have *reasonable discretion* in establishing the manner in which the board of trade complies with the core principles described in this subsection. 17 CFR 38.100 (emphasis added).

[135] Intentional or reckless acts of price manipulation, fraud, disruptive trading, wash sales, or pre-arranged trading, among others, are addressed through existing provisions, including, but not limited to, Sections 4b, 4c(a)(2), 4c(a)(5), 4o, and 9 of the CEA and Commission regulations §§ 1.38, 180.1, 180.2, 38.152, and 38.250. *See* 7 U.S.C. 6b, 6c(a)(2), 6c(a)(5), 6o, 9; 17 CFR 1.38, 180.1, 180.2, 38.152, 38.250.

[136] NPRM at 42777.

[137] ICE NPRM Letter, at 2; MGEX NPRM Letter, at 2–3; CME NPRM Letter, at 4–5, 6, 13; Better Markets NPRM Letter, at 8; IATP NPRM Letter, at 9.

[138] ICE NPRM Letter, at 2.

[139] *See id.*

[140] *See id.*

[141] *See id.*

[142] MGEX NPRM Letter, at 2–3.

[143] CME NPRM Letter, at 4–5.

[144] *See id.* at 6.

standard without a condition in the Risk Principle explicitly stating that the controls must be ''reasonably designed.'' [145]

Better Markets commented that the Commission's emphasis on DCM flexibility suggests confusion as to whether reasonableness is an objective or subjective standard.[146] Better Markets believed the preamble to the final rules should state that the Risk Principles may require DCMs to do things differently if their pre-trade risk controls do not objectively satisfy the regulations.[147] Better Markets also commented that the NPRM's preamble set forth a ''near presumption of reasonableness.'' [148] Similarly, IATP commented that the preamble indicates it is unlikely the Commission will take any enforcement action against DCMs.[149] IATP disagreed with the Commission's statement that the Risk Principles will not result in enforcement actions based on strict liability.[150] IATP stated that assuring DCMs that risk control failure will not result in enforcement action would signal to plaintiffs in a market disruption case that they would have to meet a high evidentiary standard.[151]

3. Discussion

The Acceptable Practices will be adopted as proposed with the ''reasonably designed'' standard. As stated in the NPRM, the Acceptable Practices for implementing the Risk Principles provide that DCMs shall have satisfied their requirements under the Risk Principles if they have established and implemented rules and pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.[152] ''Reasonably designed'' means that a DCM's rules and risk controls are objectively reasonable. As noted above, in assessing a DCM's rules and risk controls, the Commission as part of its oversight responsibility will consider the objective reasonableness of those measures in light of the DCM's products, volume, market participants and other factors, and how similarly positioned DCMs address similar risks.

The Acceptable Practices are intended to provide DCMs with reasonable discretion to impose rules and risk controls to prevent, detect, and mitigate market disruption. Transferring the reasonableness standard to the regulation text is not necessary to allow DCM discretion to impose rules and controls appropriate to their own markets.

In addition, the word ''prevent,'' when part of a reasonableness standard applicable through Acceptable Practices, does not create an impossible standard to achieve. Rules and controls implemented by DCMs need to be reasonable, as determined by an objective standard. Risk Principles 1 and 2 do not require DCMs to ''prevent'' market disruptions and system anomalies in all circumstances. A goal of these Risk Principles is to provide DCMs with appropriate flexibility to take reasonably designed measures relevant to individual markets, and improve those measures as markets evolve.

The Commission confirms that the reasonableness standard is an objective one and there is no presumption of reasonableness. While there are differences among DCMs, what one DCM may implement in terms of rules and controls to address material market disruptions may be relevant to assessing another DCM's compliance. For example, if the Commission finds that a particular DCM is an outlier in terms of rules or controls, this may cause the Commission to inquire further whether there are legitimate reasons for the differences.

The Commission confirms that DCMs may need to impose additional rules on their market participants, or implement additional controls, if their rules and controls do not objectively satisfy the Risk Principles. The Risk Principles are principles-based and allow for DCM discretion in compliance, but they are nevertheless enforceable regulations. Market participants should not interpret the Commission's statements in this preamble to articulate any particular evidentiary standard in an enforcement action.

C. Risk Principle 1

1. Proposal

In Risk Principle 1, the Commission proposed that a DCM must adopt and implement ''rules'' governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.[153] The Commission proposed that Risk Principle 1 (and the other Risk Principles) apply to all electronic trading.

2. Rules Versus Controls and Other Procedures

a. Summary of Comments

Several commenters addressed Risk Principle 1's requirement that DCMs implement ''rules.'' CME suggested Risk Principle 1 should focus on rules on participants and their conduct that are enforced through administrative or disciplinary processes; an example is CME Group's Messaging Efficiency Policy.[154] Other examples CME provided include trade practice and disciplinary rules and CME's disruptive trading practices rule (Rule 575), which CME amended in 2020 to provide that it is a violation ''for a participant to intentionally or recklessly engage in activity that has the *potential* to disrupt the systems of the Exchange.'' [155]

Better Markets and MGEX also commented on the term ''rule.'' [156] Better Markets stated the Commission should clarify that ''rules'' include internal policies, procedures, controls, advisories, and trading protocols contemplated in the broad definition in 40.1.[157] MGEX commented that the Commission should ensure ''rules,'' as described in the NPRM, include non-rules such as policies, procedures, protocols, and controls.[158]

CFE stated a DCM should be able to satisfy Risk Principle 1 through implementing internal systems, processes, and procedures, not just rules.[159] For example, CFE commented a DCM may not want to publicly disclose how it monitors particular markets.[160] CFE asserted requiring a DCM to describe in its rules how it monitors for market disruptions and system anomalies is administratively burdensome and may disincentivize a DCM from improving its systems.[161]

CEWG stated DCM rules adopted pursuant to Risk Principles 1 and 2 should be subject to Commission approval under Commission regulation § 40.5 or self-certification under Commission regulation § 40.6.[162] CEWG asserted a transparent regulatory process would ensure that new DCM rules are appropriately tailored.[163]

[145] *See id.* at 6–7.
[146] Better Markets NPRM Letter, at 8.
[147] *See id.*
[148] *See id.*
[149] IATP NPRM Letter, at 9.
[150] *See id.*
[151] *See id.*
[152] *See* NPRM at 42763.
[153] NPRM at 42776.
[154] CME NPRM Letter, at 5.
[155] *Id.* at 5–6 (emphasis in original).
[156] Better Markets NPRM Letter, at 10; MGEX NPRM Letter, at 2, 4.
[157] Better Markets NPRM Letter, at 10.
[158] MGEX NPRM Letter, at 2, 4.
[159] CFE NPRM Letter, at 3.
[160] *Id.*
[161] *Id.*
[162] CEWG NPRM Letter, at 7.
[163] *Id.*

b. Discussion

With respect to the comments addressing the scope of the term ''rule'' in Risk Principle 1, the Commission emphasizes that the term is intended to have the meaning set forth in part 40 of the Commission's regulations. Specifically, the Commission clarifies that for purposes of Risk Principle 1 and the Acceptable Practices, the term ''rule'' has the meaning set forth in existing Commission regulation § 40.1(i), which provides that rule means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.[164] This definition of ''rule'' is broad and can include policies, procedures, protocols, and controls that are not public.[165] DCM policies and other internal procedures addressing market disruption risk could also satisfy Risk Principle 1.

Commission regulation § 40.1(i) would require rules to be approved or self-certified pursuant to part 40 regulations, though DCMs would be entitled to request confidential treatment pursuant to the procedures in Commission regulation § 40.8(c) with respect to such filings.[166] In particular, under Risk Principle 1, a DCM would be required to submit rules to the Commission in accordance with either: (a) Commission regulation § 40.5, which provides procedures for the voluntary submission of rules for Commission review and approval; or (b) Commission regulation § 40.6, which provides procedures for the self-certification of rules with the Commission.[167]

The part 40 rule submission process will ensure that new rules that DCMs implement to address the risk of market disruption—including internal processes—will be subject to appropriate Commission review and oversight. With respect to self-certifications, the Commission stated in the preamble to the part 40 final rules that the explanation and analysis of certified rules or rule amendments should be a clear and informative—but not necessarily lengthy—discussion of the submission, the factors leading to the adoption of the rule or rule amendment, and the expected impact of the rule or rule amendment on the public and market participants.[168]

3. Scope of Electronic Trading Subject to DCM Rules

a. Summary of Comments

Several commenters addressed the scope of orders and trades subject to Risk Principle 1. ICE supported requiring DCMs to subject all electronic orders to exchange-based pre-trade risk controls, because all persons that trade electronically have the potential to disrupt markets.[169] CFE asked the Commission to clarify that under Risk Principle 1, DCMs may have rules governing market participants subject to the DCM's jurisdiction that are applicable to a subset of market participants, as long as those rules apply to all electronic orders submitted to the DCM.[170] IATP supported requiring DCMs to implement separate risk controls for cleared and uncleared trades.[171] IATP asserted uncleared trades pose greater counterparty credit risks, so the Risk Principles should require post-trade risk controls to prevent post-trade contract defaults and other credit events.[172]

b. Discussion

The Commission is adopting Risk Principle 1 as proposed, but clarifies that a DCM may have rules that apply to only a subset of market participants. The Commission understands that DCMs have markets with a broad range of market participants and trading patterns. The Commission believes that DCMs should have reasonable discretion to determine whether risk controls should be different for different types of trading activity. Indeed, it may not be advisable for a DCM to impose the same rules under Risk Principle 1 on all types of market participants and trading activity present on the DCM's platforms. The Commission's principles-based approach to the Risk Principles gives DCMs the flexibility to impose the most efficient and effective rules and pre-trade risk controls for their respective markets. The Commission believes Risk Principle 1 will help ensure DCMs continue to monitor risks as they evolve along with the markets, and make reasonable changes as appropriate to address those evolving risks.[173]

In response to IATP's comment supporting a separate set of risk controls on uncleared trades, the Commission notes that all transactions on or pursuant to the rules of a DCM must be cleared. As a result, any such separate set of risk controls would be on a null set of trades.[174]

D. Risk Principle 2—Risk Controls Listed in Part 38

1. Proposal

Risk Principle 2 requires DCMs to subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

The Commission noted in the NPRM that certain existing provisions in part 38 list appropriate DCM-implemented risk controls.[175] For example, existing Commission regulation § 38.255 mandates exchange-based risk controls to prevent and reduce the potential risk of market disruptions.[176] In addition, existing Core Principle 4's Acceptable Practices[177] list appropriate risk controls, and proposed Risk Principle 2 does not change those Acceptable Practices.

2. Summary of Comments

CME, ICE, and MGEX agree with the Commission that the controls listed in existing acceptable practices are sufficient. CME stated the controls listed in the existing acceptable practices are effective at preventing or mitigating market disruptions, and the Commission should not list any others as part of proposed Commission regulation § 38.251(f).[178] ICE commented there is not one set of risk controls that are most effective in preventing market disruptions.[179] ICE

[164] 17 CFR 40.1(i).

[165] Under part 40, a DCM's filing of rules under Commission regulations §§ 40.5 or 40.6 shall be treated as public information, *unless* accompanied by a request for confidential treatment. *See* 17 CFR 40.8(c).

[166] 17 CFR 40.8(c).

[167] *See* 17 CFR 40.5, 40.6.

[168] Part 40 final rules, 75 FR 44776, 44782–83 (July 27, 2011). The Commission further noted that it requires registered entities to provide a more detailed explanation and analysis of rules voluntarily submitted for Commission approval under the provisions of § 40.5. *Id.* at 44782. *See also* 17 CFR 40.6(a)(7) (setting forth rule submission requirements).

[169] ICE NPRM Letter, at 3.

[170] CFE NPRM Letter, at 1–2.

[171] IATP NPRM Letter, at 10.

[172] *Id.*

[173] NPRM at 42767.

[174] The Commission has explained that all transactions executed on or through a DCM must be cleared through a Commission-registered DCO. *See* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36646 (June 19, 2012).

[175] *See* NPRM at 42767–68.

[176] *See id.* at 42768.

[177] *See* Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles, Core Principle 4 (Subparagraph (b)).

[178] CME NPRM Letter, at 14.

[179] ICE NPRM Letter, at 7.

further asserted the proposed Acceptable Practices for proposed Commission regulation § 38.251(f) and the guidance provided in existing Appendix B(b)(5) provide DCMs sufficient discretion to adopt appropriate risk controls.[180] MGEX stated the controls outlined in existing Acceptable Practices for Core Principle 2 are sufficient.[181]

In contrast, IATP commented that Risk Principle 2 should include post-trade risk controls to help protect market participants against credit events resulting from DCM negligence in the design, implementation and enforcement of its rules and risk controls.[182] IATP stated this would follow the FIA recommendation on post-trade risk controls.[183]

3. Discussion

The Commission is adopting Risk Principle 2 as proposed and is not adding specific controls to the regulation text or Acceptable Practices. As discussed in the NPRM, the purpose of Risk Principle 2 is to require DCMs to consider market participants' trading activities when designing and implementing exchange-based risk controls to address market disruptive events.[184] Risk Principle 2 provides clarity to DCMs that their exchange-based risk controls must address market disruptions caused by electronic trading, including those related to price movements as well as other events that impair market participants' ability to trade.[185]

Consistent with the comments received from CME, ICE, and MGEX, the Commission believes the existing Acceptable Practices set forth in Core Principle 4 list appropriate risk controls. Specifically, the Acceptable Practices in existing Core Principle 4 list risk controls including pre-trade limits on order size, price collars or bands around the current price, message throttles, and daily price limits.[186] The Commission declines to impose additional pre-trade or post-trade risk control requirements on DCMs. The Commission does not consider such requirements to be necessary or consistent with the Commission's principles-based approach to the Risk Principles.

E. Risk Principle 3

1. Proposal

The Commission proposed in Risk Principle 3 that a DCM must promptly notify Commission staff of a ''significant'' disruption to its electronic trading platform(s) and provide timely information on the causes and remediation.

In the NPRM, the Commission stated the required notification under Risk Principle 3 would take a form similar to current Commission regulation § 38.1051(e) notification.[187] Further, the Commission differentiated Risk Principle 3 from existing Commission regulation § 38.1501(e) by noting that, rather than addressing a DCM's internal technological systems, Risk Principle 3 addresses malfunctions of the technological systems of trading firms and other non-DCM market participants that cause disruptions of the DCM's trading platform.

In addition, the Commission asked commenters to describe circumstances in which it would be appropriate for a DCM to notify other DCMs about a significant market disruption on its trading platform(s). The Commission asked whether proposed Risk Principle 3 should include such a requirement.

2. ''Significant'' Standard

a. Summary of Comments

Better Markets, CME, and ICE believed the term ''significant'' in Risk Principle 3 is unclear. Better Markets asserted that expectations regarding timing and substance of reporting ''significant market disruptions'' are imprecise and unenforceable.[188] Better Markets stated DCMs must know what to report, where to report it, when to report it, and under what circumstances reporting is required.[189] Better Markets further stated Risk Principle 3 fails to (i) provide a formal definition of market disruptions, (ii) indicate when disruptions cross the significance threshold, or (iii) identify the level of detail necessary to notify the CFTC sufficiently.[190]

CME stated that while Risk Principle 3 appears to require impact to both the operation of the DCM *and* market participants, Risk Principles 1 and 2 seem to require impact to operation of the DCM *or* market participants.[191] CME also commented that to be subject to the notification requirement, Risk Principle 3 provides a significant disruption must ''materially affect'' the DCM and market participants.[192] CME supported clarifying the distinction between ''significant'' and ''material.''[193]

MFA and MGEX supported the use of the term ''significant'' in Risk Principle 3. MFA believed the definition of ''significant'' establishes a threshold for when notification is required and will promote meaningful reporting and oversight.[194] MFA agreed that an internal disruption in a market participant's own trading system ''should not be considered significant unless it causes a market disruption materially affecting the DCM's trading platform and other market participants.''[195] MGEX believed that ''significant disruption'' provides DCMs with discretion to interpret events in light of the unique nature of markets and products across DCMs and platforms.[196]

b. Discussion

The Commission acknowledges the term ''significant'' could be susceptible to varying degrees of application based on a particular DCM's business model and particular market. However, the Commission believes in practice Risk Principle 3 provides a workable standard for notifications.[197] This has proven to be the case with respect to existing Commission regulation § 38.1051(e), which requires DCMs to notify Commission staff of, among other things, ''significant'' system malfunctions.[198] The Commission notes it originally proposed that DCMs must report to the Commission *all* system malfunctions under Commission regulation § 38.1051(e).[199] In response, CME commented that such a notification requirement would be overly broad.[200] The Commission considered CME's comment and concluded that timely advance notice of *all* planned changes to address system malfunctions is not necessary and is revising the rule to provide that DCMs only need to promptly advise the Commission of all *significant* system

[180] *Id.* at 8.

[181] MGEX NPRM Letter, at 2.

[182] IATP NPRM Letter, at 10.

[183] *Id.*

[184] NPRM at 42767.

[185] *Id.* at 42768.

[186] *See* Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles, Core Principle 4 (Subparagraph (b)).

[187] NPRM at 42769.

[188] Better Markets NPRM Letter, at 2.

[189] *Id.* at 9.

[190] *Id.* at 10.

[191] CME NPRM Letter, at 8.

[192] *Id.*

[193] *Id.*

[194] MFA NPRM Letter, at 3.

[195] *Id.*

[196] *Id.* at 4.

[197] *See* Section II.A.2(c), discussing ''significant'' and ''material.'' In addition, in response to CME's comment, a market disruption for purposes of all three Risk Principles requires impact to operation of the DCM *or* market participants.

[198] *See* 17 CFR 38.1051(e).

[199] *See* Core Principles and Other Requirements for Designated Contract Markets, *supra* note 174, at 36657–58.

[200] *Id.* at 36658.

malfunctions.[201] Thus, similar to the ''significant'' standard under Risk Principle 3, DCMs are already subject to a ''significant'' threshold for notification with respect to system safeguards rules. The Commission does not consider it appropriate or necessary to require DCMs to notify Commission staff of *all* market disruptions pursuant to Risk Principle 3, especially given that such a rule would be more burdensome on DCMs than a mandate that they report only ''significant'' market disruptions to the Commission.

3. Notification Requirement

a. Summary of Comments

CME stated that it is unsure of the practical utility to the Commission of receiving notifications under Risk Principle 3, since the Commission already collects such information through other means.[202] Better Markets asserted the CFTC should require part 40 filings, as opposed to email notifications.[203]

CME asserted the distinction from Commission regulation § 38.1051(e) is clear; an incident could disrupt the trading platform without there having been a system malfunction on the platform.[204] CME gave as an example an incident originating with a participant that causes a match engine to failover to backup.[205] CME further stated both notification provisions could be triggered by an incident arising with a participant that causes both a market disruption and a system malfunction.[206]

CEWG stated Risk Principle 3 appears to apply a *per se* standard for reporting, which leaves market participants open to potential enforcement risk.[207] CEWG asserted the Commission should revise Risk Principle 3 to require notifications only where disruptions result from grossly negligent or reckless conduct with respect to a market participant's obligations to implement and maintain pre-trade risk controls, conduct due diligence or testing, as well as appropriate risk mitigation measures consistent with applicable DCM rules or accepted industry practices related to electronic trading activity.[208]

ICE recommended the Commission define what constitutes a ''significant disruption'' of a DCM trading platform and how it differs from a ''market disruption,'' *e.g.,* whether a transient disruption, which temporarily results in prices not reflecting market fundamentals, would be reportable.[209] ICE supported the Commission incorporating into Risk Principle 3 the requirement that a significant disruption be caused by a ''malfunction of a market participant's trading system.'' [210] ICE asserted the addition of this language would help to differentiate the reporting obligations under Commission regulation § 38.1051(e).[211]

In response to the question in the NPRM asking if Risk Principle 3 should require a DCM to notify other DCMs of a significant market disruption, CME and ICE indicated Risk Principle 3 should not include such a requirement. ICE stated current Appendix B(b)(5) provides guidance on coordinating risk controls for linked or related contracts.[212] ICE asserted in circumstances of a significant market disruption, it would be prudent for such coordination to include notification to impacted markets, at least though a market alert.[213] CME noted there are already real-time data feeds and other public sources that provide information on whether a DCM is experiencing a significant market disruption.[214] CME further noted if this proposal is adopted, all DCMs will be required to report to the Commission, negating the need for notice between DCMs.[215]

b. Discussion

The Commission is finalizing the notification requirement in Risk Principle 3 as proposed, with one clarification. In the NPRM, Risk Principle 3 referred to ''significant disruptions to'' a DCM's platform(s). Consistent with Risk Principles 1 and 2, which use the term ''market disruption,'' the Commission is revising Risk Principle 3 to state a DCM must promptly notify Commission staff of any ''significant *market* disruptions on'' its platform(s). The purpose of this revision is to clarify that the notification requirement in Risk Principle 3 applies to a subset of the market disruptions under Risk Principles 1 and 2, *i.e.,* to those market disruptions that are ''significant.'' Consistent with the comments received, the Commission is not including a requirement that a DCM notify other DCMs in the event of a significant market disruption.[216]

In response to comments questioning the utility of notifications,[217] the Commission reiterates its view that the notification requirement under Risk Principle 3 will assist the Commission's oversight and its ability to monitor and assess market disruptions across all DCMs. The Commission expects notification under Risk Principle 3 to take a similar form to the current notification process for electronic trading halts, cybersecurity incidents, or activation of a DCM's business continuity-disaster recovery plan under Commission regulation § 38.1051(e). Specifically, the Commission would expect such notification to consist of an email containing sufficient information to convey the nature of the market disruption, and if known, its cause, and the remediation.

In response to CEWG's comment, the Commission declines to limit the notification requirement in Risk Principle 3 to instances of ''grossly negligent'' or ''reckless'' conduct. The Commission considers such qualifiers to be overly limiting and unduly burdensome on DCMs that would be required to determine whether conduct constitutes gross negligence or recklessness. In addition, the Commission reiterates that an email notification is the appropriate form of Risk Principle 3 notification. Requiring such notifications to be in the form of part 40 filings would be overly burdensome to exchanges given the Commission's estimate of 0–25 notifications per year. Moreover, in the context of significant market disruptions, prompt email notification is preferable to the inherently slower process of part 40 filings.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities, and to provide a regulatory flexibility analysis with respect to such impact. The regulations adopted in this final rulemaking will affect DCMs. The Commission previously determined that DCMs are not ''small entities'' for purposes of the RFA because DCMs are required to demonstrate compliance with a number of Core Principles, including principles concerning the expenditure of sufficient financial

[201] *Id.* (emphasis added).

[202] CME NPRM Letter, at 16.

[203] Better Markets NPRM Letter, at 10.

[204] CME NPRM Letter, at 14–15.

[205] *Id.*

[206] *Id.* at 15.

[207] CEWG NPRM Letter, at 5.

[208] *Id.* at 6.

[209] ICE NPRM Letter, at 4.

[210] *Id.*

[211] *Id.*

[212] CME NPRM Letter, at 15; ICE NPRM Letter, at 9.

[213] ICE NPRM Letter, at 9.

[214] CME NPRM Letter, at 15.

[215] *Id.*

[216] In response to ICE's comment, see discussion at Section II.A.2(c) addressing ''significant'' and ''material.''

[217] *See* CME NPRM Letter, at 16.

resources to establish and maintain an adequate self-regulatory program.[218] The Commission received no comments on the impact of the rules described in the NPRM on small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulations adopted by this final rulemaking will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any ''collection of information,'' as defined by the PRA.[219] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB''). The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government. The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.

The final rulemaking modifies the following existing collections of information previously approved by OMB and for which the Commission has received control numbers: (i) OMB control number 3038–0052, Core Principles and Other Requirements for DCMs (''OMB Collection 3038–0052'') and OMB control number 3038–0093, Provisions Common to Registered Entities (''OMB Collection 3038–0093''). The Commission does not believe the Risk Principles as adopted impose any other new collections of information that require approval of OMB under the PRA.

The Commission requests that OMB approve and revise OMB control numbers 3038–0052 and 3038–0093 in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

1. OMB Collection 3038–0093—Provisions Common to Registered Entities

Final Commission regulation § 38.251(e) (''Risk Principle 1'') provides that DCMs must adopt and implement rules governing market participants subject to their respective jurisdictions to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. As provided in subparagraph (b)(6) of Appendix B to part 38, such rules must be reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. Any such rules a DCM adopts pursuant to Commission regulation § 38.251(e) must be submitted to the Commission in accordance with part 40 of the Commission's regulations. Specifically, a DCM is required to submit such rules to the Commission in accordance with either: (a) Commission regulation § 40.5, which provides procedures for the voluntary submission of rules for Commission review and approval; or (b) Commission regulation § 40.6, which provides procedures for the self-certification of rules with the Commission. This information collection is required for DCMs as needed, on a case-by-case basis. The Commission acknowledges that various DCM practices in place today may be consistent with Commission regulation § 38.251(e), such as rules requiring market participants to use exchange-provided risk controls that address potential price distortions and related market anomalies. Accordingly, it is possible that some DCMs would not be required to file new or amended rules to satisfy Risk Principle 1.

Commission regulation § 38.251(e) amends OMB Collection 3038–0093 by increasing the existing annual burden by an additional 48 hours[220] for DCMs that would be required to comply with part 40 of the Commission's regulations. As a result, the revised total annual burden under this amended collection would increase by 816 hours.[221] Although the Commission believes that operational and maintenance costs for DCMs in Commission regulation § 38.251(e) will incrementally increase, these costs are expected to be *de minimis.*

The Commission has previously estimated the combined annual burden hours for both Commission regulations §§ 40.5 and 40.6 to be 7,000 hours. Upon implementation of final Commission regulation § 38.251(e), the Commission estimates that 17 exchanges may each make two rule filings under Commission regulations § 40.5 or § 40.6 per year for a total of 34 submissions for all DCMs.[222] The Commission further estimates that the exchanges may employ a combination of in-house and outside legal and compliance personnel to update existing rulebooks and it will take 24 hours to complete and file each rule submission for a total of 48 burden hours for each exchange and 816 burden hours for all exchanges.

OMB Collection 3038–0093 was created to cover the Commission's part 40 regulatory requirements for registered entities (including DCMs, SEFs, DCOs, and swap data repositories) to file new or amended rules and product terms and conditions with the Commission.[223] OMB Control Number 3038–0093 covers all information collections in part 40, including Commission regulation § 40.2 (Listing products by certification), Commission regulation § 40.3 (Voluntary submission of new products for Commission review and approval), Commission regulation § 40.5 (Voluntary submission of rules for Commission review and approval), and Commission regulation § 40.6 (Self-certification of rules). Commission regulation § 38.251(e) adopted in this final rulemaking modifies the existing annual burden in OMB Collection 3038–0093, increasing the annual burden estimates in aggregate below:

Estimated number of respondents: 17.

Estimated frequency/timing of responses: As needed.

Estimated number of annual responses per respondent: 2.

Estimated number of annual responses for all respondents: 34.

Estimated annual burden hours per response: 24.

Estimated total annual burden hours per respondent: 48.

[218] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

[219] 44 U.S.C. 3501 *et seq.*

[220] The Commission estimates that final Commission regulation § 38.251(e) would require potentially 17 DCMs to make 2 filings with the Commission a year requiring approximately 24 hours each to prepare. Accordingly, the total burden hours for each DCM would be approximately 48 hours per year.

[221] The Commission estimates that the total additional aggregate annual burden hours for DCMs under final Commission regulation § 38.251(e) would be 816 hours based on each DCM incurring 48 burden hours (17 × 48 = 816).

[222] The Commission revised the number of potential respondent-DCMs to 17 in order to reflect the number of DCMs currently registered with the Commission.

[223] *See* 17 CFR part 40.

Estimated total annual burden hours for all respondents: 816.

2. OMB Collection 3038–0052—Core Principles and Other Requirements for DCMs

Final Commission regulation § 38.251(g) (''Risk Principle 3'') requires a DCM to promptly notify Commission staff of any significant market disruption on its electronic trading platform(s) and provide timely information on the cause and remediation of such disruption.[224] Risk Principle 3 further requires that such notification contain sufficient information to convey the nature of the disruption, and if known, its causes, and remediation. The Commission recognizes that the specific cause of the market disruption and the attendant remediation may not be known at the time of the disruption and may have to be addressed in a follow-up email or report. This information collection will be required for DCMs as needed, on a case-by-case basis.

The Commission received one comment regarding its PRA burden analysis in the preamble to the NPRM.[225] CME in its comment letter asserted the operation of Risk Principle 3 is unclear, and the Commission's estimate of approximately 50 notifications per year is ''so far from what we would have anticipated being required under this proposal that it merits discussion.'' [226] CME also indicated it questions ''whether the Commission has an interpretation of 'significant disruption' that is not reflected in its proposal'' based on the apparent differences in notification estimates by the Commission and CME.[227]

CME further described that since 2011, ''the CME Group DCMs have brought approximately 59 disciplinary actions for electronic trading activity that may have disrupted markets or other participants.'' [228] However, based on CME's review of those disciplinary actions, the exchange only identified three cases that it believes could be considered to have caused a significant disruption to the operations of the DCM. CME did not in its comments explain how its estimate was determined or what criteria or standard was employed as part of this analysis.

As described above, CME is using the number of actual disciplinary actions brought against market participants for disruptions that could be detrimental to the exchange as a ''proxy'' for the ''substantial disruption'' standard set forth in Risk Principle 3. Without indicating what analysis it may have used or considered, CME asserted that only three disciplinary actions could be considered to have caused a significant disruption to the operations of CME.[229] Although the Commission appreciates CME's comments regarding the potential number of reportable events in connection with final Commission regulation § 38.251(g), the Commission does not believe the number of actual disciplinary cases brought by an exchange is an appropriate proxy for reportable market disruption events.[230] The Commission notes that in many instances, basing the reportable event on whether it is subject to a formal disciplinary action would be under-inclusive. In addition, what is a ''significant'' market disruption on one exchange may differ from another, based on market participant differences, the exchange's respective market structure, and the technology of the underlying exchange marketplace.

The Commission submits that its original estimate of the reportable events under Commission regulation § 38.251(g) may be too high for some exchanges. However, the Commission does not believe an estimate of three reportable events since 2011, based on the number of disciplinary actions in the past, is a reasonable proxy. Therefore, the Commission asserts that a range of reportable events between 0–25 may better reflect the potential number of reportable significant market disruption events for each DCM. The Commission is accordingly revising collection 3038–0052 to reflect the range of potential annual reportable events by each DCM to be between 0 and 25, reflecting the differences in DCM structure and operations and the market participants accessing those DCMs.

In connection with the request for comment in the NPRM regarding whether the proposed information collections are necessary for the proper performance of Commission functions, CME stated it is ''unsure of the practical utility to the Commission of receiving notifications from a DCM pursuant to draft Principle III. From a market oversight perspective, the Commission already (at least with the CME Group DCMs) collects information on these types of events through regular engagement and review of a DCM's compliance with core principles.'' [231] The Commission does not agree with CME's assertion that the notification may serve no practical utility based on the assumption that the Commission collects this type of information from CME through regular engagement and review of CME's compliance with core principles. As described above in Section II.E, the purpose of the notification requirement adopted in Commission regulation § 38.251(g) is for Commission staff to receive prompt notice of a market disruption impacting a DCM's trading platform(s). This notification is intended to assist the Commission in its oversight of the derivatives markets with the ability to monitor and assess market disruptions across DCMs on a near real-time basis. CME's argument that the current ''regular'' engagement and review of CME's compliance with core principles is sufficient for this purpose is not persuasive and would not provide the Commission with sufficient capability to address and monitor significant market disruptions on a near real-time basis.

Additionally, CME further commented on the Commission's request in the NPRM relating to whether there are ways to minimize the burden of the proposed collections of information on DCMs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques. In its comment to this request, CME indicated that it ''currently provides CFTC staff near real-time notifications of velocity logic events. We separately provide the CFTC a daily file containing information related to events that occur on the match engine (*e.g.,* velocity logic events, circuit breakers, etc.). These types of automated reports or notifications are highly efficient and effective means to provide CFTC staff pertinent information.'' [232] Although the Commission finds the daily file that CME voluntarily provides relating to velocity logic events [233] to be helpful in

[224] *See supra* Section II.E. (discussion of the Risk Principle 3).

[225] *See* CME NPRM Letter, at 8.

[226] *See id.*

[227] *See id.*

[228] *See id.* at 9.

[229] The NPRM cited events at CME DCMs, including a disciplinary action from 2011, as examples of DCMs policing electronic trading activities that may be detrimental to the DCM.

[230] The Commission submits that a reportable event does not necessarily mean that a disciplinary case is required, but instead suggests that there has been a problem with the operation of the electronic trading platform that requires additional review and oversight. Accordingly, the notification of a significant market disruption would typically start a specific regulatory oversight process by the Commission—not establish the particular requirements that may or may not merit the bringing of a disciplinary action, as CME suggests.

[231] CME NPRM Letter, at 16.

[232] *Id.*

[233] ''Velocity Logic'' is addressed on CME's website. Generally, it is ''designed to detect market

certain circumstances, the Commission believes that a uniform standard across DCMs relating to ''reportable events'' for significant market disruption events is necessary for its oversight and regulatory responsibilities under the CEA. For this reason, the Commission notes that the notification requirement is a foundational requirement of the current rulemaking that is expected to provide greater transparency and awareness to the Commission regarding market disruptions associated with electronic trading.

The Commission has previously estimated the combined annual burden hours for part 38 to be 7,357.5 hours. Upon implementation of final Commission regulation § 38.251(g), the Commission estimates that OMB Collection 3038–0052 will be revised by increasing the number of annual responses by a range between 0 and 25 notifications to Commission staff per year for a total range of between 0 and 425 [234] notifications for all DCMs. The Commission has also revised the number of potential respondent-DCMs to 17 in order to reflect the number of DCMs currently registered with the Commission. The Commission further estimates that the DCMs may employ a combination of in-house and outside legal and compliance personnel to review and prepare significant market disruption event notifications to Commission staff and it will take approximately 5 burden hours to prepare each notification resulting in a range of burden hours between 0 and 125 [235] for each event notification across DCMs and a total range of between 0 and 2,125 burden hours annually for all notifications to Commission staff required for all DCMs.[236] Although the Commission believes that operational and maintenance costs for DCMs in Commission regulation § 38.251(g) will incrementally increase, these costs are expected to be *de minimis.*

OMB Collection 3038–0052 was created to cover regulatory requirements for DCMs under part 38 of the Commission's regulations.[237] OMB Control Number 3038–0052 covers all information collections in part 38, including Subpart A (General Provisions), Subparts B through X (the DCM core principles), as well as the related appendices thereto, including Appendix A (Form DCM), Appendix B (Guidance on, and Acceptable Practices in, Compliance with Core Principles), and Appendix C (Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation). Commission regulation § 38.251(g) adopted in this final rulemaking modifies the existing annual burden in OMB Collection 3038–0052 for complying with certain requirements in Subpart E (Prevention of Market Disruption) of part 38, as estimated in aggregate below:

Estimated number of respondents: 17.

Estimated frequency/timing of responses: As needed.

Estimated number of annual responses per respondent: 0–25.

Estimated number of annual responses for all respondents: 0–425.

Estimated annual burden hours per response: 5.

Estimated total annual burden hours per respondent: 0–125.

Estimated total annual burden hours for all respondents: 0–2,125.

Estimated aggregate annual recordkeeping burden hours: 0–850.[238]

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[239] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

The baseline for the consideration of costs and benefits in this final rulemaking is the monitoring and mitigation capabilities of DCMs, as governed by rules in current part 38 of the CFTC's regulations. Under these rules, DCMs are required to conduct real-time monitoring of all trading activity on their electronic trading platforms and identify disorderly trading activity and any market or system anomalies.[240]

The Commission recognizes that the final electronic trading risk principles rules may impose additional costs on DCMs and market participants. The Commission has endeavored to assess the expected costs and benefits of the final rulemaking in quantitative terms, including PRA-related costs, where possible. In situations where the Commission received quantitative data related to the cost-benefit estimates proposed in the NPRM, the Commission included them in the cost-benefit considerations of this final rulemaking. The Commission also acknowledges and took into consideration qualitative comments with regard to the cost-benefit estimates in the NPRM. When the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the final rules in qualitative terms.

a. Summary of the Rule

As discussed in more detail in the preamble above, after considering various comments submitted by the commenters, the Commission decided

movement of a predefined number of ticks either up or down within a predefined time.'' Velocity Logic introduces a momentary suspension in matching by transitioning the futures instrument(s) and related options into the Pre-Open or Reserved/Pause State. *See* CME Velocity logic, *available at https://www.cmegroup.com/confluence/display/EPICSANDBOX/Velocity+Logic.*

[234] Based on the annual aggregate range of potential notifications under final Commission regulation § 38.251(g) from 0 to 425 for all DCMs, the Commission estimates that the average annual aggregate notifications for all DCMs is 212.50 with the annual average number of notifications per DCM to be 13.28.

[235] The Commission estimates that final Commission regulation § 38.251(g) would require potentially each DCM to make between 0 and 25 reports with the Commission a year requiring approximately 5 hours each to prepare. Accordingly, the total burden hour range for each DCM would be between approximately 0 and 125 hours per year ($0 \times 5 = 0$ and $25 \times 5 = 125$).

[236] The Commission estimates that the total aggregate annual burden hours for DCMs under final Commission regulation § 38.251(g) would be a range between 0 and 2,125 hours based on each DCM incurring between 0 hours ($0 \times 17 = 0$ burden hours) and 2,125 hours ($125 \times 17 = 2{,}125$ burden hours). Based on these estimates, the Commission has determined the annual average aggregate burden hours for all DCMs to be 1,062.50 burden hours and the annual average burden hour for each DCM to be 66.406 burden hours.

[237] *See* 17 CFR part 38.

[238] The Commission estimates that additional total aggregate annual recordkeeping burden hours for DCMs under Commission regulations §§ 38.950 and 38.951 as a result of the final regulations under this rulemaking would be between 0 and 850 hours based on each DCM incurring between 0 and 50 burden hours ($17 \times 0 = 0$ and $17 \times 50 = 850$). These estimates are based on the range of notifications expected to be between 0–25 per DCM annually. The Commission estimates that each DCM would require 2 burden hours in connection with its recordkeeping obligations under Commission regulations §§ 38.950 and 38.951. Based on these estimates, the Commission also calculates the annual average aggregate recordkeeping burden hours for all DCMs to be 400 burden hours and the annual average recordkeeping burden hour for each DCM to be 25 burden hours.

[239] 7 U.S.C. 19(a).

[240] *See* existing Commission regulations §§ 38.250, 38.251, 38.255 and Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles, Core Principle 4 (Subparagraph (b)).

on a principles-based approach and to give discretion to each DCM in terms of how to define precisely market disruptions and system anomalies as they relate to their particular markets. As a result, each DCM will have the flexibility to tailor the implementation of the rules to best prevent, detect, and mitigate market disruptions or system anomalies in their respective markets. This flexibility should mitigate the cost and burden associated with DCMs' implementation of the Risk Principles. Therefore, the Commission adopts the following specific Risk Principles and associated Acceptable Practices applicable to DCM electronic trading as proposed.[241]

i. Commission Regulation § 38.251(e)—Risk Principle 1

Commission regulation § 38.251(e)—Risk Principle 1—provides that a DCM must adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

ii. Commission Regulation § 38.251(f)—Risk Principle 2

Commission regulation § 38.251(f)—Risk Principle 2—provides that a DCM must subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

iii. Commission Regulation § 38.251(g)—Risk Principle 3

Commission regulation § 38.251(g)—Risk Principle 3—provides that a DCM must promptly notify Commission staff of a significant market disruption on its electronic trading platform(s) and provide timely information on the causes and remediation.

iv. Acceptable Practices for Commission Regulations §§ 38.251(e) and (f)

The Acceptable Practices provide that, to comply with Commission regulation § 38.251(e), a DCM must adopt and implement rules that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. To comply with Commission regulation § 38.251(f), the Acceptable Practices provide that the DCM must subject all electronic orders to exchange-based pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies.

2. Costs

a. Costs of Adjustments to Existing Practices

i. Summary of Comments

A number of commenters commented on the existing practices of DCMs. CME, ICE, and Better Markets asserted that the Risk Principles are redundant of existing regulations.[242] In particular, CME commented that the Risk Principles overlap with existing Commission regulations, specifically regulations promulgated under Core Principles 2 and 4.[243] CME and ICE suggested relying on or amending existing regulations, specifically Commission regulation § 38.255.[244] ICE stated that this would track the Commission's approach to regulating financial risk controls in Commission regulation § 38.607, which has proven effective.[245] ICE also stated that the DCMs could face confusion and potential costs while determining an appropriate notification standard and updating existing regulations could help with these costs.[246]

CME, CEWG, FIA/FIA PTG, ICE, and MFA commented that DCMs already implement controls and address risks to their platforms.[247] MFA believes the Risk Principles will help encourage DCMs to continue to monitor risks as they evolve along with the markets, and to make reasonable modifications as appropriate.[248]

AFR and Rutkowski disagreed with the assertion that current DCM practices are effective in achieving what the Risk Principles aim to achieve.[249]

CME had two direct comments regarding the cost estimates presented in the NPRM. First, CME commented that the Commission should identify the specific types of software enhancements and additional data fields associated with the 2,520 staff hours included in the proposed rulemaking.[250] Second, CME commented that the Commission's estimate of 50 significant market disruptions described in the PRA section of the NPRM is too high, and added that CME determined it had only three significant market disruptions in the last decade across four DCMs based on the number of formal disciplinary cases brought by the DCM for electronic trading activity that may have disrupted markets or other participants.[251]

The Commission did not receive comments on other costs associated with adjusting existing practices, such as costs associated with recordkeeping or with the need for an additional compliance officer.

ii. Discussion

The Commission acknowledges the Risk Principles supplement existing regulations, namely Commission regulations §§ 38.251 and 38.255, with some potential overlap. The Commission believes the intended goals of the Risk Principles cannot be solely achieved by adding the words ''electronic trading'' to existing regulations. To the extent that the Risk Principles are already covered by existing regulations as many commenters suggested, then the Commission does not expect much, if any, additional costs to be associated with the Risk Principles. While the Commission acknowledges that DCMs could face potential costs while determining an appropriate notification standard, the Commission expects DCMs to be already collecting most, if not all, required information to make such a determination. As a result, the Commission expects such costs to be minimal. Some commenters also disagreed with the assumption that existing DCM practices are effective in achieving what the Risk Principles aim to achieve. To the extent this might be the case, the Commission believes DCMs will accordingly experience some additional costs related to the regulations, but the risks associated with market disruptions or system anomalies associated with electronic trading will decrease in financial markets. The Commission expects the Risk Principles will minimize the risks associated with market disruptions or system anomalies associated with electronic trading to a greater degree than the existing regulations, while at the same time minimizing the additional cost burdens of implementation due to the existence of current DCM practices that are expected to be consistent with the Risk Principles.

As to CME's comment on requiring more detail with regard to potential software enhancements that might be required, the Commission provides a

[241] As discussed above, the Commission revised Risk Principle 3 to change the phrase ''disruptions to'' to ''market disruptions on.'' *See supra* Section II.E.

[242] CME NPRM Letter, at 12–13; ICE NPRM Letter, at 3; Better Markets NPRM Letter, at 4–9.

[243] CME NPRM Letter, at 7, 12–13.

[244] *See id.* at 12; ICE NPRM Letter, at 3.

[245] *See id.*

[246] ICE NPRM Letter, at 9.

[247] CME NPRM Letter, at 4–7; CEWG NPRM Letter, at 4; FIA/FIA PTG NPRM Letter, at 3; ICE NPRM Letter, at 1; MFA NPRM Letter, at 2.

[248] MFA NPRM Letter, at 2.

[249] AFR NPRM Letter, at 2; Rutkowski NPRM Letter, at 2.

[250] CME NPRM Letter, at 17.

[251] *See id.*

more detailed breakdown of the 2,520 staff hours below.

In addressing CME's comment on the estimated annual number of significant market disruptions, the Commission believes that CME's use of the number of formal disciplinary cases brought in connection with electronic trading that may have disrupted markets or other market participants as a ''proxy'' for significant market disruptions may underestimate the actual number of significant market disruptions. More specifically, while CME states that it has brought approximately 59 disciplinary actions for potential market disruptions involving electronic trading activity since 2011, CME identified just three of these cases to have potentially caused a significant market disruption.[252] However, CME does not provide any information or analysis on how it arrived at its estimate of three significant market disruptions. The Commission notes that each DCM may interpret ''significant'' disruption in a different manner based on differences in market structures, market participants, and the technology utilized by the DCM. As stated above, the Commission believes that the number of relevant disciplinary cases brought by a DCM could be under-inclusive of the number of potential reportable market disruption events and may not be an appropriate proxy for the number of market disruptions reportable under Commission regulation § 38.251(g). However, the Commission also acknowledges that, based on CME's comment and further consideration, the Commission's original estimate of 50 annual significant market disruptions per DCM might be too high. Accordingly, the Commission has updated its estimate of the annual number of reportable market disruption events to be 25 or less (between 0–25) for each DCM as described below.[253]

iii. Costs

Consistent with the NPRM and comments received, current risk management practices of some DCMs may be sufficient to comply with the requirements of Commission regulations §§ 38.251(e) through 38.251(g), in which case expected costs are expected to be minimal.[254] However, some DCMs may have to adjust some of their existing practices to comply with the regulations.

The Commission believes that DCMs may have to update their software to enable them to capture more efficiently additional information regarding participants subject to their jurisdiction to implement rules adopted pursuant to Commission regulation § 38.251(e). The Commission acknowledges that the additional information required to be collected may be different for each DCM because the specific rules each DCM might need to adopt and implement pursuant to Commission regulation § 38.251(e) will be different, and also because the existing information collection protocols already in place at each DCM are not likely to be the same. The Commission expects, among other things, the required information to be collected include the trader identification for order entry, the means by which traders connect to the exchange's platform, or any required statistics of order message traffic attributable to an electronic trader.

The Commission expects the design, development, testing, and production release of a required software update to take 2,520 staff hours in total. The Commission expects 360 hours of that total to be used for establishing requirements and design, 1,280 hours to be used for development, 720 hours for testing, and 160 hours for production release. To calculate the cost estimate for changes to DCM software, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the Department of Labor's Bureau of Labor Statistics (''BLS'').[255] Commission staff arrived at an hourly rate of $70.76 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2019), multiplied by 1.3 to account for overhead and other benefits.[256] Commission staff chose this methodology to account for the variance in skillsets that may be used to plan, implement, and manage the required changes to DCM software. Using these estimates, the Commission would expect the software update to cost $178,313 per DCM. The Commission acknowledges that this is an estimate and the actual cost of such a software update would depend on the current status of the specific DCM's information acquisition capabilities and the amount of additional information the DCM would have to collect as a result of Commission regulation § 38.251(e). To the extent that a DCM currently or partially captures the required information and data through its systems and technology, these costs would be lower.

The Commission acknowledges that any additional rules resulting from Commission regulation § 38.251(e) are required to be submitted pursuant to part 40. The Commission expects a DCM to take an additional 48 hours annually (two submissions on average per year, 24 hours per submission) to submit these amendments to the Commission. In order to estimate the appropriate wage rate, the Commission used the salary information for the securities industry compiled by the BLS.[257] Commission staff arrived at an hourly rate of $89.89 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2019) multiplied by 1.3 to account for overhead and other benefits.[258] The Commission estimates this indirect cost to each DCM to be $4,314.72 annually (48 × $89.89). To the extent a DCM currently has in place rules required under Commission regulation § 38.251(e), these costs would be incrementally lower.

The Commission can envision a scenario where a DCM might also need to update its trading systems to subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies as required by Commission regulation § 38.251(f).

[252] *See id.* at 9.

[253] *See id.*

[254] *See* NPRM at 42772; CME NPRM Letter, at 17; ICE NPRM Letter, at 9.

[255] May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at https://www.bls.gov/oes/current/naics4_523000.htm.*

[256] The Commission's estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): ''computer programmer—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); ''project management specialists and business operations specialists—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); ''Software and Web Developers, Programmers, and Testers—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); and ''Software Developers and Software Quality Assurance Analysts and Testers—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent).

[257] May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at https://www.bls.gov/oes/current/naics4_523000.htm.*

[258] The Commission's estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): ''compliance officer—industry: securities, commodity contracts, and other financial investment and related activities'' (50 percent); and ''lawyer—legal services'' (50 percent). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

Depending on the extent of the update required, the Commission anticipates the design, development, testing, and production release of the new trading system to take 8,480 staff hours in total, which the Commission expects to be covered by more than one employee. To calculate the cost estimate for updating a DCM's trading systems, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the BLS.[259] Commission staff arrived at an hourly rate of $70.76 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2019) multiplied by 1.3 to account for overhead and other benefits.[260] Commission staff chose this methodology to account for the variance in skill sets that may be used to plan, implement, and manage the required update to a DCM's trading system. Using these estimates, the Commission would expect the trading system update to cost $600,036 to a DCM. The Commission emphasizes that this is an estimate and the actual cost could be higher or lower. The cost may also vary across DCMs, as each DCM has the flexibility to apply the specific controls that the DCM deems reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies. In addition, the Commission further notes that to the extent a DCM currently or partially has in place pre-trade risk controls consistent with proposed Commission regulation § 38.251(f), these costs would be incrementally lower.

Commission regulation § 38.251(g) requires a DCM promptly to notify Commission staff of a significant market disruption on its electronic trading platform(s) and provide timely information on the causes and remediation. The Commission expects that there may be incremental costs to DCMs from Commission regulation § 38.251(g) in the form of analysis regarding which disruptions could be significant enough to report, maintain, and archive the relevant data, as well as the costs associated with the act of reporting the disruptions. The Commission currently expects every DCM to have the necessary means to communicate with the Commission promptly, and therefore, does not expect any additional communication costs. The Commission expects DCMs to incur a minimal cost in determining what a significant market disruption could be and preparing information on its causes and remediation. The Commission does not expect this cost to be significant, because the Commission believes DCMs should already have the means necessary to identify the causes of market disruptions and have plans for remediation. To the extent that complying with Commission regulation § 38.251(g) requires a DCM to incur additional recordkeeping and reporting burdens, the Commission estimates these additional recordkeeping requirements to be no more than 50 hours per DCM per year, and the additional reporting requirements to require no more than 125 hours per DCM per year (five hours per report and an estimated 25 reports additionally per DCM).

The Commission acknowledges CME's comment indicating that based on its review and analysis, CME believes to have had only three significant market disruptions in the past decade across its four DCMs. The Commission appreciates the information provided and recognizes that the number of times a DCM might have to identify and report significant market disruptions pursuant to Commission regulation § 38.251(g) may vary greatly across DCMs. The Commission acknowledges that the frequency of such reporting could theoretically be less than one in any given year for an exchange.

In calculating the cost estimates for recordkeeping and reporting, the Commission estimates the appropriate wage rate based on salary information for the securities industry compiled by the BLS.[261] For the reporting cost, Commission staff arrived at an hourly rate of $76.44 using figures from a weighted average of salaries and bonuses across different professions contained in the most recent BLS Occupational Employment and Wages Report (May 2019) multiplied by 1.3 to account for overhead and other benefits.[262] In calculating the cost estimate for recordkeeping, the Commission staff arrived at an hourly rate of $71.019 using figures from the most recent BLS Occupational Employment and Wages Report (May 2019) multiplied by 1.3 to account for overhead and other benefits.[263] The Commission estimates the cost for additional recordkeeping to a DCM to be no more than $3,550.95 (50 × $71.019) annually and the cost for additional reporting to a DCM to be no more than $9,555.00 (125 × $76.44) annually. As discussed above, certain DCMs might have no additional relevant market disruptions to report some years, which would translate to a zero cost estimate of additional reporting and recordkeeping for those years for those DCMs.

To the extent that DCMs would need to update their rules and internal processes to comply with Commission regulations §§ 38.251(e) through 38.251(g) and the associated Acceptable Practices, the Commission expects some DCMs also may need to update or supplement their compliance programs, which would involve additional costs. However, the Commission does not expect these costs to be significant. The Commission believes some DCMs may need to hire an additional full-time compliance staff member to address the additional compliance needs associated with the regulation. Assuming that the average annual salary of each compliance officer is $94,705, the Commission estimates the incremental annual compliance costs to a DCM that needs to hire an additional compliance officer to be $119,340.[264] However, the

[259] May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at https://www.bls.gov/oes/current/naics4_523000.htm.*

[260] The Commission's estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): ''computer programmer—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); ''project management specialists and business operations specialists—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); ''Software and Web Developers, Programmers, and Testers—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); and ''Software Developers and Software Quality Assurance Analysts and Testers—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent).

[261] May 2019 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 523000—Securities, Commodity Contracts, and Other Financial Investments and Related Activities, *available at https://www.bls.gov/oes/current/naics4_523000.htm.*

[262] The Commission's estimated appropriate wage rate is a weighted national average of mean hourly wages for the following occupations (and their relative weight): ''computer programmer—industry: securities, commodity contracts, and other financial investment and related activities'' (25 percent); ''compliance officer—industry: securities, commodity contracts, and other financial investment and related activities'' (50 percent); and ''lawyer—legal services'' (25 percent). Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the required reporting.

[263] The Commission's estimated appropriate wage rate is the mean hourly wages for ''database administrators and architects.'' Commission staff chose this methodology to account for the variance in skill sets that may be used to accomplish the collection of information.

[264] In calculating this cost estimate for reporting, the Commission estimates the appropriate annual wage for a compliance officer based on salary information for the securities industry compiled by the BLS. Commission staff used the annual wage of

Commission notes that the exact compliance needs may vary across DCMs, and some DCMs may already have adequate compliance programs that can handle any rule updates and internal processes required to comply with Commission regulations §§ 38.251(e) through 38.251(g), and therefore the actual compliance costs may be higher or lower than the Commission's estimates.

b. Cost of Periodically Updating Risk Management Practices

i. Summary of Comments

The Commission did not receive any comments associated with the need periodically to update risk management practices.

ii. Costs

The Commission expects the trading methods and technologies of market participants to change over time, requiring DCMs to adjust their rules pursuant to Commission regulation § 38.251(e) and adjust their exchange-based pre-trade risk controls pursuant to Commission regulation § 38.251(f) accordingly. As trading methodologies and connectivity measures evolve, it is expected that new causes of potential market disruptions and system anomalies could surface. To that end, the Commission believes full compliance would require a DCM to implement periodic evaluation of its entire electronic trading marketplace and updates of the exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies, as well as updates of the appropriate definitions of market disruptions and system anomalies. Therefore, rules imposed as a result of Commission regulations §§ 38.251(e) through 38.251(g) would need to be flexible and fluid, and potentially updated as needed, which may involve additional costs. Moreover, such rule changes would result in a cost increase associated with the rise in the number of rule filings that DCMs would have to prepare and submit to the Commission.

c. Costs to Market Participants

i. Summary of Comments

The Commission did not receive any comments associated with costs to market participants.

ii. Costs

The Commission can envision a situation where the rules adopted by DCMs as a result of Commission regulation § 38.251(e) change frequently, and market participants would need to adjust to new rules frequently. While these adjustments might carry some costs for market participants, such as potential added delays to their trading activity due to additional pre-trade controls, the Commission expects these changes to be communicated to the market participants by DCMs with enough implementation time so as to minimize the burden on market participants and their trading strategies. Moreover, to the extent a DCM's policies and procedures require market participants to report changes to their connection processes, trading strategies, or any other adjustments the DCM deems required, there could be some cost to the market participants. Finally, market participants may feel the need to upgrade their risk management practices as a response to DCMs' updated risk management practices driven by the Risk Principles. The Commission recognizes that part of the costs to market participants might also come from needing to update their systems and potentially adjust the software they use for risk management, trading, and reporting. These costs may be somewhat mitigated to the extent market participants currently comply with DCM rules and regulations regarding pre-trade risk controls and market disruption protocols.

d. Regulatory Arbitrage

i. Summary of Comments

The Commission received a number of comments regarding the possibility of competition and regulatory arbitrage. CME commented that the greatest risk for regulatory arbitrage is between DCMs and SEFs or FBOTs.[265] Also, IATP commented that the Commission should clarify why it considers regulatory arbitrage between DCMs unlikely to happen.[266] IATP also noted that the competition among DCMs for over-the-counter trading and for trading in new products, such as digital coins, could result in lax risk control design or lax updating of controls under competitive pressures.[267] IATP also mentioned the difference in competitive pressures for cleared and uncleared trades.[268] Finally, CFE expressed concern that if the Commission compares all DCMs to a baseline of controls, which are prevalent across DCMs, there may be an expectation for smaller DCMs to adhere to the risk control standards of larger DCMs.[269] This could become a barrier to entry for smaller DCMs.[270]

ii. Discussion

As outlined the in the NPRM and in the discussion of antitrust considerations below,[271] the Commission acknowledges the theoretical possibility of regulatory arbitrage occurring as a result of the Risk Principles but does not expect it to materialize.[272] As discussed in the NPRM and Section I.D.2 of this final rulemaking, the Commission will continue to monitor whether Risk Principles of this nature may be appropriate for other markets such as SEFs or FBOTs.[273]

The Commission acknowledges there are differences in products and market participants across DCMs, and DCMs might implement different rules and risk controls given differences in their respective markets. It is important to note that ongoing Commission oversight will identify whether the differences in DCM rules and risk controls are due to differing contracts being offered for trading, competitive pressure, or regulatory arbitrage, and whether there are resulting issues that must be addressed.

iii. Costs

The principles-based regulations offer DCMs the flexibility to address market disruptions and system anomalies as they relate to their particular markets and market participants' trading activities. Similarly, DCMs are also given the flexibility to decide how to apply the requirements associated with regulations in their respective markets. This flexibility could result in differences across DCMs, potentially contributing to regulatory arbitrage. For example, DCMs' practices could differ in the information collected from market participants; the rules applied to prevent, detect, and mitigate market disruptions or system anomalies; and the intensity of pre-trade controls. The parameters for establishing market disruptions or system anomalies could be defined differently by the various DCMs, which might lead to differing levels of exchange-based pre-trade risk controls.

$91,800, which reflects the average annual salary for a compliance officer contained in the most recent BLS Occupational Employment and Wages Report (May 2019), and multiplied it by 1.3 to account for overhead and other benefits.

[265] CME NPRM Letter, at 13.

[266] IATP NPRM Letter, at 11.

[267] *See id.* at 9.

[268] *See id.* at 10.

[269] CFE NPRM Letter, at 4.

[270] *See id.*

[271] *See* Section III.D of this final rulemaking.

[272] *See* NPRM at 42763 n.6.

[273] *See id.* and Section I.D.2 of this final rulemaking.

The Commission acknowledges that to the extent there is potential for market participants to choose between DCMs, those DCMs with lower information collection requirements and potentially less stringent pre-trade risk controls could appear more attractive to certain market participants. All or some of these factors could create the potential for market participants to move their trading from DCMs with potentially more stringent risk controls to DCMs with less stringent controls, which could cost certain DCMs business. While the Commission recognizes that this kind of regulatory arbitrage could cause liquidity to move from one DCM to another, potentially impairing (or benefiting) the price discovery of the contract with reduced (or increased) liquidity, the Commission does not expect this to occur with any frequency. First, the Commission notes that liquidity for a given contract in futures markets tends to concentrate in one DCM. This means that futures markets are less susceptible to this type of regulatory arbitrage. Second, while an individual DCM decides the exchange-based pre-trade risk controls for its markets, those risk controls must be effective. The Commission does not believe that differences in the application of the Risk Principles across DCMs would be substantial enough to induce market participants to switch to trading at a different DCM, even if there were two DCMs trading similar enough contracts. For example, DCMs currently apply various pre-trade controls to comply with Commission regulation § 38.255 requirements for risk controls for trading, but the Commission does not have any evidence that DCMs compete on pre-trade controls. The Commission expects DCMs to approach the setting of their rules and controls to comply with the Risk Principles in a similar manner.

3. Benefits

a. Minimize Disruptive Behaviors Associated With Electronic Trading and Ensure Sound Financial Markets

i. Summary of Comments

While not a direct comment, AFR stated that the NPRM does not offer a systematic assessment of the current costs of the types of electronic disruptions addressed by the Risk Principles.[274]

ii. Discussion

The Commission acknowledges that no such costs were present in the NPRM and it considers such analysis not quantitatively feasible. However, the Commission considers market disruption costs to be substantial and the Commission expects that these regulations will minimize the frequency of market disruptions and their associated costs. The Commission believes this to be an important benefit to DCMs and market participants through ensuring a sound financial marketplace.

iii. Benefits

The Commission believes that the Risk Principles are crucial for the integrity and resilience of financial markets, as they would ensure that DCMs have the ability to prevent, detect, and mitigate most, if not all, disruptive behaviors associated with electronic trading. Commission regulation § 38.251(e) requires DCMs to adopt and implement rules governing market participants subject to their jurisdiction such that market disruptions or system anomalies associated with electronic trading can be minimized. This would allow markets to operate smoothly and to continue functioning as efficient platforms for risk transfer, as well as allowing for healthy price discovery.

The Commission expects Commission regulation § 38.251(f) to subject all electronic orders to a DCM's exchange-based pre-trade risk controls. The Commission expects this to benefit the markets as well as the market participants sending orders to the DCMs. First, by preventing orders that could cause market disruptions or system anomalies through exchange-based pre-trade risk controls, Commission regulation § 38.251(f) allows the markets to operate orderly and efficiently. This benefits traders in the markets, market participants utilizing price discovery in the markets, as well as traders in related markets. Second, Commission regulation § 38.251(f) provides market participants sending orders to a DCM with an additional layer of protection through the implementation of exchange-based pre-trade risk controls. If an unintentional set of messages were to breach the risk controls of FCMs and other market participants, Commission regulation § 38.251(f) could prevent those messages from reaching a DCM and potentially resulting in unwanted transactions. This benefits the market participants, as well as their FCMs, by saving them from the obligation of unwanted and unintended transactions.

Commission regulation § 38.251(g) ensures that significant market disruptions will be communicated to the Commission staff promptly, as well as their causes and eventual remediation. The Commission believes Commission regulation § 38.251(g) will benefit the markets and market participants by strengthening their financial soundness and promoting the resiliency of derivatives markets by allowing the Commission to stay informed of any potential market disruptions effectively and promptly. If needed, the Commission's timely action in the face of market disruptions could help markets recover faster and stronger.

Finally, Commission regulations §§ 38.251(e) through 38.251(g) are likely to benefit the public by promoting sound risk management practices across market participants and preserving the financial integrity of markets so that markets can continue to fulfill their price discovery role.

b. Value of Flexibility Across DCMs

i. Summary of Comments

Most commenters, including CME, CFE, CEWG, FIA/FIA PTG, ICE, ISDA/SIFMA, MFA, and Optiver supported a principles-based approach, which allows flexibility in the implementation of the regulations across DCMs.[275] Many commenters noted they prefer the principles-based approach to the prescriptive nature of prior proposals and that such an approach provides flexibility and takes into account future technological advances.[276]

In contrast, AFR, Better Markets, IATP, and Rutkowski disagreed with the principles-based approach, and asserted that the incentives of DCMs and public regulators are not fully aligned.[277] AFR, Better Markets, and Rutkowski commented that the Risk Principles provide too much deference to DCMs and the Commission failed to address conflicts of interest concerns that may impede the independence of DCMs and SROs.[278]

ii. Discussion

The Commission believes a principles-based approach of Risk Principles allows flexibility to DCMs. Through this flexible approach, DCMs can shape the adoption and

[274] AFR NPRM Letter, at 2.

[275] CME NPRM Letter, at 1, 12, 16; CFE NPRM Letter, at 1; CEWG NPRM Letter, at 2; FIA/FIA PTG NPRM Letter, at 2–4; ICE NPRM Letter, at 2, 9; ISDA/SIFMA NPRM Letter, at 1–2; MFA NPRM Letter, at 1–2; Optiver NPRM Letter, at 1.

[276] CME NPRM Letter, at 1, 12; CFE NPRM Letter, at 1; CEWG NPRM Letter, at 2; FIA/FIA PTG NPRM Letter, at 2–4; ISDA/SIFMA NPRM Letter, at 1; MFA NPRM Letter, at 1–2.

[277] AFR NPRM Letter, at 1–2; Better Markets NPRM Letter, at 2, 6, 9, 10–12; IATP NPRM Letter, at 1, 4, 8; Rutkowski NPRM Letter, at 1.

[278] AFR NPRM Letter, at 1–2; Better Markets NPRM Letter, at 2, 6, 9, 10–12; Rutkowski NPRM Letter, at 1.

implementation of their rules to effectively prevent, detect, and mitigate risks associated with electronic trading in their markets. Additionally, this flexibility will also allow DCMs to adjust their rules accordingly to respond to future changes in their markets. Without such flexibility, DCMs would need to comply with prescriptive rules that may not be as effective in preventing, detecting, and mitigating market disruptions and system anomalies and that may involve higher costs to market participants as well as potential higher compliance costs.

The Commission notes Core Principle 16 in part 38 requires DCMs to establish and enforce rules addressing potential conflicts of interest.[279] Furthermore, as also mentioned in the preamble, any conflict of interest concerns, where DCMs might prioritize profitability over reasonable controls, will be addressed through regular Commission oversight of DCMs.[280]

iii. Benefits

The Commission believes that DCMs have markets with different trading structures and participants with varying trading patterns. It is possible that market participant behavior that one DCM considers a major risk of market disruptions could be of less concern to another DCM. The Commission's principles-based approach to Commission regulations §§ 38.251(e) and 38.251(f) allows DCMs the flexibility to impose the most efficient and effective rules and pre-trade risk controls for their respective markets. The Commission believes such flexibility, including through the Acceptable Practices, benefits DCMs by allowing them to adopt and implement effective and efficient measures reasonably designed to achieve the objectives of the Risk Principles. Without such flexibility, DCMs would need to comply with prescriptive rules that may not be as effective in preventing, detecting and mitigating market disruptions and system anomalies and that may potentially involve higher compliance costs.

c. Direct Benefits to Market Participants

i. Summary of Comments

The Commission did not receive any comments associated with benefits to market participants.

ii. Benefits

Commission regulation § 38.251(e) requires DCMs to adopt and implement rules that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. In addition, Commission regulation § 38.251(f) requires DCMs to subject all electronic orders to exchange-based pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. This approach will assist in preventing, detecting, and mitigating market disruptions and system anomalies and thus protect the effectiveness of financial markets to continue providing the services of risk transfer and price transparency to all market participants. Moreover, the Commission believes that requiring DCMs to implement these DCM-based rules and risk controls could incentivize market participants themselves to strengthen their own risk management practices.

d. Facilitate Commission Oversight

i. Summary of Comments

The Commission did not receive any comments associated with benefits to Commission oversight.

ii. Benefits

The Commission believes the implementation of the Risk Principles will facilitate the Commission's capability to monitor the markets effectively. Moreover, Commission regulation § 38.251(g) will result in DCMs informing the Commission promptly of any significant market disruptions and remediation plans. The Commission believes this will allow it to take steps to contain a disruption and prevent the disruption from impacting other markets or market participants. Thus, the Risk Principles will facilitate the Commission's oversight and its ability to monitor and assess market disruptions across all DCMs.

Finally, the Commission expects that the Risk Principles will better incentivize DCMs to recognize market disruptions and system anomalies and examine remediation plans in a timely fashion.

4. 15(a) Factors

a. Protection of Market Participants and the Public

Commission regulations §§ 38.251(e) through 38.251(g) are intended to protect market participants and the public from potential market disruptions due to electronic trading. The rules are expected to benefit market participants and the public by requiring DCMs to adopt and implement rules addressing the market disruptions and system anomalies associated with electronic trading, subject all electronic orders to specifically-designed exchange-based pre-trade risk controls, and promptly report the causes and remediation of significant market disruptions. All of these measures create a safer marketplace for market participants to continue trading without major interruptions and allow the public to benefit from the information generated through a well-functioning marketplace.

b. Efficiency, Competitiveness, and Financial Integrity of DCMs

The Commission believes that Commission regulations §§ 38.251(e) through 38.251(g) will enhance the financial integrity of DCMs by requiring DCMs to implement rules and risk controls to address market disruptions and system anomalies associated with electronic trading. However, the Commission also acknowledges that market participants' efficiency of trading might be hindered due to potential latencies that may occur in the delivery and routing of orders to the matching engine as a result of additional pre-trade risk controls. In addition, the Commission can envision a scenario where the flexibility provided to DCMs in designing and implementing rules to prevent, detect, and mitigate market disruptions and system anomalies, and the differences between the updated pre-trade risk controls and existing DCM risk control rules, could potentially lead to regulatory arbitrage between DCMs. To the extent that there are significant differences in those practices set by competing DCMs, market participants might choose to trade in the DCM with the least stringent rules if competing DCMs offer the same or relatively similar products. The Commission acknowledges that competitiveness across DCMs might be hurt as a result. However, as discussed above, the Commission does not believe that differences in the application of the Risk Principles across DCMs would be substantial enough to induce market participants to switch to trading at a different DCM, even if there were two DCMs trading similar enough contracts.

c. Price Discovery

The Commission expects price discovery to improve as a result of Commission regulations §§ 38.251(e) through 38.251(g), especially due to improved market functioning through the implementation of targeted pre-trade risk controls and rules. The Commission

[279] *See* 17 CFR 38.850–51.

[280] Conflicts of interest are also discussed in the antitrust considerations section of this final rule. *See* Section III.D below.

expects the new regulations to assist with the prevention and mitigation of market disruptions due to electronic trading, leading markets to provide more stable and consistent price discovery services. However, as noted above, adoption and implementation of rules pursuant to Commission regulation § 38.251(e) and pre-trade risk controls implemented by DCMs pursuant to Commission regulation § 38.251(f) could be different across DCMs. As a result, the improvements in price discovery across DCMs' markets are not likely to be uniform.

d. Sound Risk Management Practices

The Commission expects Commission regulations §§ 38.251(e) through 38.251(g) to help promote and ensure better risk management practices of both DCMs and their market participants. The Commission expects DCMs and market participants to focus on, and potentially update, their risk management practices. Additionally, the Commission believes that the requirement for DCMs to notify Commission staff regarding the cause of a significant market disruption to their respective electronic trading platforms would also provide reputational incentives for both DCMs and their market participants to focus on, and improve, risk management practices.

e. Other Public Interest Considerations

The Commission does not expect Commission regulations §§ 38.251(e) through 38.251(g) to have any significant costs or benefits associated with any other public interests.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.'' [281] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. In the NPRM, the Commission preliminarily determined that the Risk Principles proposal is not anticompetitive and has no anticompetitive effects. The Commission then requested comment on (i) whether the proposal is anticompetitive and, if so, what the anticompetitive effects are; (ii) whether any other specific public interest, other than the protection of competition, to be protected by the antitrust laws is implicated by the proposal; and (iii) whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting the proposal.

The Commission does not anticipate that the Risk Principles rulemaking will result in anticompetitive behavior, but instead, believes that the principles-based approach to DCM electronic trading does not establish a barrier to entry or a competitive restraint. As noted above, the Commission encouraged comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the antitrust laws or anticompetitive in nature. The Commission received three comments asserting that the proposed rules may potentially impact competition through the existence of ''regulatory arbitrage'' and one comment regarding the competitive impact of potential risk control assessments to a baseline of risk controls that are prevalent and effective across DCMs.

IATP commented that ''DCMs compete for market participant trades, so competitive pressures could reduce DCM verification of market participant compliance with DCM requirements for market participant risk control.'' [282] IATP focused on the potential competitive pressures that could potentially occur with respect to non-cleared transactions, stating that these transactions should ''post higher initial margin and maintain higher variation margin than cleared trades.'' [283] IATP disagreed with the Commission's belief in the NPRM that a lack of uniformity between DCMs' rules and risk controls does not render a particular DCM's rules or risk controls per se unreasonable.[284]

AFR commented that the Commission's proposal rejected the more active regulatory approach to electronic trading taken in the now-withdrawn Regulation AT and, instead, delegates the core elements of electronic trading oversight to for-profit exchanges under a principles-based approach.[285] AFR criticized the Commission's principles-based approach regarding the regulation of electronic trading on DCMs, stating that it disagrees with the core assumption underlying the principles-based approach that the incentives of DCMs ''are fully aligned with those of public regulators in limiting speculative and trading practices that could threaten market integrity.'' [286] The basis of AFR's comment is that DCMs are ''economically dependent on the order flow provided by large traders and are in direct competition with other venues to capture that order flow.'' [287] As a result, AFR argues that this dependence on order flow creates a conflict of interest whereby DCMs may accommodate the interests of large brokers and traders even though there may be risks to market integrity. AFR further believes that conflict of interest requires significant public regulatory oversight of DCM market practices, stating that ''[p]ure self-regulation is not enough.'' [288]

Better Markets similarly commented that permitting DCMs to determine the types of risk controls to deter and/or prevent market disruptions is inherently conflicted due to competitive pressures.[289] In commenting regarding the potential competitive issues in connection with the Risk Principles, Better Markets cited the Commission's statement in the NPRM that noted the potential for regulatory arbitrage due to

[281] 7 U.S.C. 19(b).

[282] IATP NPRM Letter, at 9. IATP noted, among other things, that ''trading in new products, such as digital coins, could result in lax risk control design or lax updating of controls under competitive pressures.''

[283] *Id.*

[284] *See* NPRM at 42765. IATP commented that ''If one DCM pursues competitive advantage by developing risk controls and rules that market participants perceive to be less costly to implement and/or to give them a competitive advantage in trading, the Commission believes the DCM seeking such a competitive advantage to comply with the Principles, provided that the DCM rules and risk controls are not inherently unreasonable.'' IATP NPRM Letter, at 11. IATP believes that, in connection with its comments regarding the potential competitive concerns of the Electronic Risk Principles Rule, the Commission should document and explain how ''allowing each DCM to develop and enforce its own rules and risk controls presents no possibility of regulatory arbitrage among DCMs.'' *See id.*

[285] *See* AFR NPRM Letter, at 1. *See also* Rutkowski NPRM Letter, at 1. Mr. Rutkowski's comment largely adopts the arguments set forth in the AFR comment.

[286] *See* AFR NPRM Letter, at 1.

[287] *Id.*

[288] *Id.*

[289] *See* Better Markets NPRM Letter, at 11. In particular, Better Markets noted that ''[e]xchanges face conflicts of interest between maximizing profit and shareholder value and diminishing trading volumes through meaningful limits on certain electronic trading practices. With competitive pressures and revenues at stake, one exchange is unlikely to be a first mover and absorb the costs and rancor of market participants in implementing risk controls and related measures that its competitors may, for market share reasons, postpone indefinitely. That is why a federal baseline set of controls and regulations—revisited as often as is necessary to ensure responsible innovation—must be applied to all DCMs.'' *Id.*

the principles-based nature of the requirements.[290] With respect to this competitive issue, Better Markets noted that those DCMs with lower information collection requirements and less stringent pre-trade risk controls could appear more attractive to certain market participants and could facilitate certain market participants to move trading among DCMs, thereby costing certain DCMs business.[291]

As noted in the NPRM and the preamble of these final rules, the Commission is aware that DCMs may have conflicting and competing interests in connection with the oversight of electronic trading.[292] However, the Commission does not believe that differences in the application of the Risk Principles across DCMs would be substantial enough to induce market participants to switch to trading at a different DCM.

The commenters essentially argued that the more prescriptive regulatory approach to electronic trading taken in the withdrawn Regulation AT proposal is preferable to the Risk Principles approach that ''delegates'' elements of electronic trading oversight to for-profit exchanges. As support for their argument, commenters focused on the inherent conflict of self-regulation whereby a for-profit entity is also tasked with performing a certain degree of regulatory oversight over its marketplace. The Commission notes the Congressional intent to serve the public interests of the CEA ''through a system of effective self-regulation of trading facilities . . . under the oversight of the Commission.'' [293] DCMs have significant incentives and obligations to maintain well-functioning markets as self-regulatory organizations that are subject to specific regulatory requirements. Specifically, the DCM Core Principles require DCMs to, among other things, refrain from adopting any rule or taking any action that results in any unreasonable restraint of trade and imposing material anticompetitive burdens.[294] In addition, DCM Core Principles also require DCMs to surveil trading on their markets to prevent market manipulation, price distortion, and disruptions of the delivery or cash-settlement process.[295] Several academic studies, including one concerning futures exchanges and another concerning demutualized stock exchanges, also support the conclusion that exchanges are able both to satisfy shareholder interests and meet their self-regulatory organization responsibilities.[296]

As noted above in Section III.C.3, CFE expressed concern that smaller DCMs could over time be expected to adopt and implement the same pre-trade risk controls in place at the larger DCMs which could, therefore, impact competition and diversity. CFE is specifically concerned about the statement in the NPRM regarding assessment of risk controls comparing ''all DCMs to a baseline of controls on electronic trading and electronic order entry that are prevalent and effective across DCMs.'' [297] CFE further asserted that ''what is in place at the larger DCMs and DCM groups should not simply become the de facto standard for what all DCMs must employ.'' [298]

The Commission reiterates that the Risk Principles are intended to provide DCMs with the flexibility to adopt those pre-trade risk controls reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. As a result, the Commission does not intend or expect larger DCM pre-trade risk controls to be the standard for all DCMs, although there may be risk controls that are common to all DCMs. As noted in the CFE comments, it is not the Commission's intent to effectively impose on all DCMs those risk controls that are in place at larger DCMs.

The Commission also believes that these competitive concerns raised by commenters are mitigated because: (i) DCMs are required to submit any proposed rules under Commission regulation § 38.251(e) to the Commission for review under part 40 of the Commission's regulations; and (ii) DCMs are required pursuant to the DCM Antitrust Core Principle to refrain from adopting any rule or taking any action that results in any unreasonable restraint of trade and imposing material anticompetitive burdens.[299] Accordingly, the Commission has determined that the Risk Principles serve the regulatory purpose of the CEA to deter and prevent price manipulation or any other disruptions to market integrity.[300] In addition, the Commission notes that the Risk Principles implement additional purposes and policies set forth in section 5(d)(4) of the CEA.[301] The Commission has considered the final rules and related comments, to determine whether they are anticompetitive, and continues to believe that the Risk Principles will not result in any unreasonable restraint of trade, or impose any material anticompetitive burden on trading in the markets.

List of Subjects in 17 CFR Part 38

Commodity futures, Designated contract markets, Reporting and recordkeeping requirements.

PART 38—DESIGNATED CONTRACT MARKETS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 38.251, republish the introductory text and add paragraphs (e) through (g) to read as follows:

§ 38.251 General requirements.

A designated contract market must:

* * * * *

(e) Adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading;

(f) Subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading; and

(g) Promptly notify Commission staff of any significant market disruptions on

[290] Better Markets specifically stated that ''The CFTC acknowledges this regulatory arbitrage concern but minimizes such concerns due to a belief that ''differences in the application of the proposed regulation across DCMs would [not] be substantial enough to induce market participants to switch to trading at a different DCM, even if there were two DCMs trading similar enough contracts.'' Better Markets NPRM Letter, at 11. *See also* NPRM at 42774.

[291] *See id.*

[292] *See* NPRM at 42775 and Section III.C.4 of this final rulemaking.

[293] Section 3(b) of the CEA. 7 U.S.C. 5(b).

[294] CEA section 5(d)(19), 7 U.S.C. 7(d)(19) and 17 CFR 38.1000.

[295] 17 CFR 38.200 and 17 CFR 38.250.

[296] *See* David Reiffen and Michel A. Robe, *Demutualization and Customer Protection at Self-Regulatory Financial Exchanges,* Journal of Futures Markets, *supra* note 56, at 126–164, Feb. 2011; Kobana Abukari and Isaac Otchere, *Has Stock Exchange Demutualization Improved Market Quality? International Evidence, supra* note 56.

[297] NPRM at 42768.

[298] CFE NPRM Letter, at 4.

[299] *See* Commission regulation § 38.1000 (Core Principle 19, Antitrust Considerations).

[300] Section 3(b) of the CEA, 7 U.S.C. 5(b).

[301] 7 U.S.C. 5(d)(4). This DCM Core Principle focusing on the prevention of market disruption requires that the board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—(A) methods for conducting real-time monitoring of trading; and (B) comprehensive and accurate trade reconstructions.

its electronic trading platform(s) and provide timely information on the causes and remediation.

■ 3. In appendix B to part 38, under ''Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION,'' add paragraph (b)(6) to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION

* * *

(b) * * *

(6) *Market disruptions and system anomalies associated with electronic trading.* To comply with § 38.251(e), the contract market must adopt and implement rules that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. To comply with § 38.251(f), the contract market must subject all electronic orders to exchange-based pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies.

* * * * *

Issued in Washington, DC, on December 10, 2020, by the Commission.

Robert Sidman

Deputy Secretary of the Commission.

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

Appendices to—Electronic Trading Risk Principles Voting Summary Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Stump, and Berkovitz voted in the affirmative. Commissioner Behnam voted in the negative.

Appendix 2—Supporting Statement of Chairman Health P. Tarbert

The mission of the CFTC is to promote the integrity, resilience, and vibrancy of U.S. derivatives markets through sound regulation. We cannot achieve this mission if we rest on our laurels—particularly in relation to the ever-evolving technology that makes U.S. derivatives markets the envy of the world. What is sound regulation today may not be sound regulation tomorrow.

I am reminded of the paradoxical observation of Giuseppe di Lampedusa in his prize-winning novel, *The Leopard:* ''*If we want things to stay as they are, things will have to change.*'' [1]

While the novel focuses on the role of the aristocracy amid the social turbulence of 19th century Sicily, its central thesis—that achieving stability in changing times itself requires change—can be applied equally to the regulation of rapidly changing financial markets.

Today we are voting to finalize a rule to address the risk of disruptions to the electronic markets operated by futures exchanges. The risks involved are significant; disruptions to electronic trading systems can prevent market participants from executing trades and managing their risk. But how we address those risks—and the implications for the relationship between the Commission and the exchanges we regulate—is equally significant.

The Evolution of Electronic Trading

A floor trader from the 1980s and even the 1990s would scarcely recognize the typical futures exchange of the 21st Century. The screaming and shouting of buy and sell orders reminiscent of the film *Trading Places* has been replaced with silence, or perhaps the monotonous humming of large data centers. Over the past two decades, our markets have moved from open outcry trading pits to electronic platforms. Today, 96 percent of trading occurs through electronic systems, bringing with it the price discovery and hedging functions foundational to our markets.

By and large, this shift to electronic trading has benefited market participants. Spreads have narrowed,[2] liquidity has improved,[3] and transaction costs have dropped.[4] And the most unexpected benefit is that electronic markets have been able to stay open and function smoothly during the COVID–19 lockdowns. By comparison, traditional open outcry trading floors such as options pits and the floor of the New York Stock Exchange were forced to close for an extended time. Without the innovation of electronic trading, our financial markets would almost certainly have seized up and suffered even greater distress.

But like any technological innovation, electronic trading also creates new and unique risks. Today's final rule is informed by examples of disruptions in electronic markets caused by both human error as well as malfunctions in automated systems—disruptions that would not have occurred in open outcry pits. For instance, ''fat finger'' orders mistakenly entered by people, or fully automated systems inadvertently flooding matching engines with messages, are two sources of market disruptions unique to electronic markets.

Past CFTC Attempts To Address Electronic Trading Risks

The CFTC has considered the risks associated with electronic trading during much of the last decade. Seven years ago, a different set of Commissioners issued a concept release asking for public comment on what changes should be made to our regulations in light of the novel issues raised by electronic trading. Out of that concept release, the Commission later proposed Regulation AT. For all its faults, Regulation AT drove a very healthy discussion about the risks that should be addressed and the best way to do so.

Regulation AT was based on the assumption that automated trading, a subset of electronic trading, was inherently riskier than other forms of trading. As a result, Regulation AT sought to require certain automated trading firms to register with the Commission notwithstanding that they did not hold customer funds or intermediate customer orders. Most problematically, Regulation AT also would have required those firms to produce their source code to the agency upon request and without subpoena.

Regulation AT also took a prescriptive approach to the types of risk controls that exchanges, clearing members, and trading firms would be required to place on order messages. But this list was set in 2015. In effect, Regulation AT would have frozen in time a set of controls that all levels of market operators and market participants would have been required to place on trading. Since that list was proposed, financial markets have faced their highest volatility on record and futures market volumes have increased by over 50 percent.[5] Improvements in technology and computer power have been profound. Of course, I commend my predecessors for focusing on the risks that electronic trading can bring. But times change, and Regulation AT would not have changed with them. Consequently, our Commission formally withdrew Regulation AT this past summer.[6]

An Evolving CFTC for Evolving Markets

In withdrawing Regulation AT, the CFTC has consciously moved away from registration requirements and source code production. But in voting to finalize the Risk Principles, the CFTC is committing to address risk posed by electronic trading while strengthening our longstanding principles-based approach to overseeing exchanges.

The markets we regulate are changing. To maintain our regulatory functions, the CFTC must either halt that change or change our agency. Swimming against the tide of developments like electronic markets is not an option, nor should it be. The markets exist to serve the needs of market participants, not the regulator. If a technological change improves the functioning of the markets, we should embrace it. In fact, one of this agency's founding principles is that CFTC should ''foster responsible innovation.'' [7] Applying this reasoning alongside the

[1] Giuseppe Tomasi di Lampedusa, *The Leopard* (Everyman's Library Ed. 1991) at p. 22.

[2] Frank, Julieta and Philip Garcia, ''Bid-Ask Spreads, Volume, and Volatility: Evidence from Livestock Markets,'' American Journal of Agricultural Economics, Vol. 93, Issue 1, p. 209 (January 2011).

[3] Terrence Henderschott, Charles M. Jones, and Albert K. Menkveld, ''Does Algorithmic Trading Improve Liquidity?'' Journal of Finance, Volume 66, Issue 1, p. 1 (February 2011).

[4] Esen Onur and Eleni Gousgounis, ''The End of an Era: Who Pays the Price when the Livestock Futures Pits Close?'', Working Paper, Commodity Futures Trading Commission Office of the Chief Economist.

[5] Futures Industry Association, ''A record year for derivatives'' (March 5, 2019), available at *https://www.fia.org/articles/record-year-derivatives.*

[6] Regulation Automated Trading; Withdrawal, 85 FR 42755 (July 15, 2020).

[7] Commodity Exchange Act, Section 3(b), 7 U.S.C. 3(b).

overarching theme of *The Leopard* leads us to a single conclusion: As our markets evolve, the only real course of action is to ensure that the CFTC's regulatory framework evolves with it.

The Need for Principles-Based Regulation

So then how do we as a regulator change with the times while still fulfilling our statutory role overseeing U.S. derivatives markets? I recently published an article setting out a framework for addressing situations such as this.[8] I believe that principles-based regulations can bring simplicity and flexibility while also promoting innovation when applied in the right situations. Such an approach can also create a better supervisory model for interaction between the regulator and its regulated firms—but only so long as that oversight is not toothless.

There are a variety of circumstances in which I believe principles-based regulation would be most effective. Regulations on how exchanges manage the risks of electronic trading are a prime example. This is about risk management practices at sophisticated institutions subject to an established and ongoing supervisory relationship. But it is also an area where regulated entities have a better understanding than the regulator about the risks they face and greater knowledge about how to address those risks. As a result, exchanges need flexibility in how they manage risks as they constantly evolve.

At the same time, principles-based regulation is not ''light touch'' regulation. Without the ability to monitor compliance and enforce the rules, principles-based regulation would be ineffective. Principles-based regulation of exchanges can work because the CFTC and the exchanges have constant interaction that engenders a degree of mutual trust. The CFTC—as overseen by our five-member Commission—has tools to monitor how the exchanges implement principles-based regulations through reviews of license applications and rule changes, as well as through periodic examinations and rule enforcement reviews.

Monitoring compliance alone is not enough. The regulator also needs the ability to enforce against non-compliance. Principles-based regimes ultimately give discretion to the regulated entity to find the best way to achieve a goal, so long as that method is objectively reasonable. To that end, the CFTC has a suite of tools to require changes through formal action, escalating from denial of rule change requests, to enforcement actions, to license revocations. The CFTC consistently needs to address the effectiveness and appropriateness of these levers to make sure the exchanges are meeting their regulatory objectives. And given that exchanges will be judged on a reasonableness standard, it must be the Commission itself—based on a recommendation from CFTC staff[9]—who ultimately decides whether an exchange has been objectively unreasonable in complying with our principles.

Final Rule on Risk Principles for Electronic Trading

This brings us to today's finalization of the Risk Principles that were proposed in June of this year. The final rule, which we are adopting by-and-large as proposed, centers on a straightforward issue that I think we can all agree is important for our regulations to address. Namely, the Risk Principles require exchanges to take steps to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading.

The disruptions we are concerned about can come from any number of causes, including: (i) Excessive messages, (ii) fat finger orders, or (iii) the sudden shut off of order flow from a market maker. The key attribute of the disruptions addressed by the Risk Principles is that they arise because of electronic trading.

To be sure, our current regulations do require exchanges to address market disruptions. But the focus of those rules has generally been on disruptions caused by sudden price swings and volatility. In effect, the Risk Principles expand the term ''market disruptions'' to cover instances where market participants' ability to access the market or manage their risks is negatively impacted by something other than price swings. This could include slowdowns or closures of gateways into the exchange's matching engine caused by excessive messages submitted by a market participant. It could also include instances when a market maker's systems shut down and the market maker stops offering quotes.

As noted in the preamble to the final rule, exchanges have worked diligently to address emerging risks associated with electronic trading. Different exchanges have put in place rules such as messaging limits and penalties when messages exceed filled trades by too large a ratio. Exchanges also may conduct due diligence on participants using certain market access methods and may require systems testing ahead of trading through those methods.

It is not surprising that exchanges have developed rules and risk controls that comport with our Risk Principles. The Commission, exchanges, and market participants have a common interest in ensuring that electronic markets function properly. Moreover, this is an area where exchanges are likely to possess the best understanding of the risks presented and have control over how their own systems operate. As a result, exchanges have the incentive and the ability to address the risks arising from electronic trading. Principles-based regulations in this area will ensure that exchanges have reasonable discretion to adjust their rules and risk controls as the situation dictates, not as the regulator dictates.

The three Risk Principles encapsulate this approach. First, exchanges must have rules to prevent, detect, and mitigate market disruptions and system anomalies associated with electronic trading. In other words, an exchange should take a macro view when assessing potential market disruptions, which can include fashioning rules applicable to all traders governing items such as onboarding, systems testing, and messaging policies. Second, exchanges must have risk controls on all electronic orders to address those same concerns. Third, exchanges must notify the CFTC of any significant market disruptions and give information on mitigation efforts.

Importantly, implementation of the Risk Principles will be subject to a reasonableness standard. The Acceptable Practices accompanying the Risk Principles clarify that an exchange would be in compliance if its rules and its risk controls are reasonably designed to meet the objectives of preventing, detecting, and mitigating market disruptions and system anomalies. The Commission will have the ability to monitor how the exchanges are complying with the Principles, and will have avenues to sanction non-compliance.

Framework for Future Regulation

I hope that the Risk Principles we are adopting today will serve as a framework for future CFTC regulations. Electronic trading presents a prime example of where principles-based regulation—as opposed to prescriptive rule sets—is more likely to result in sound regulation over time. Through thoughtful analysis of the regulatory objective we aim to achieve, the nature of the market and technology we are addressing, the sophistication of the parties involved, and the nature of the CFTC's relationship with the entity being regulated, we can identify what areas are best for a prescriptive regulation or a principles-based regulation.[10] In the present context, a principles-based approach—setting forth concrete objectives while affording reasonable discretion to the exchanges—provides flexibility as electronic trading practices evolve, while maintaining sound regulation. In sum, it recognizes that things will have to change if we want things to stay as they are.[11]

Appendix 3—Supporting Statement of Commissioner Brian D. Quintenz

I support today's final rule requiring designated contract markets (DCMs) to adopt rules that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. It also requires DCMs to subject all electronic orders to pre-trade risk controls that are reasonably designed to prevent, detect and mitigate market disruptions having a ''material'' effect on its participants

[8] Tarbert, Heath P., ''Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation,'' Harv. Bus. L. Rev., Vol. 10 (June 15, 2020), available at *https://www.hblr.org/volume-10-2019-2020/*.

[9] CFTC Staff conduct regular examinations and reviews of our registered entities, including exchanges and clearinghouses. As part of those examinations and reviews, Staff may identify issues of material non-compliance with regulations as well as recommendations to bring an entity into compliance. Ultimately, however, the Commission itself must accept an examination report or rule enforcement review report before it can become final, including any findings of non-compliance. Likewise, Staff are asked to make recommendations regarding license applications, reviews of new products and rules, and a variety of other Commission actions, although ultimate authority lies with the Commission.

[10] Tarbert, at 11–17.

[11] Di Lampedusa, at 22.

and to provide prompt notice to the Commission in the event the platform experiences any material market disruptions that meet a higher threshold of being ''significant''.

I believe all DCMs have already adopted regulations and pre-trade risk controls designed to address the risks posed by electronic trading. As I have noted previously, many—if not all—of the risks posed by electronic trading are already being effectively addressed through the market's incentive structure, including exchanges' and firms' own self-interest: DCMs through their interest in operating markets with integrity, and firms through their interest in not exposing their or their customers' funds to huge losses in a matter of minutes through algorithmic operational error. Both exchanges and firms have been leaders in implementing best practices around electronic trading risk controls. Therefore, today's final rule merely codifies principles underlying existing market practice of DCMs to have reasonable controls in place to mitigate electronic trading risks.

Significantly, the final rule puts forth a principles-based approach, allowing DCM trading and risk management controls to continue to evolve with the trading technology itself. As we have witnessed over the past decade, risk controls are constantly being updated and improved to respond to market developments. In my view, these continuous enhancements are made possible because exchanges and firms have the flexibility and incentives to evolve and hold themselves to an ever-higher set of standards, rather than being held to a set of prescriptive regulatory requirements which can quickly become obsolete. By adopting a principles-based approach, the final rule provides exchanges and market participants with the flexibility they need to innovate and evolve with technological developments. DCMs are well-positioned to determine and implement the rules and risk controls most effective for their markets. Under the rule, DCMs are required to adopt and implement rules and risk controls that are objectively reasonable. The Commission would monitor DCMs for compliance and take action if it determines that the DCM's rules and risk controls are objectively unreasonable. Importantly, the Appendix to the final rule points out that a DCM will be held to a standard of reasonableness and not to how other DCMs implement the rule. Any horizontal review across DCMs of rules or risk controls would only inform objectively unreasonable determinations, not create a baseline set of specific risk controls that become de-facto regulatory requirements.

The Technology Advisory Committee (TAC), which I am honored to sponsor, has explored the risks posed by electronic trading at length. In each of those discussions, it has become obvious that both DCMs and market participants take the risks of electronic trading seriously and have expended enormous effort and resources to address those risks.

For example, at one TAC meeting, we heard how the CME Group has implemented trading and volatility controls that complement, and in some cases exceed, eight recommendations published by the International Organization of Securities Commissions (IOSCO) regarding practices to manage volatility and preserve orderly trading.[1] At another TAC meeting, the Futures Industry Association (FIA) presented on current best practices for electronic trading risk controls.[2] FIA reported that through its surveys of exchanges, clearing firms, and trading firms, it has found widespread adoption of market integrity controls since 2010, including price banding and exchange market halts. FIA also previewed some of the next generation controls and best practices currently being developed by exchanges and firms to further refine and improve electronic trading systems. The Intercontinental Exchange (ICE) also presented on the risk controls ICE currently implements across all of its exchanges, noting how its implementation of controls was fully consistent with FIA's best practices.[3] These presentations emphasize how critical it is for the Commission to adopt a principles-based approach that enables best practices to evolve over time.

I believe the final rule issued today adopts such an approach and provides DCMs with the flexibility to continually improve their risk controls in response to technological and market advancements. Because this rule allows for flexible implementation and effectively places that burden on the market participants with the most aligned and motivated interests, I believe this rule will stand the test of time and serve as a paradigm of the CFTC's mission statement: Sound regulation that promotes the integrity, resilience, and vibrancy of the U.S. derivatives market.

Appendix 4—Dissenting Statement of Commissioner Rostin Behnam

I would like to start by thanking DMO staff for their tireless work on this rule. While the Risk Principles are short, that is not reflective of the work that has been done by staff to produce them. This is the same DMO staff that worked on the much broader ''Regulation AT'',[1] and I appreciate all of their work over many years.

Last June, I stated in my dissent to the Electronic Trading Risk Principles proposal[2] that I strongly support thoughtful and *meaningful* policy that addresses the ever-increasing use of automated systems in our markets.[3] The proposal regarding Electronic Trading Risk Principles did not achieve this. Far from utilizing over a decade of experiences that should have profoundly shaped how we address operational risks that are consistently unpredictable and have wide-ranging impacts, today's final rule changes only a single word from the proposal aimed at codifying the status quo. Accordingly, I respectfully dissent.

A little over ten years ago, on May 6, 2010, the Flash Crash shook our markets.[4] The prices of many U.S.-based equity products, including stock index futures, experienced an extraordinarily rapid decline and recovery. In 2012, Knight Capital, a securities trading firm, suffered losses of more than $460 million due to a trading software coding error.[5] Other volatility events related to automated trading have followed with increasing regularity.[6] In September and October 2019, the Eurodollar futures market experienced a significant increase in messaging.[7] According to reports, the volume of data generated by activity in Eurodollar futures increased tenfold.[8] A lesson of these events is that under stressed market conditions, automated execution of a large sell order can trigger extreme price movements, and the interplay between automated execution programs and algorithmic trading strategies can quickly result in disorderly markets.[9]

Recent events further amplify that in increasingly interconnected markets, which are informed by growing access to real-time data and information, we do not always know how and where the next market stress event will materialize. This past April 20, the May contract for the West Texas Intermediate Light Sweet Crude Oil futures contract (the ''WTI Contract'') on the New York Mercantile Exchange settled at a price of -$37.63 per barrel. The May Contract's April 20 negative

[1] Meeting of the TAC on March 27, 2019, Automated and Modern Trading Markets Subcommittee Presentation, transcript and webcast available at, *https://www.cftc.gov/PressRoom/Events/opaeventtac032719.*

[2] Meeting of the TAC on Oct. 3, 2019, Automated and Modern Trading Markets Subcommittee Presentation, *https://www.cftc.gov/PressRoom/Events/opaeventtac100319.*

[3] *Id.*

[1] Regulation Automated Trading, Proposed Rule, 80 FR 78824 (Dec. 17, 2015); Supplemental Regulation AT NPRM, 81 FR 85334 (Nov. 25, 2016).

[2] Rostin Behnam, Commissioner, CFTC, Dissenting Statement of Commissioner Rostin Behnam Regarding Electronic Trading Risk Principles (June 25, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement062520b.*

[3] The Commission's Office of the Chief Economist has found that over 96 percent of all on-exchange futures trading occurred on DCMs' electronic trading platforms. Haynes, Richard & Roberts, John S., ''Automated Trading in Futures Markets—Update #2'' at 8 (Mar. 26, 2019), available at *https://www.cftc.gov/sites/default/files/2019-04/ATS_2yr_Update_Final_2018_ada.pdf.*

[4] *See* Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEF to the Joint Advisory Committee on Emerging Regulatory Issues (Sept. 30, 2010), available at *http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/staff-findings050610.pdf.*

[5] *See* SEC Press Release No. 2013–222, ''SEC Charges Knight Capital With Violations of Market Access Rule'' (Oct. 16, 2013), available at *http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539879795.*

[6] For a list of volatility events between 2014 and 2017, *see* the International Organization of Securities Commissions (''IOSCO'') March 2018 Consultant Report on Mechanisms Used by Trading Venues to Manage Extreme Volatility and Preserve Orderly Trading (''IOSCO Report''), at 3, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD607.pdf.*

[7] *See* Osipovich, Alexander, ''Futures Exchange Reins in Runaway Trading Algorithms,'' *Wall Street Journal* (Oct. 29, 2019), available at *https://www.wsj.com/articles/futures-exchange-reins-in-runaway-trading-algorithms-11572377375.*

[8] *Id.*

[9] *Id.* at 6.

settlement price was the first time the WTI Contract traded at a negative price since being listed for trading 37 years ago.

While the unusual fact that the price went significantly negative grabbed the headlines, the precipitousness of the price move was every bit as significant. The price dropped more than $39 between 2:10 and 2:30 p.m. on April 20. Overall, the price dropped $58.05 from the open of trading to its low on April 20, breaking its historical relationship with other petroleum-based contracts including the Brent Crude futures contract. The WTI price moved more in 20 minutes than it does most years. A contract that had never experienced a 10% move in a single day fell by more than 300% in a brief 20-minute period. All of the contributing factors have yet to be accounted for, but one thing is certain—these were stressed market conditions. An already oversupplied global crude oil market was hit with an unprecedented reduction in demand caused by the COVID–19 pandemic.[10] Under stressed market conditions, automated trading has the potential to quickly make an already volatile situation even worse.

Technology glitches have continued to impact our markets. Just yesterday, a large retail broker that was significantly impacted by the events of April 20 suffered a significant failure in data storage.[11] Recent technology glitches overseas have hampered our international colleagues as well, handcuffing markets for extended periods of time without clear explanation. In Japan this past September, the Tokyo Stock Exchange shut down for a day due to technical glitches in equities trading.[12] Luckily, this glitch happened to coincide with all other Asian markets being closed and occurred the day after the first Presidential debate. But this only emphasizes the outsized impact that a technical issue could have during volatile market conditions. One can imagine what would have happened if the glitch had occurred the day before, during the leadup to the debate.[13]

Just last month, Australia's stock exchange lost an entire day of trading due to a software problem impacting trading of multiple securities in a single order.[14] This discrete issue was enough to lead to inaccurate market data that necessitated shutting down the exchange for an entire trading day.[15]

As we consider today's final rule, there is a tendency to think that something is better than nothing, and that today's risk principles—if nothing else—demonstrate the Commission's belief that mitigating automated trading risk is important. However, I continue to question whether these Risk Principles improve upon the status quo, or even do anything of marginal substance relative to the status quo.[16]

The preamble seems to go to great lengths to make it clear that the Commission is not asking DCMs to do anything. The preamble states at the very outset that the ''Commission believes that DCMs are addressing most, if not all, of the electronic trading risks currently presented to their trading platforms.'' [17] The preamble presents each of the three Risk Principles as ''new'', but then goes on to describe all of the actions already taken by DCMs that meet the principles. If the appropriate structures are in place, and we have dutifully conducted our DCM rule enforcement reviews and have found neither deficiencies nor areas for improvement, then is the exercise before us today anything more than creating a box that will automatically be checked?

The only potentially new aspect of these Risk Principles is that the preamble suggests different application in the future, as circumstances change. As I said in regard to the proposal, the Commission seems to want it both ways: We want to reassure DCMs that what they do now is enough, but at the same time the new risk principles potentially provide a blank check for the Commission to apply them differently in the future.[18]

We do not know what the next external event to stress market conditions will be, but one likely possibility is climate change. In establishing new rules for automated trading, I would have liked the Commission to have taken a more fulsome look at both the events of April 20, the COVID–19 pandemic more broadly, and the potential impacts of climate change on our automated markets. The recently published Interim Staff Report on the events of April 20 provides a stark example of what can happen to automated markets under times of economic stress.

The April 20 price plummet triggered both dynamic circuit breakers and velocity logic—exactly the type of risk controls discussed in the proposal that preceded the Electronic Trading Risk Principles proposal, commonly referred to as ''Regulation AT.'' Regulation AT was formally withdrawn at the Chairman's direction and without my support. Further troubling, it was withdrawn before Commission staff had any meaningful opportunity to consider whether and how the risk controls in either Regulation AT or the Electronic Trading Risk Principles as proposed performed during trading around April 20. There was arguably no better test case, and yet we charged forward without looking back. If the risk controls were effective, we should consider whether more specific risk controls along these lines should be part of the Electronic Trading Risk Principles, in order to be certain that all DCMs are prepared to maintain orderly trading during such a confluence of events. If they are not, we should consider whether stronger risk controls are necessary.

I also think the Risk Principles would be improved if they were informed by a consideration of the possible impacts of climate change. The preamble states ''The principles-based approach provides DCMs with flexibility to address risks to markets as they evolve, including any idiosyncratic events.'' Referring to events such as climate change as ''idiosyncratic'' downplays their impact and places regulators and DCMs in a purely reactive posture. While we cannot know for certain what the next external event that causes stressed market conditions will be, that does not mean that we should remain idle until it hits. As we will continue to experience unanticipated and unprecedented events that will impact our markets and the larger U.S. economy, I am concerned that a policy of simply checking a box will do nothing more than shield DCMs from public scrutiny and fault for the fallout.

So often we hear that the markets have evolved from a technological and innovative standpoint at an exponential rate as compared to their regulators. Rulemakings like this provide our greatest opportunity to proactively close that gap. We need to be proactive. Being proactive means studying the incidents of the past, like the Flash Crash, Knight Capital, and most recently April 20 so that we can recognize the precursors of events to come. Instead of just reacting, we can predict, prepare for, and possibly prevent the next crisis event.

Again, while there is a temptation to advance this rule under the theory that something is better than nothing, in this case I do not think that the final rules add anything at all beyond the opportunity to take a victory lap. In other words, the theme in this case is that nothing is better than something. I believe that we can, and should, do better. Therefore, I cannot support today's final rule.

Appendix 5—Supporting Statement of Commissioner Dawn D. Stump

As I observed when we proposed these risk principles last summer, it is a simple fact that the markets we regulate have become increasingly electronic (much like everything else in our modern lives). The rulemaking that we are now adopting appropriately recognizes that market infrastructure providers have already implemented a host of measures pursuant to our existing regulations and their own self-regulatory responsibilities to account for the associated risks that inherently come with the development of electronic trading. I do not want our adoption of additional Commission risk principles regarding electronic trading on designated contract markets (''DCMs'') to be taken as an indication that adequate attention is not being paid—or that insufficient resources are being invested—by the exchanges to address the lessons that have already been learned and applied over many years as electronic trading has become more prevalent in these markets.

I also want to stress the significance of the often-overlooked direction we have received from Congress in Section 3 of the Commodity

[10] Interim Staff Report, Trading in NYMEX WTI Crude Oil Futures Contract Leading Up to, on, and around April 20, 2020 (Nov. 23, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8315-20.*

[11] *See* Platt and Stafford, ''Trading Outages Strike Again for US Retail Brokers,'' *Financial Times* (Dec. 7, 2020), available at *https://www.ft.com/content/cb99dc6f-a73e-41af-91fb-21a4aa606265.*

[12] *See* Dooley, Ben, ''Tokyo Stock Market Halts Trading for a Day, Citing Glitch,'' *The New York Times* (Sep. 30, 2020), available at *https://www.nytimes.com/2020/09/30/business/tokyo-stock-market-glitch.html.*

[13] *Id.*

[14] *See* ''Software Glitch Halts Trading on Australia's Stock Exchange, to Reopen Tuesday,'' *Reuters* (Nov. 15, 2020), available at *https://www.reuters.com/article/us-asx-trading/software-glitch-halts-trading-on-australias-stock-exchange-to-reopen-tuesday-idUSKBN27W020.*

[15] *Id.*

[16] *See* Behnam, *supra* note 2.

[17] Final Rule at 4.

[18] *See* Behnam, *supra* note 2.

Exchange Act (''CEA'').[1] Section 3(a) sets out Congress's *finding* that the transactions subject to the CEA are affected with a national public interest. Then, in Section 3(b), Congress stated that it is the *purpose* of the CEA to serve this public interest ''through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.''

I support adopting these electronic trading risk principles as an appropriate exercise of the Commission's oversight that Congress expects from us, as stated in Section 3(b) of the CEA. While, as noted, I do not question the exchanges' diligence in addressing the risks in electronic trading on their platforms, I am comfortable incorporating these principles into our existing rule set in order to make clear that DCMs must continue to monitor these risks as they evolve along with the markets, and make reasonable modifications as appropriate.

Importantly, though, I also support the principles-based approach of these final rules. This approach recognizes that the front-line responsibility for preventing, detecting, and mitigating material risks posed by electronic trading rests with the exchanges themselves. The exchanges are best positioned to execute this responsibility because they have the best knowledge of the trading that occurs on their own markets. At the same time, this approach serves the public interest through a system of effective self-regulation of trading facilities—precisely as Congress directed in its statement of purpose in Section 3(b) of the CEA.

I thank and commend the Staff for the time and energy they have put into the preparation of this rulemaking, and for the thoughtful consideration they have given to these issues over the course of the past several years.

Appendix 6—Statement of Commissioner Dan M. Berkovitz

I support today's final rule on Electronic Trading Risk Principles (''Final Rule''). The Final Rule addresses market disruptions associated with electronic trading through limited requirements applicable directly to designated contract markets (''DCMs'') and indirectly to DCM market participants. It is an incremental step that can enhance the safety and soundness of electronic trading on U.S. exchanges. I look forward to the continuing evolution of trading in our markets, and to the Commission's steady engagement with the technology and risk controls of modern trading to determine whether more may be needed in the future.

I am able to support the Final Rule because it recognizes the role of both DCMs and market participants in preventing and mitigating market disruptions, as well as the ultimate responsibility and authority of the Commission to oversee the actions of our market infrastructures and market participants. The Final Rule codifies three ''Risk Principles,'' including new requirements in Risk Principle 1 that DCMs implement rules governing their market participants to prevent, detect, and mitigate market disruptions and system anomalies.[1] This provision, codified in Commission regulation 38.251(e), speaks directly to new risk-reducing practices and may be the most helpful of the three Risk Principles.

Market participants originate, place, and manage orders on DCMs though an array of systems that vary in sophistication and automation. Experience teaches that errors in the design, testing, implementation, operation, or supervision of such systems by a single market participant can lead to cascading effects that disrupt an entire market and the ability of all market participants to engage in price discovery and risk mitigation. Accordingly, it is crucial that market participants, DCMs, and the Commission implement and enforce the Risk Principles in meaningful ways going forward.[2]

The Commission's efforts in this regard may be aided by Risk Principle 3, which requires DCMs to ''promptly notify Commission staff of any significant market disruptions'' and ''provide timely information on the causes and remediation.''[3] I support Commission efforts to remain up-to-date as technologies evolve, new potential sources of market disruptions arise, and best practices for safeguarding markets are developed. Information provided to the Commission through Risk Principle 3 will strengthen the Commission's daily oversight of DCMs, and help educate the Commission and its staff as to the most effective risk-reducing measures.

I am also able to support the Final Rule because it recognizes and preserves the Commission's authority to interpret and enforce the standards in the Risk Principles, and because it clarifies that Risk Principles 1 and 2 are intended to address any type of market disruption arising from market participants or electronic orders that materially affects electronic trading. I thank the Chairman for working with my office to achieve these enhancements to the Final Rule.

The Final Rule includes Acceptable Practices in Appendix B to part 38 providing that a DCM can comply with Risk Principles 1 and 2 through rules and pre-trade risk controls that are ''reasonably designed'' to prevent, detect, and mitigate market disruptions and system anomalies. While legitimate concerns have been raised that these terms could lend themselves to excessive disputes over interpretation, the Final Rule makes clear that they are subject to an objective standard and Commission oversight. It notes specifically that ''[t]he Commission will oversee and enforce the Risk Principles in accordance with an objective reasonableness standard[,]'' and that the Risk Principles are ''enforceable regulations.''[4] I am pleased that the Final Rule clearly articulates the seriousness with which the Commission will monitor and enforce the Risk Principles.

The Final Rule also makes clear that while Risk Principle 3 addresses ''significant'' market disruptions, Risk Principles 1 and 2 include the broader set of ''material'' disruptions. As stated in the Final Rule, ''the standard for a significant market disruption under Risk Principle 3 is higher than the standard for a market disruption under Risk Principles 1 and 2.'' Markets and market participants will benefit from the Commission's decision to resolve this potential ambiguity in the proposed rule and to implement a rigorous standard for Risk Principles 1 and 2.

Today's Final Rule addresses an issue that has remained open in the Commission's books for far too long. Electronic trading is no longer a new technology in Commission-regulated markets, and it has not been new for many years. The Risk Principles are a circumscribed but important first step in ensuring that the Commission's rules keep pace with technological changes underlying derivatives trading. The Commission must now proceed to full, effective implementation of the Risk Principles and to oversight of DCMs' own implementations. I support these efforts, combined with continued vigilance to determine whether additional steps may be needed in the future.

In the preamble to the Final Rule, the Commission stresses the potential benefits of the principles-based approach embodied in the Risk Principles. My support for the principles-based approach in this particular rulemaking, however, should not be interpreted as an endorsement of such a broad principles-based approach in other circumstances, or foreclose my support for more prescriptive measures should they become necessary with respect to risk

[1] CEA Section 3, 7 U.S.C. 5.

[1] In addition, Risk Principle 2 requires DCMs to subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. Risk Principle 2 overlaps with existing Commission regulations, including § 38.255, which requires DCMs to ''establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions.'' DCMs should help drive an effective implementation of Risk Principle 2 by carefully examining their existing pre-trade risk controls and ensuring that such controls are fit for the types of market participants, technologies, and trading practices prevalent on their markets.

[2] I appreciate the concerns raised by some commenters that the Risk Principles may be imprecise, difficult to enforce, or provide too much deference to DCMs. As discussed below, the Final Rule helps mitigate some of these concerns by emphasizing that the Risk Principles are an objective standard and enforceable rules subject to Commission oversight. The Commission will be able to monitor DCMs' compliance with the Risk Principles through its DCM rule enforcement review program, as well as other oversight activities including review of new rule certifications, review of market disruption notifications received pursuant to Risk Principle 3, market surveillance, and other oversight tools.

[3] Risk Principle 3 is codified in new Commission regulation 38.251(g).

[4] As I articulated in my statement when the Risk Principles were first proposed, the Dodd-Frank Act amended the Commodity Exchange Act to make clear that a DCM's discretion with respect to core principle compliance is circumscribed by any rule or regulation that the Commission might adopt pursuant to a core principle. In today's Final Rule, the Commission is requiring DCMs to adopt and implement rules and pre-trade risk controls that are ''reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.''

controls. Although the markets overseen by the Commission have benefitted from the flexibility of a principles-based approach in a number of areas, in other circumstances a more prescriptive approach has provided the market with needed clarity and certainty. The appropriate choice or balance between prescriptive regulations and principles-based regulations will depend upon the circumstances being addressed by those regulations.

Whether this rulemaking will fully accomplish its objectives will depend to a large extent upon the diligence and commitment to its implementation by DCMs and market participants. If DCMs and market participants comprehensively adopt and maintain industry best practices to prevent, detect, and mitigate market disruptions and system anomalies, as well as develop and implement measures to address emerging issues as they arise, then further prescriptive action by the Commission may not be necessary.

I thank the staff of the Division of Market Oversight for their work to address a number of my concerns with the Final Rule, as well as their overall work on the Final Rule.

[FR Doc. 2020–27622 Filed 1–5–21; 11:15 am]

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Part III

Securities and Exchange Commission

17 CFR Parts 210, 229, *et al.*

Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, and 249

[Release No. 33–10890; 34–90459; IC–34100; File No. S7–01–20]

RIN 3235–AM48

Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S–K. Specifically, we are eliminating the requirement for Selected Financial Data, streamlining the requirement to disclose Supplementary Financial Information, and amending Management's Discussion & Analysis of Financial Condition and Results of Operations (''MD&A''). These amendments are intended to eliminate duplicative disclosures and modernize and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants.

DATES:

Effective date: The final rules are effective February 10, 2021.

Compliance date: See Section II.F for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Angie Kim, Special Counsel, Office of Rulemaking, at (202) 551–3430, or Ryan Milne, Associate Chief Accountant, Office of the Chief Accountant, at (202) 551–3400 in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference	CFR citation (17 CFR)
Regulation S–X	§§ 210.1–01 through 210.13–02.
Item 1–02(bb)	§ 210.1–02(bb).
Regulation S–K	§§ 229.10 through 229.1406.
Item 10	§ 229.10.
Item 301	§ 229.301.
Item 302	§ 229.302.
Item 303	§ 229.303.
Item 914	§ 229.914.
Regulation AB	§§ 229.1100 through 229.1125.
Item 1112	§ 229.1112.
Item 1114	§ 229.1114.
Item 1115	§ 229.1115.
Securities Act of 1933 [1] (''Securities Act'')	
Rule 419	§ 230.419.
Form S–1	§ 239.11.
Form S–20	§ 239.20.
Form S–4	§ 239.25.
Form F–1	§ 239.31.
Form F–4	§ 239.34.
Securities Exchange Act of 1934 [2] (''Exchange Act'')	
Rule 14a–3	§ 240.14a–3.
Schedule 14A	§ 240.14a-101.
Form 20–F	§ 249.218.
Form 40–F	§ 249.220f.
Form 8–K	§ 249.308.
Form 10–K	§ 249.310.
Securities Act and Investment Company Act of 1940 [3] (''Investment Company Act'')	
Form N–2	§§ 239.14 and 274.11a–1.

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*
[3] 15 U.S.C. 80a–1 *et seq.*

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I. Introduction

A. Background

On January 30, 2020, the Commission proposed amendments to Regulation S–K,[4] and related rules and forms to: (1) Eliminate Item 301, Selected Financial Data and Item 302, Supplementary Financial Information; and (2) modernize, simplify, and enhance the disclosure requirements in Item 303, MD&A.[5] The Commission also proposed certain parallel amendments to financial disclosure requirements applicable to foreign private issuers (''FPIs'').[6] The proposed amendments were part of an ongoing, comprehensive evaluation of our disclosure requirements[7] and focused on modernizing and improving disclosure by reducing costs and burdens while continuing to provide investors with all material information.

Many commenters supported the objectives of the proposed amendments or were generally in favor of the proposals.[8] We also received suggestions to modify or further consider aspects of the proposed amendments that commenters believed could be clarified or improved.[9] After reviewing and considering the public comments, we are adopting the majority of the amendments as proposed. As discussed further below, in certain cases, we are adopting the proposed rules with modifications that are intended to address comments received.

B. Overview of the Final Amendments

We are adopting changes to Items 301, 302, and 303 of Regulation S–K that would reduce duplicative disclosure and focus on material information. Our amendments:

- Eliminate Item 301 (Selected Financial Data); and
- Modernize, simplify, and streamline Item 302(a) (Supplementary Financial Information) and Item 303 (MD&A). Specifically, these amendments will:
  - Revise Item 302(a) to replace the current requirement for quarterly tabular disclosure with a principles-based requirement for material retrospective changes;
  - Add a new Item 303(a), *Objective,* to state the principal objectives of MD&A;
  - Amend Item 303(a), *Full fiscal years* (amended Item 303(b)) and Item 303(b), *Interim periods* (amended Item 303(c)) to modernize, clarify, and streamline the items;
  - Replace Item 303(a)(4), *Off-balance sheet arrangements,* with an instruction to discuss such obligations in the broader context of MD&A;
  - Eliminate Item 303(a)(5), *Tabular disclosure of contractual obligations,* and amend Item 303(b)(1), *Liquidity and Capital Resources,* to specifically require disclosure of material cash requirements from known contractual and other obligations as part of an enhanced liquidity and capital resources discussion; and
  - Add a new Item 303(b)(3), *Critical accounting estimates,* to clarify and codify Commission guidance on critical accounting estimates.[10]

We are also adopting certain parallel amendments to Forms 20–F and 40–F, including Item 3.A of Form 20–F (Selected Financial Data), Item 5 of Form 20–F (Operating and Financial Review and Prospects), General Instruction B.(11) of Form 40–F (Off-Balance Sheet Arrangements), and General Instruction B.(12) of Form 40–F (Tabular Disclosure of Contractual Obligations).[11] The following table summarizes some of the changes we are adopting, as described more fully in Section II (Final Amendments):[12]

[4] 17 CFR 229.10 through 229.1406.

[5] *See* Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Release No. 33–10750 (Jan. 30, 2020) [85 FR 12068 (Feb. 28, 2020)] (the ''Proposing Release'').

[6] An FPI is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents; and (2) any of the following: (i) A majority of its executive officers or directors are citizens or residents of the United States; (ii) more than 50% of its assets are located in the United States; or (iii) its business is principally administered in the United States. *See* 17 CFR 230.405. *See also* 17 CFR 240.3b–4(c).

[7] *See* Proposing Release at Section I.A.

[8] Comment letters for the Proposing Release are *available at https://www.sec.gov/comments/s7-01-20/s70120.htm.* Unless otherwise indicated, comment letters cited in this release are to the Proposing Release. In addition, the SEC's Investor Advisory Committee adopted recommendations (''IAC Recommendation'') with respect to the proposal and other disclosure matters, asking the Commission and staff to: Reconsider whether to permit all companies to omit fourth quarter information from annual reports; closely monitor accounting developments relating to reverse factoring; continue to monitor the use of non-GAAP measures by reporting companies; and reconsider whether to permit omission of the tabular contractual obligations information in annual reports. *See* U.S. Securities & Exchange Commission Investor Advisory Committee, Recommendation of the SEC Investor Advisory Committee Relating to Accounting and Financial Disclosure (May 21, 2020), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/accounting-and-financial-disclosure.pdf. See also* letter from the Investor-as-Owner Subcommittee of the SEC Investor Advisory Committee dated April 27, 2020.

[9] In addition, some commenters provided input addressing whether there is a need for additional disclosure requirements relating to environmental, social, or governance issues (''ESG'') and sustainability matters. *See* letters from RSM US LLP dated April 20, 2020 (''RSM''); Edison Electric Institute and American Gas Association dated April 28, 2020 (''EEI & AGA''); U.S. Chamber of Commerce's Center for Capital Markets Competitiveness dated May 4, 2020 (''Chamber''); Principles for Responsible Investment dated April 28, 2020; Institute for Policy Integrity, New York University School of Law dated April 28, 2020; E. Warren, United States Senator dated April 28, 2020; Center for Audit Quality dated April 28, 2020 (''CAQ''); Ernst & Young, LLP dated April 28, 2020 (''E&Y''); The Forum for Sustainable and Responsible Investment dated June 17, 2020. These commenters reflected a range of views. For example, some commenters broadly supported the establishment of comprehensive ESG disclosure requirements, while others recommended prescriptive line-item requirements specifically addressing climate risk disclosures. Other commenters asserted that the existing disclosure principles in Regulation S–K are sufficient to elicit disclosure of material information and objected to new rules that would require all registrants to include topic-specific disclosure on ESG and sustainability matters irrespective of the applicability to registrants' particular operations and finances. In keeping with the Commission's principles-based approach to MD&A, we are not adding any new requirements to Item 303 with respect to ESG or sustainability matters, and continue to emphasize the Commission's existing guidance on these topics. *See* Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33–9106 (Feb. 8, 2010) [75 FR 6290 (Feb. 8, 2010)].

[10] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation,* Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)] (the ''2003 MD&A Interpretive Release'').

[11] We discuss the amendments that affect FPIs in Section II.D *infra.* We are adopting corresponding changes for FPIs to all items, except for Items 302(a) and 303(b).

[12] The information in this table is not comprehensive and is intended only to highlight

Continued

Current item or issue	Summary description of amended rules	Principal objective(s)	Discussed below in section
Item 301, *Selected financial data*.	Registrants will no longer be required to provide 5 years of selected financial data.	Modernize disclosure requirement in light of technological developments and simplify disclosure requirements.	II.A.
Item 302(a), *Supplementary financial information*.	Registrants will no longer be required to provide 2 years of tabular selected quarterly financial data. The item will be replaced with a principles-based requirement for material retrospective changes.	Reduce repetition and focus disclosure on material information. Modernize disclosure requirement in light of technological developments.	II.B.
Item 303(a), *MD&A*	Clarify the objective of MD&A and streamline the fourteen instructions.	Simplify and enhance the purpose of MD&A	II.C.1.a.
Item 303(a)(2), *Capital resources*.	Registrants will need to provide material cash requirements, including commitments for capital expenditures, as of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.	Modernize and enhance disclosure requirements to account for capital expenditures that are not necessarily capital investments.	II.C.2 and II.C.7.
Item 303(a)(3)(ii), *Results of operations*.	Registrants will need to disclose known events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments.	Clarify item requirement by using a disclosure threshold of ''reasonably likely,'' which is consistent with the Commission's interpretative guidance on forward-looking statements.	II.C.3.
Item 303(a)(3)(iii), *Results of operations*.	Clarify that a discussion of material *changes* in net sales or revenue is required (rather than only material *increases*).	Clarify MD&A disclosure requirements by codifying existing Commission guidance.	II.C.4.
Item 303(a)(3)(iv), *Results of operations*. Instructions 8 and 9 ..... (Inflation and price changes)	The item and instructions will be eliminated. Registrants will still be required to discuss these matters if they are part of a known trend or uncertainty that has had, or the registrant reasonably expects to have, a material favorable or unfavorable impact on net sales, or revenue, or income from continuing operations.	Encourage registrants to focus on material information that is tailored to a registrant's businesses, facts, and circumstances.	II.C.5.
Item 303(a)(4), *Off-balance sheet arrangements*.	The item will be replaced by a new instruction to Item 303. Under the new instruction, registrants will be required to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on such registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources even when the arrangement results in no obligation being reported in the registrant's consolidated balance sheets.	Prompt registrants to consider and integrate disclosure of off-balance sheet arrangements within the context of their MD&A.	II.C.6.
Item 303(a)(5), *Contractual obligations*.	Registrants will no longer be required to provide a contractual obligations table. A discussion of material contractual obligations will remain required through an enhanced principles-based liquidity and capital resources requirement focused on material short- and long-term cash requirements from known contractual and other obligations.	Promote the principles-based nature of MD&A and simplify disclosures.	II.C.7 and II.C.2.

some of the more significant aspects of the final amendments. It does not reflect all of the amendments or all of the rules and forms that are affected. All changes are discussed in their entirety below. As such, this table should be read together with the referenced sections and the complete text of this release.

Current item or issue	Summary description of amended rules	Principal objective(s)	Discussed below in section
Instruction 4 to Item 303(a) ..... (Material changes in line items)	Incorporate a portion of the instruction into amended Item 303(b). Clarify in amended Item 303(b) that where there are material changes in a line item, including where material changes within a line item offset one another, disclosure of the underlying reasons for these material changes in quantitative and qualitative terms is required.	Enhance analysis in MD&A. Clarify MD&A disclosure requirements by codifying existing Commission guidance on the importance of analysis in MD&A.	II.C.1.b.
Item 303(b), *Interim periods*	Registrants will be permitted to compare their most recently completed quarter to either the corresponding quarter of the prior year or to the immediately preceding quarter. Registrants subject to Rule 3–03(b) of Regulation S–X will be afforded the same flexibility.	Allow for flexibility in comparison of interim periods to help registrants provide a more tailored and meaningful analysis relevant to their business cycles.	II.C.9.
Critical Accounting Estimates	Registrants will be explicitly required to disclose critical accounting estimates.	Facilitate compliance and improve resulting disclosure. Eliminate disclosure that duplicates the financial statement discussion of significant policies. Promote meaningful analysis of measurement uncertainties.	II.C.8.

We discuss the final amendments below in the order that each Item appears in Regulation S–K.

II. Description of the Final Amendments

A. Selected Financial Data (Item 301)

1. Proposed Amendments

Current Item 301 [13] requires registrants to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading. Instruction 1 to Item 301 states that the purpose of the item is to supply in a convenient and readable format selected financial data that highlights certain significant trends in the registrant's financial condition and results of operations. Instruction 2 to Item 301 lists specific items that must be included, subject to appropriate variation to conform to the nature of the registrant's business, and provides that registrants may include additional items they believe would enhance an understanding of, and highlight, other trends in their financial condition and results of operations.[14]

Smaller reporting companies [15] are not required to provide Item 301 information.[16] Emerging growth companies (''EGCs'') [17] that are providing the information called for by Item 301 in a Securities Act registration statement need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's initial public offering (''IPO'') of its common equity securities.[18] In addition, an EGC that is providing the information called for by Item 301 in a registration statement, periodic report, or other report filed under the Exchange Act need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with its first registration statement that became effective under the Exchange Act or Securities Act.[19]

The Commission proposed to eliminate Item 301 in part because of advances in technology since the item's adoption in 1970 that allow for easy access to the information required by this item on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').[20] The Commission also noted that Item 301 was originally intended to elicit disclosure of material trends and that requiring five years of selected financial data is not necessary to achieve this because of the requirement for discussion and analysis of trends in Item 303.[21]

2. Comments

Commenters broadly supported the proposals.[22] A few commenters stated that Item 301 creates additional complexity or costs when evaluating whether to recast earlier years or when

[13] *See also infra* Section II.D for a discussion of related amendments to Form 20–F.

[14] Instruction 2 to Item 301 of Regulation S–K states that, subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the table of financial data: Net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock); and cash dividends declared per common share.

[15] Item 10(f)(1) of Regulation S–K defines a smaller reporting company (''SRC'') as a registrant that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not an SRC that: Had a public float of less than $250 million; or had annual revenues of less than $100 million, and had either no public float or a public float of less than $700 million. Business development companies (''BDCs'') do not fall within the SRC definition and are a type of closed-end investment company that is not registered under the Investment Company Act.

[16] Item 301(c) of Regulation S–K [17 CFR 229.301(c)].

[17] An EGC is defined as a company that has total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: Its total annual gross revenues are $1.07 billion or more; it has issued more than $1 billion in non-convertible debt in the past three years; or it becomes a ''large accelerated filer,'' as defined in Exchange Act Rule 12b–2. *See* Securities Act Rule 405 and Exchange Act Rule 12b–2.

[18] Item 301(d)(1) of Regulation S–K [17 CFR 229.301(d)(1)].

[19] Item 301(d)(2) of Regulation S–K [17 CFR 229.301(d)(2)].

[20] *See* Proposing Release at Section II.A.

[21] *See* Proposing Release at Section II.A.

[22] *See, e.g.,* letters from PriceWaterhouseCoopers LLP dated April 23, 2020 (''PWC''); Pfizer, Inc. dated April 24, 2020 (''Pfizer''); Eli Lilly and Company dated April 24, 2020 (''Eli Lilly''); EEI and AGA; KPMG LLP dated April 28, 2020 (''KPMG''); CAQ; FedEx dated April 28, 2020 (''FedEx''); Nasdaq, Inc. dated April 28, 2020 (''Nasdaq''); Nareit dated April 28, 2020 (''Nareit''); Financial Executives International dated April 28, 2020 (''FEI''); SIFMA dated April 28, 2020 (''SIFMA''); Institute of Management Accountants dated April 28, 2020 (''IMA''); E&Y; UnitedHealth Group dated April 28, 2020 (''UnitedHealth''); Medtronic dated April 29, 2020 (''Medtronic''); Chamber; ABA Business Law Section dated June 5, 2020 (''ABA''); Society for Corporate Governance dated June 22, 2020 (''Society'').

recasting earlier years, such as when there is a new accounting standard or change in business.[23] For example, one commenter stated that the costs of providing the earlier two years can be significant and elaborated that these costs include: Internal costs to prepare any restatement and disclosures; implementation of internal controls; and external costs such as legal and audit fees.[24] Another commenter stated that it recently disposed of a portion of its business and revising the full five years under Item 301 was difficult and time consuming, and it believed that the disclosure was not useful to investors.[25]

Some commenters opposed the proposal and recommended retaining this item.[26] These commenters suggested that eliminating the item would increase the time and costs for investors to obtain the same disclosure through other means.[27] Some of these commenters also stated that eliminating Item 301 would result in the loss of disclosure, noting specifically the loss of the earlier two years where a corporation discontinues its operations, changes its accounting standards, or otherwise materially restates prior period results.[28] A few commenters also expressed the view that the proposal would negatively impact trend disclosure, especially for the full five years, because, in their observation, registrants do not typically provide this disclosure despite requirements in Item 303 and Commission guidance calling for it.[29] These commenters stated that they ''have not noted [trend] disclosure being provided by registrants in MD&A to any significant extent, and have certainly not seen evidence of this type of disclosure encompassing a full five-year trend analysis.'' [30]

A few commenters, while not objecting to the proposed elimination of the item, recommended continued consideration of investor input as to the overall utility of Item 301.[31] One of these commenters stated that many registrants disclose trends for the periods covered by the financial statements, and if Item 303 is intended to elicit five-year trend disclosure, Item 303 should be clarified to make this objective clear.[32]

3. Final Amendments

We are adopting the amendments to eliminate Item 301 as proposed. We agree with commenters that the earlier two years required by Item 301 can create additional costs and complexity. We acknowledge the input of some commenters that the earlier two years required by Item 301 can help illustrate material trends. However, this disclosure is typically available in prior filings on EDGAR.[33] We also continue to believe that the disclosures required by Item 303 should continue to elicit material trend disclosure. Item 303 currently requires disclosure of trend data,[34] and will continue to require this information under the amendments,[35] and we reiterate Commission guidance that has emphasized the importance of this disclosure in MD&A.[36] In light of these requirements, we do not anticipate that eliminating Item 301 will discourage trend disclosure or otherwise reduce disclosure of material trends. We acknowledge commenters that stated that our amendments may increase the time and costs to investors to obtain historical disclosures elsewhere. However, we expect that these search costs are likely to decrease over time as investors adjust to new disclosure formats.[37]

Notwithstanding the amendments to eliminate Item 301, we encourage registrants to consider whether trend information for periods earlier than those presented in the financial statements may be necessary as part of MD&A's objective to ''provide material information relevant to an assessment of the financial condition and results of operations.'' [38] We also encourage registrants to consider whether a tabular presentation of relevant financial or other information, as part of an introductory section or overview, including to demonstrate material trends, may help a reader's understanding of MD&A.[39]

This Commission guidance also states that registrants could benefit from adding an introductory section or overview. [40] Notwithstanding the amendments to eliminate Item 301, registrants should continue to consider whether such tabular disclosure as part of an introductory section or overview, including to demonstrate material trends, would be appropriate.

B. Supplementary Financial Information (Item 302)

1. Proposed Amendments

Current Item 302(a)(1) requires disclosure of selected quarterly financial data of specified operating results,[41] and current Item 302(a)(2) requires disclosure of variances in these results from amounts previously reported on a Form 10–Q.[42] Item 302(a) does not apply to SRCs or FPIs and, because it only applies to companies that already have a class of securities registered under Section 12 of the Exchange Act at the time of filing, it does not apply to first-time registrants conducting an IPO and registrants that are only required to file reports pursuant to Section 15(d) of the Exchange Act.[43] When Item 302(a) applies, it requires certain information

[23] *See, e.g.,* letters from Eli Lilly; EEI & AGA; FEI.

[24] *See* letter from FEI.

[25] *See* letter from Eli Lilly.

[26] *See, e.g.,* letters from NASAA dated April 28, 2020 (''NASAA''); California Public Employees' Retirement Systems dated April 28, 2020 (''CalPERS''); CFA Institute and Council of Institutional Investors dated April 28, 2020 (''CFA & CII''); Dan Jamieson dated May 1, 2020 (''D. Jamieson'').

[27] *See id.*

[28] *See* letters from NASAA (observing loss of information where there is a change in accounting standard or restatement, noting that in both scenarios the lost disclosure would be particularly significant); CFA & CII (observing loss of information where there are discontinued operations or restatements); D. Jamieson.

[29] *See* letters from CFA & CII; D. Jamieson.

[30] *See id.*

[31] *See* letters from Grant Thornton dated April 28, 2020 (''Grant Thornton'') (encouraging ''the SEC to continue outreach to investors on the overall utility of selected financial data and supplementary financial information prior to finalizing rulemaking in this area''); BDO USA, LLP dated April 28, 2020 (''BDO'') (stating its belief that ''investors are best positioned to provide feedback about whether the Selected Financial Data . . . should be eliminated or retained'').

[32] *See* letter from BDO.

[33] In addition, filings are generally available on registrants' websites and other third-party websites. We note that the elimination of Item 301 includes the exchange rate disclosure requirements for FPI's in Instruction 5 of Item 301. This is consistent with the Commission's prior removal of exchange rate data disclosure requirements in former Item 3.A.3 of Form 20–F, in which the Commission similarly cited the ready availability of exchange rate disclosure information on a number of websites as a basis for eliminating that requirement. *See* Disclosure Update and Simplification, Release No. 33–10532 (Aug. 17, 2018) [83 FR 38768 (Aug. 7, 2018)]. *Id.* at 107.

[34] *See, e.g.,* Item 303(a)(1) and (a)(2)(ii).

[35] *See, e.g.,* amended Item 303(a), Item 303(b)(1)(i), Item 303(b)(1)(ii)(B), and Item 303(b)(2)(ii).

[36] *See, e.g.,* 2003 MD&A Interpretive Release.

[37] *See infra* Section IV.C.2.a.

[38] *See* amended Item 303(b).

[39] *See* 2003 MD&A Interpretive Release at Section III.A.

[40] *See id.*

[41] Item 302(a)(1) of Regulation S–K [17 CFR 229.302(a)(1)]. Item 302(a)(1) specifies disclosure of: Net sales; gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered); income (loss) from continuing operations; per share data based upon income (loss) from continuing operations; net income (loss); and net income (loss) attributable to the registrant.

[42] Item 302(a)(2) of Regulation S–K [17 CFR 229.302(a)(2)]. When the data supplied pursuant to Item 302(a) varies from amounts previously reported on the Form 10–Q filed for any quarter, such as when a combination between entities under common control occurs or where an error is corrected, the registrant must reconcile the amounts given with those previously reported and describe the reason for the difference.

[43] Item 302(a)(5) and (c) of Regulation S–K [17 CFR 229.302(a)(5) and (c)].

for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are included or required by Article 3 of Regulation S–X.[44] Item 302(a)(3) requires a description of the effect of any discontinued operations and unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments that are material to the results of that quarter.[45] If a registrant's financial statements have been reported on by an accountant, Item 302(a)(4) requires that accountant to follow appropriate professional standards and procedures regarding the data required by Item 302(a).[46]

The Commission proposed to eliminate Item 302(a), intending to address the largely duplicative disclosures that result from this prescriptive requirement. However, the Commission recognized that, while most of the financial data required by Item 302(a) can be found in prior quarterly reports on EDGAR, the item requires separate disclosure of certain fourth quarter information, which is not otherwise required to be disclosed. The Commission also recognized that the proposal may result in the loss of the effect of a retrospective change in the earliest of the two years.[47] In the Proposing Release, the Commission stated that, where fourth quarter results are material or there is a material retrospective change, existing requirements, such as those in Item 303 would still elicit this disclosure.[48]

The Commission also proposed to eliminate Item 302(b) (Supplementary Financial Information—Information about Oil and Gas Producing Activities) due to overlap with a U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') requirement.[49]

2. Comments

The proposal generated a wide range of responses. Many commenters supported the proposal.[50] A number of these commenters suggested that fourth quarter information is easily derived, such as by subtracting the third quarter from year-to-date amounts [51] or is otherwise frequently disclosed in registrants' earnings releases.[52] Other commenters expressed the view that registrants would voluntarily present Item 302(a) disclosure absent a requirement.[53] One of these commenters, while supportive of the proposal, expressed concern about the loss of certain fourth quarter information and the effects of material retrospective changes.[54] This commenter recommended revising the instructions to Item 303 to require (i) a discussion of the fourth quarter in MD&A but only when this quarter differs materially from previously reported quarterly information and (ii) disclosure of material retrospective changes.

A number of commenters, however, opposed the proposal to eliminate Item 302(a).[55] All of these commenters suggested that a separate presentation of fourth quarter data is useful to investors,[56] with one of these commenters stating that for ''a significant number of companies, fourth quarter results cannot be derived from annual results.'' [57] A few of these commenters also questioned the cost savings, if any, to registrants if Item 302(a) were eliminated, stating that registrants already have the procedures in place to disclose this information.[58]

Several commenters opposing the proposal stated that eliminating Item 302(a) would result in either delays in the disclosure of retrospective revisions until the following Form 10–Q or a loss of disclosure on the effect of a retrospective change on the earliest of the two years for such revisions.[59] Some of these commenters questioned whether the loss of the fourth quarter data may be mitigated by disclosure elicited under Item 303 [60] and/or Accounting Standards Codification 270 (Interim Reporting).[61] One of these commenters expressed the view that registrants would voluntarily report fourth quarter data, but noted that eliminating Item 302(a) would result in investors losing the benefit of having an auditor review of the fourth quarter.[62] One of these commenters recommended that, if Item 302(a) were retained, the line items required for presentation be conformed to key subtotals in the registrant's interim statement of comprehensive income in order to eliminate the potential for inconsistencies between the item requirements and the registrant's financial statements.[63]

A few commenters, while not objecting to the proposed elimination of Item 302(a), recommended continued consideration of investor input on the utility of Item 302(a) before finalizing any rulemaking.[64] All of these commenters suggested revisions to provide for disclosure of material retrospective changes, either by revising Item 302(a),[65] or through revisions to Item 303.[66] Some commenters also recommended revising Item 302(a) to allow newly reporting registrants to exclude this data for interim periods prior to those presented in its IPO registration statement.[67]

Several commenters recommended coordinating with the Public Company Accounting Oversight Board (PCAOB) to clarify the requirement in Accounting Standard (AS) 4105.06, which requires auditors to review fourth quarter data where an annual report includes Item 302(a) disclosure.[68]

With respect to the proposal to eliminate Item 302(b), one commenter specified that it supported the

[44] Item 302(a)(1) and (a)(3) [17 CFR 229.302(a)(1) and (a)(3)].

[45] Item 302(a)(3) of Regulation S–K [17 CFR 229.302(a)(3)]. The requirement applies to items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included.

[46] Item 302(a)(4) of Regulation S–K [17 CFR 229.302(a)(4)].

[47] Because Item 302(a)(2) requires disclosure of variances in results from amounts previously reported for the two most recent fiscal years, the effect of a retrospective change in any quarter for which a Form 10–Q is filed in the more recent of the two fiscal years will be disclosed in the selected quarterly data. However, absent Item 302(a)(2), this variance would not be specifically required to be disclosed until the following year in the corresponding fiscal quarter in which the retrospective change occurred. Additionally, disclosure in the Form 10–Q for this corresponding fiscal quarter would not include the effects of this change in the earliest of the two years presented in the Form 10–K, as this Form 10–Q would be limited to the current and prior-year interim periods.

[48] *See* Proposing Release at Section II.B.1.

[49] *See* ASC 932–235–50. *See also* Proposing Release at Section II.B.2.

[50] *See, e.g.,* letters from PWC; Pfizer; Eli Lilly; EEI & AGA; KPMG; CAQ; FedEx; Nasdaq; Nareit; FEI; SIFMA; IMA; UnitedHealth; Medtronic; Chamber; ABA; Society.

[51] *See, e.g.,* letters from Eli Lilly; FEI; SIFMA; IMA; UnitedHealth; Medtronic; Society.

[52] *See* letter from UnitedHealth.

[53] *See* letters from KPMG; CAQ.

[54] *See* letter from ABA.

[55] *See, e.g.,* letters from E&Y; NASAA; CalPERS; CFA & CII; D. Jamieson. *See also* IAC Recommendation.

[56] *See id.*

[57] *See* IAC Recommendation.

[58] *See, e.g.,* letters from NASAA; CalPERS. *See also* IAC Recommendation.

[59] *See, e.g.,* letters from E&Y; CFA & CII; D. Jamieson. *See supra* footnote 47.

[60] *See* letters from E&Y; NASAA.

[61] *See* letter from E&Y.

[62] *See id.*

[63] *See* letter from E&Y.

[64] *See, e.g.,* letters from RSM; Grant Thornton; BDO.

[65] *See* letter from RSM.

[66] *See* letters from Grant Thornton (questioning whether current Item 303 would elicit this disclosure); BDO (stating that, if Item 303 is expected to elicit disclosure of material retrospective changes, this should be clarified in the item).

[67] *See* letters from Grant Thornton; E&Y.

[68] *See, e.g.,* letters from PWC; KPMG; CAQ; RSM; Grant Thornton; BDO; Deloitte & Touche, LLP dated April 28, 2020 (''Deloitte''). The text of AS 4105.06 is *available at https://pcaobus.org/Standards/Auditing/Pages/AS4105.aspx.*

proposal,[69] and no commenters specifically opposed the proposal.

3. Final Amendments

We are adopting amendments to Item 302(a), with modifications from what was proposed in response to comments received. Specifically, we are retaining the item and streamlining its requirements to require disclosure only when there are one or more retrospective changes that pertain to the statements of comprehensive income for any of the quarters within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S–X and that, individually or in the aggregate, are material.[70] Our amendments will require registrants to provide an explanation of the reasons for such material changes and to disclose, for each affected quarterly period and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income (as specified in Rule 1–02(bb)(ii) of Regulation S–X) and earnings per share reflecting such changes. The affected quarters may include, depending on the facts and circumstances, a single quarter in which the material retrospective change applies, or it may flow through to subsequent quarters during the relevant look-back period (*i.e.,* the quarters within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S–X).[71] Consistent with a commenter's suggestion,[72] we are amending Item 302(a) to refer to amended Rule 1–02(bb)(ii). This will link amended Item 302(a) to the summarized financial information related to the statements of comprehensive income specified in amended Rule 1–02(bb)(1)(ii) of Regulation S–X,[73] thereby providing registrants flexibility in the line items presented. We are also adopting amendments to Rule 1–02(bb), as proposed, to clarify that the disclosure of summary financial information may vary, as appropriate, to conform to the nature of the entity's business.[74] Lastly, our amendments retain all Item 302(a) references in our rules and forms.[75]

The final amendments do not revise the population of registrants that are not required to provide disclosure pursuant to Item 302(a),[76] including, but not limited to, first time registrants conducting an IPO or registrants that are only required to file reports pursuant to Section 15(d).

We continue to believe that requiring quarterly financial data when there have not been one or more retrospective changes that are material, either individually or in the aggregate, would duplicate disclosures provided elsewhere, such as in Forms 10–Q or, in the case of fourth quarter results, can be derived from annual results disclosed in the Form 10–K. Our amendments eliminate these duplicative disclosures. We do, however, agree with commenters that timely disclosure of the effects of material retrospective changes may be important to investors, and lack of such disclosure could impact the ability to derive fourth quarter information when there have been such changes. As discussed in the Proposing Release, Item 303 should elicit some disclosure where there has been a material retrospective change. However, we believe that the amended Item 302(a) disclosures will further aid investors' understanding of the reasons for the material retrospective change and the related quantitative effect on the quarterly periods affected. Accordingly, our amendments are intended to address this discrete area.

We also believe amended Item 302(a) will better highlight material retrospective changes, as disclosure will only be required where there are such changes, which may be important to investors. For this reason, we believe amended Item 302(a) may be important in the context of both Exchange Act and Securities Act forms and accordingly, are retaining requirements to provide disclosure pursuant to this item in these forms.[77] Further, by limiting the disclosure only to affected quarters, we believe the final amendments will balance the costs to registrants of preparing such disclosures, while providing investors with material information regarding the impact of material changes.

We acknowledge commenters who stated that, absent Item 302(a), fourth quarter results may not always be available or readily derived from annual results. We continue to believe that, in most instances, fourth quarter information can be readily derived from annual results, and as such, amended Item 302(a) does not generally require fourth quarter disclosure on a standalone basis.[78] Our amendments are intended to address the most common reason why fourth quarter data would not be easily calculable.

Additionally, and as some commenters stated, we expect that some registrants will voluntarily provide fourth quarter disclosure or disclosure of selected quarterly financial

[69] *See* letter from Chamber.

[70] Some examples of a retrospective change that may trigger Item 302(a) disclosure include: Correction of an error; disposition of a business that is accounted for as discontinued operations; a reorganization of entities under common control; or a change in an accounting principle. These examples are not intended to be an exhaustive list, and may not always be material such that disclosure would be required under amended Item 302(a). Further, not all changes in accounting principles would result in a retrospective change. For example, certain calendar year-end EGCs that elected to take advantage of the extended transition period for new or revised financial accounting standards in their initial public offerings, will adopt in accordance with U.S. GAAP ASC 842, *Leases* for the full fiscal year in their 2022 Form 10–K filed in 2023 and will not adopt ASC 842 in interim periods until the Forms 10–Q filed in 2023. We do not view the adoption of ASC 842 in the 2022 Form 10–K, in this scenario, to constitute a retrospective change that should trigger disclosure under Item 302(a) in the registrant's 2022 Form 10–K. By contrast, a registrant that loses EGC status as of December 31, 2022, would have a retrospective change that would require evaluation of materiality under Item 302(a) because the registrant would be required to adopt ASC 842 in the 2022 Form 10–K for both the full fiscal year and interim periods within that fiscal year.

[71] In the previous example of a registrant that loses EGC status, the affected quarters would include all four since the material retrospective change was as of January 1st.

[72] *See* letter from E&Y.

[73] Rule 1–02(bb)(1)(ii) generally refers to the same line items required by current Item 302(a).

[74] *See* Proposing Release at footnote 337.

[75] *See* discussion in Section II.E. *infra.*

[76] *See* amended Rule 302(a)(2).

[77] *See* discussion in Section II.E. *infra.*

[78] We acknowledge the view expressed in the IAC Recommendation regarding the ability to derive fourth quarter results based on the assessment described in their letter of selected net income data from the years 2010 through 2019. *See* IAC Recommendation. The information provided in the IAC Recommendation was not sufficient for us to replicate the referenced study, and the data and methodology were not otherwise in a publicly available source. Nevertheless, it appears that the data provided in the IAC Recommendation is not inconsistent with the staff's observations and conclusions regarding the ability to calculate fourth quarter data in most instances. Based on the information provided in the IAC Recommendation, assuming that the fewest number of companies studied (3,000) and the largest incidents of difference reported (300) occurred in the same year, it follows that there would have been no difference between reported and derived fourth quarter results for 90% of companies in such year. The data presented further suggests that, in the year where the greatest number of differences were observed between reported and derived fourth quarter results, 100 companies had less than a 1% difference and only 30 companies had a greater than 10% difference. We believe these findings are consistent with our view that in the substantial majority of cases, fourth quarter data is readily derivable. Based on our own observations and calculations, in most if not all instances, any differences that would cause fourth quarter data to not be derivable from year-end and third-quarter year-to-date results would be due to a retrospective change or changes. Under the final amendments, when there is a material retrospective change or changes, fourth quarter financial data would be required.

information. In such instances, that information would be subject to the PCAOB AS 2710 requirements for auditors to read and consider such information for material inconsistencies with the audited financial statements. These procedures are lesser in scope as compared to the review procedures required by AS 4105.06 that are to be performed on fourth quarter data when presented in an annual report pursuant to Item 302(a).[79]

In a change from current Item 302(a), amended Item 302(a) will apply beginning with the first filing on Form 10–K after the registrant's initial registration of securities under sections 12(b) or 12(g) of the Exchange Act.[80] We are making this change because we agree with commenters that it would be unnecessarily burdensome for registrants to provide disclosure for interim periods prior to those presented in an IPO registration statement.[81] Although some commenters suggested that disclosure should not be required for any quarterly periods not previously presented on a standalone basis, such as in a Form 10–Q,[82] we believe that such an approach would unduly delay disclosure of the impact of material retrospective changes. For this reason, and because the commenters' suggestions related primarily to current Item 302(a), which requires disclosure in every annual report, while amended Item 302(a) will require disclosure in more limited circumstances, we believe that it is appropriate to require newly reporting registrants to provide Item 302(a) disclosure, if applicable, beginning in their first Form 10–K. Nonetheless, when a new registrant has a material retrospective change to its year-to-date interim period information in its most recent registration statement, but has not yet disclosed that interim period information in quarterly increments, we would not object if Item 302(a) disclosures are presented for the affected year-to-date interim period and the fourth quarter in the affected year.[83]

Finally, we proposed to eliminate Item 302(b), disclosure of oil and gas producing activities, on the condition that the FASB finalize amendments to U.S. GAAP that would require incremental disclosure called for by Item 302(b). The FASB has not yet finalized the amendments, so we are retaining Item 302(b) and may reconsider the proposal in the future.

C. Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

Item 303 of Regulation S–K requires disclosure of information relevant to assessing a registrant's financial condition, changes in financial condition, and results of operations. The disclosure requirements for full fiscal years in Item 303(a) include five components: Liquidity, capital resources, results of operations, off-balance sheet arrangements, and contractual obligations.[84] Item 303(b) covers interim period disclosures and requires registrants to discuss material changes in the items listed in Item 303(a), other than the impact of inflation and changing prices on operations.[85] Item 303(c) acknowledges the application of a statutory safe harbor for forward-looking information provided in off-balance sheet arrangements and contractual obligations disclosures. Item 303(d) provides certain accommodations for SRCs.

The Commission proposed amendments to Item 303 of Regulation S–K that were intended to modernize, simplify, and enhance the MD&A disclosures for investors while reducing compliance burdens for registrants.[86] After consideration of the comments received, and as discussed in more detail below, amended Item 303 will provide the following:

- New Item 303(a) states the objectives of MD&A that will apply throughout amended Item 303. It also incorporates much of the substance of Instructions 1, 2, and 3 to current Item 303(a).
- Amended Item 303(b) provides the requirements for full fiscal year disclosure and comprises three main requirements:
  - Item 303(b)(1) provides the overarching requirements for liquidity and capital resources disclosures, and reflects an enhanced principles-based requirement focused on material short- and long-term cash requirements, including those from known contractual and other obligations. Items 303(b)(1)(i) and (ii) provide the specific disclosure requirements for liquidity and capital resources, respectively.
  - Item 303(b)(2) provides the requirements for results of operations disclosures, and includes minor amendments such as eliminating the current requirement to discuss the impact of inflation and changing prices where material; and
  - Item 303(b)(3), requires disclosure of critical accounting estimates, and largely clarifies and codifies Commission guidance in this area.
- The instructions to amended Item 303(b) have been streamlined, such as by eliminating unnecessary cross-references to industry guides, and replace the requirement for off-balance sheet arrangement disclosures (current Item 303(a)(4)) with an instruction to discuss these obligations in the broader context of MD&A disclosure.
- Amended Item 303(c) provides for interim disclosure requirements, and will allow for more flexibility in the interim periods compared. The item's instructions have also been streamlined by eliminating certain instructions and providing cross-references to similar instructions to Item 303(b); and
- Current Item 303(a)(5) will be eliminated, and current Items 303(c) and (d) will be eliminated as conforming changes.

The following table outlines the new structure of Item 303 as a result of these amendments:[87]

[79] The text of AS 4105.06 is *available at https://pcaobus.org/Standards/Auditing/Pages/AS4105.aspx.* The final amendments update the outdated reference in current Item 302(a)(4) from the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants to the current reference of the Auditing Standards issued by the Public Company Accounting Oversight Board.

[80] *See* amended Item 302(a)(2). *See also* footnote 70 *supra.*

[81] *See, e.g.,* letters from Grant Thornton and E&Y.

[82] *See, e.g.,* letters from Grant Thornton; E&Y (recommending that ''new registrants be exempted from providing the disclosure until their second annual report, and in registration statements thereafter, to avoid requiring selected quarterly data to be presented for interim periods not previously presented in any periodic quarterly reports.'').

[83] For example, after conducting an IPO, a registrant files its first Form 10–K in which Item 302(a) information would be required. The Item 302(a)-triggering material retrospective change occurred during a quarter that has only been presented as a part of the year-to-date interim period statement of comprehensive income filed in the IPO registration statement. In this circumstance, we would not object if the quantitative Item 302(a) disclosure in the Form 10–K comprised information for the same interim period previously presented in the registration statement (rather than for each affected quarter during that time), along with the fourth quarter, in the affected year.

[84] Item 303(a)(1)–(5) of Regulation S–K [17 CFR 229.303(a)(1)–(5)].

[85] *See* Item 303(b) and Instruction 7 to Item 303(b) of Regulation S–K [17 CFR 229.303(b)].

[86] We discuss *infra* in Section II.D our amendments that will make certain parallel changes to Item 5 of Form 20–F (Operating and Financial Review and Prospects), General Instruction B.(11) of Form 40–F (Off-Balance Sheet Arrangements), and General Instruction B.(12) of Form 40–F (Tabular Disclosure of Contractual Obligations).

[87] The information in this table is not comprehensive and is intended only to highlight the general structure of the current rules and final amendments. It does not reflect all of the amendments or all of the rules and forms that are affected. All changes are discussed in their entirety throughout this release. As such, this table should be read together with the referenced sections and the complete text of this release.

Current structure	Amended structure	Discussed in section(s)
N/A	Item 303(a), *Objective*	II.C.1.
Item 303(a), *Full fiscal years*	Item 303(b), *Full fiscal years*	II.C.1.
Item 303(a)(1), *Liquidity*	Item 303(b)(1), *Liquidity and Capital Resources*	II.C.2 and II.C.7.
Item 303(a)(2), *Capital resources.*	(i) Liquidity. (ii) Capital Resources.	
Item 303(a)(3), *Results of operations*	Item 303(b)(2), *Results of operations*	II.C.3, II.C.4, & II.C.5.
(i) Unusual or infrequent events.	(i) Unusual or infrequent events.	
(ii) Known trends or uncertainties.	(ii) Known trends or uncertainties.	
(iii) Material increases.	(iii) Material changes.	
(iv) Inflation and changing prices.		
Item 303(a)(4), *Off-balance sheet arrangements*	Replace with Instruction 8 to Item 303(b)	II.C.6.
Instructions 1, 2, 3, 4, and 5 to Item 303(a)(4).		
Item 303(a)(5), *Tabular disclosure of contractual obligations.*	Eliminate (with some content incorporated into Item 303(b)(1) (Liquidity and Capital Resources) and Instruction 4 to Item 303(b)).	II.C.2 and II.C.7.
2003 MD&A Interpretative Release, Critical accounting estimates.	Item 303(b)(3), *Critical accounting estimates*	II.C.8.
Instruction 1 to Item 303(a)	Instruction 1 to Item 303(b) (with amendments)	II.C.1.
Instruction 2 to Item 303(a)	Eliminate (with content incorporated into *Objective*)	II.C.1.
Instruction 3 to Item 303(a)	Eliminate (with content incorporated into *Objective*)	II.C.1.
Instruction 4 to Item 303(a)	Instruction 2 to Item 303(b) (with amendments and some content incorporated into Item 303(b)).	II.C.1 and II.C.4.
N/A	Instruction 3 to Item 303(b)	II.C.7.
Instruction 5 to Item 303(a)	Instruction 4 to Item 303(b) (with amendments and content incorporated into Item 303(b)(1) (Liquidity and Capital Resources)).	II.C.2 and II.C.7.
Instruction 6 to Item 303(a)	Instruction 5 to Item 303(b) (with minor amendments).	II.C.1.
Instruction 7 to Item 303(a)	Instruction 6 to Item 303(b)	II.C.10.
Instruction 8 to Item 303(a)	Eliminate	II.C.5.
Instruction 9 to Item 303(a)	Eliminate	II.C.5.
Instruction 10 to Item 303(a)	Instruction 7 to Item 303(b)	II.C.1.
Instruction 11 to Item 303(a)	Instruction 9 to Item 303(b) (with amendments)	II.D.3.
Instruction 12 to Item 303(a)	Instruction 10 to Item 303(b) (with non-substantive amendments).	II.C.1.
Instruction 13 to Item 303(a)	Eliminate	II.C.1.
Instruction 14 to Item 303(a)	Eliminate	II.C.1.
Item 303(b), *Interim periods*	Item 303(c), *Interim periods*	II.C.9.
(1) Material changes in financial condition.	(1) Material changes in financial condition.	
(2) Material changes in results of operations, Rule 3–03(b) of Regulation S–X matters.	(2) Material changes in results of operations. (i) Material changes in results of operations (year-to-date). (ii) Material changes in results of operations (quarter comparisons).	
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 3, 4, 6, 8, and 11 to proposed Item 303(b)).	II.C.9.
Instruction 2 to Item 303(b)	Eliminate	II.C.9.
Instruction 3 to Item 303(b)	Eliminate	II.C.9.
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c)	II.C.9.
Instruction 5 to Item 303(b)	Eliminate	II.C.9.
Instruction 6 to Item 303(b)	Eliminate	II.C.9.
Instruction 7 to Item 303(b)	Eliminate	II.C.9.
Instruction 8 to Item 303(b)	Instruction 11 to Item 303(b)	II.C.9.
Item 303(c), *Safe harbor*	Eliminate	II.C.10.
Item 303(d), *Smaller reporting companies*	Eliminate	II.C.11.

1. Restructuring and Streamlining

a. Objective of MD&A (New Item 303(a))

i. Proposed Amendments

The first paragraph of current Item 303(a) instructs registrants to discuss their financial condition, changes in financial condition, and results of operations for full fiscal years.[88] The paragraph then sets forth the items that must be included in this discussion, including liquidity, capital resources, results of operations, off-balance sheet arrangements, contractual obligations, and any other information a registrant believes would be necessary to understand its financial condition, changes in financial condition, and results of operations.

The Commission proposed adding a new Item 303(a) to succinctly state the objectives of MD&A by incorporating a portion of the substance of current Instruction 1, and much of the substance of current Instructions 2 and 3 into the item.[89] As part of new Item 303(a), the Commission also proposed codifying guidance that states that a registrant should provide a narrative explanation of its financial statements

[88] Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[89] *See* Proposing Release at Section II.C.1. As a result of this proposed amendment, the remainder of Item 303 was proposed to be renumbered. Herein we distinguish the rule numbering prior to these amendments from the amended rule numbering by reference to ''current'' and ''amended.''

that enables investors to see a registrant ''through the eyes of management.'' [90] By emphasizing the purpose of MD&A at the outset of Item 303, the proposal was intended to provide clarity and focus to registrants as they consider what information to discuss and analyze. The proposal was also intended to facilitate a thoughtful discussion and analysis, and encourage management to disclose factors specific to the registrant's business, which management is in the best position to know, and underscore materiality as the overarching principle of MD&A.[91]

ii. Comments

Most commenters supported the proposal to add new Item 303(a) to state the purposes of MD&A at the forefront.[92] One of these commenters nonetheless expressed concern with incorporating, as part of new Item 303(a), guidance that MD&A is ''from management's perspective,'' stating that this is such a broad statement that compliance could be difficult and it could be interpreted to mandate disclosure of otherwise confidential information (*e.g.,* competitive advantages, target markets).[93] A few commenters questioned the proposal.[94] Some of these commenters, while not opposed to the proposal, did not believe it would improve MD&A.[95] Instead, these commenters suggested more explicit and prescriptive requirements, such as providing examples of the types of items to be discussed.

One commenter objected to replacing the word ''should'' with ''must'' both in proposed Item 303(a) and throughout the item, stating these terms are not interchangeable.[96] This commenter stated that only ''should'' allows the requisite flexibility appropriate for MD&A whereas ''must'' results in a ''checklist item'' that creates exposure to absolute liability and second guessing. Another commenter suggested revising proposed Item 303(a) and the remainder of the item to account for the statement of cash flows, stating that existing MD&A rules largely pre-date the requirement in U.S. GAAP to provide statements of cash flows.[97]

iii. Final Amendments

We are adopting the amendments largely as proposed. Amended Item 303(a) calls for the following disclosure, which is expected to better allow investors to view the registrant from management's perspective:

- Material information relevant to an assessment of the financial condition and results of operations of the registrant, including an evaluation of the amounts and certainty of cash flows from operations and from outside sources.
- Material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations.
- The material financial and statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, cash flows and other changes in financial condition, and results of operations.

Registrants should regularly revisit these objectives in Item 303(a) as they prepare their MD&A and consider ways to enhance the quality of the analysis provided. These objectives provide the overarching requirements of MD&A and apply throughout amended Item 303. As such, they emphasize a registrant's future prospects and highlight the importance of materiality and trend disclosures to a thoughtful MD&A.[98] These amendments are intended to remind registrants that MD&A should provide an analysis that encompasses short term results as well as future prospects.[99] Consistent with this amendment and current guidance, and in a slight modification from our proposals, amended Item 303(a) specifies that the disclosure must include matters that are reasonably likely, based on ''management's assessment'' to have a material impact on future operations.[100]

Consistent with this approach, our amendments also incorporate current guidance that MD&A is intended to provide disclosures from ''management's perspective.'' In response to the input of one commenter, we have slightly reframed the reference to ''management's perspective'' to make clear that disclosure that meets the requirements of the item generally is expected to better allow an investor to view the registrant from management's perspective.

In response to one commenter's suggestion, we are slightly revising our proposals to explicitly incorporate cash flows as part of MD&A's objective.[101] Amended Item 303(a) specifies that MD&A must include financial and other statistical data that will enhance a reader's understanding of the registrant's financial condition, ''cash flows,'' and other changes in financial condition and results of operations. In light of this amendment and existing references to cash flows, we do not believe it is necessary to replace every reference to ''changes in financial condition'' with ''cash flows,'' as suggested by this commenter. Given the historical and continued importance of materiality in MD&A, we are not, as suggested by some commenters, adopting modifications to be more explicit or prescriptive. Rather, we continue to believe that MD&A's materiality-focused and principles-based approach facilitates disclosure of complex and often rapidly evolving areas, without the need to continuously amend the text of the rule to update or impose additional prescriptive requirements.[102] These amendments are intended to further emphasize these goals.

[90] *See* 2003 MD&A Interpretative Release, at 75056. *See also* 1989 Interpretative Release, at 22428.

[91] *See* Proposing Release at Section II.C.1.

[92] *See, e.g.,* letters from Grant Thornton; Nasdaq; FEI; IMA; RSM; Society.

[93] *See* letter from RSM.

[94] *See, e.g.,* letters from ABA; CFA & CII; D. Jamieson.

[95] *See* letters from CFA & CII; D. Jamieson.

[96] *See* letter from ABA.

[97] *See* letter from E&Y (stating that the statement of cash flows has not been integrated in MD&A like the balance sheet and income statement and recommended replacing ''changes in financial condition'' with ''cash flows'' throughout Item 303 and adding ''cash flows'' to proposed Item 303(a)).

[98] As proposed, our amendments replace the word ''shall'' with ''must'' throughout Item 303 to clarify the rule and avoid any ambiguity associated with the use of ''shall.'' Our amendments to Item 303 do not replace ''should'' in the current requirements with ''must.'' However, in some instances our amendments update Form 20–F by replacing ''should'' with ''must'' to conform the requirements to Item 303, consistent with our other amendments to Form 20–F. We do not believe the use of ''must'' in these instances modifies the overall flexibility of MD&A's principles-based approach.

[99] *See, e.g.,* 2003 MD&A Interpretive Release and 1989 MD&A Interpretive Release.

[100] This language codifies Commission guidance on forward-looking information where the Commission stated, that as part of the two-step test, ''management must make two assessments.'' *See* 1989 MD&A Interpretive Release, at 22330. *See also* footnote 145 below.

[101] *See supra* footnote 97. Amended Item 303(a)'s reference to ''the amounts and certainty of cash flows from operations and from outside sources,'' which is in current Instruction 2 to Item 303(a), predates the cash flow statement. *See* Amendments to Annual Report Form, Related Forms, Rules, Regulations and Guides; Integration of Securities Act Disclosure Systems, Release No. 33–6231, (Sept. 2, 1980) [45 FR 63630 (Sept. 25, 1980)].

[102] *See* Proposing Release at footnote 95 and corresponding text.

b. Reasons Underlying Material Changes (Amended Item 303(b))

i. Proposed Amendments

In light of the proposal to add new Item 303(a), the Commission proposed re-captioning current Item 303(a) as Item 303(b), which would continue to apply to all MD&A disclosures.[103] The Commission also proposed moving to the amended Item 303(b) the portion of current Instruction 4 that provides that where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described.[104] The Commission also proposed to amend that portion of current Instruction 4 to clarify that MD&A requires a narrative discussion of the ''reasons underlying'' material changes rather than only the ''causes'' for material changes.[105] This proposal was intended to encourage registrants to provide a more meaningful discussion of the underlying reasons that may be contributing to material changes in line items. The Commission also proposed amending the item to clarify that registrants should discuss material changes within a line item even when such material changes offset each other, consistent with prior Commission guidance.[106]

ii. Comments

Some commenters supported this proposal, stating that it effectively codifies prior guidance.[107] Some commenters recommended revising the proposal to limit the requirement to provide quantitative disclosure where it is ''reasonably available'' and material, stating that registrants often struggle with isolating reasons for material changes as they can be highly interrelated.[108] Other commenters suggested expanding the proposal to provide examples of the type of ''causes'' of changes to be discussed, stating this would facilitate a meaningful discussion.[109]

iii. Final Amendments

We are adopting the amendments largely as proposed, with a slight modification. The Commission has focused on improving the analysis in MD&A for many years. Yet, despite specific instructions in Item 303(a) that ''the discussion shall not merely repeat numerical data contained in the consolidated financial statements,'' [110] the Commission has previously observed that many registrants simply recite the amounts of changes from year to year that are readily computable from their financial statements.[111] Similarly, the staff continues to seek greater analysis in MD&A,[112] and others, including commenters, have also observed that the quality of analysis in MD&A could be improved.[113]

In light of these observations and our efforts seeking greater analysis, we continue to believe these amendments are necessary. Accordingly, we are adopting the amendments largely as proposed to enhance the analysis in MD&A. By moving a portion of current Instruction 4 to Item 303(a) to the main text of amended Item 303(b) and clarifying that the provision requires underlying reasons for material changes in quantitative and qualitative terms, our amendments underscore the importance of the analysis provided in MD&A. In a change from what was proposed, we are eliminating language in current Instruction 4 that the reasons for material changes must be described to the extent necessary to an understanding of the registrant's business as a whole. We believe this language is duplicative of the language in amended Item 303(a) and the amendments discussed in this section.

Consistent with MD&A's principles-based approach, we are not adopting the suggestion of some commenters to provide examples of the types of changes to be discussed.[114] Also consistent with MD&A's principles-based approach, and as proposed, the amendments require discussion of underlying reasons only for ''material'' changes. We believe these amendments will encourage registrants to provide a more meaningful discussion of the underlying reasons that may be contributing to material changes in line items, and avoid simply reciting amounts of changes. We acknowledge, as suggested by some commenters, that isolating reasons for specific material changes, and quantifying such isolated reasons, can sometimes be challenging because they can be highly interrelated. In such circumstances, we encourage registrants to acknowledge this fact, and to explain such interrelated circumstances to the extent possible.[115]

c. ''Segment Information . . . Other Subdivisions (*e.g.,* Geographic Areas Product Lines)'' (Amended Item 303(b))

i. Proposed Amendments

Item 303(a) currently requires that, where in the registrant's judgment a discussion of segment information and/or other subdivisions (*e.g.,* geographic areas) of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant ''reportable''

[103] Current Item 303(b) of Regulation S–K, which relates to interim periods requires a ''discussion of material changes in those items specifically listed in [Item 303(a)], except that the impact of inflation and changing prices on operations for interim periods need not be addressed.'' *See* 1989 MD&A Interpretive Release at n. 38 and 39 and corresponding text (''The second sentence of Item 303(b) states that MD&A relating to interim period financial statements 'shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.' As this sentence indicates, material changes to each and every specific disclosure requirement contained in paragraph (a), with the noted exception, should be discussed.''); 2003 MD&A Interpretive Release (''Disclosure in MD&A in quarterly reports is complementary to that made in the most recent annual report and in any intervening quarterly reports.'').

[104] Instruction 4 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[105] *See* Proposing Release at Section II.C.1.

[106] *See, e.g.,* 1989 MD&A Interpretive Release (providing an example of a description of the effects of offsetting developments in material changes in revenue: ''Revenue from sales of single-family homes for 1987 increased 6 percent from 1986. The increase resulted from a 14 percent increase in the average sales price per home, partially offset by a 6 percent decrease in the number of homes delivered. Revenues from sales of single-family homes for 1986 increased 2 percent from 1985. The average sales price per home in 1986 increased 6 percent, which was offset by a 4 percent decrease in the number of homes delivered.'').

[107] *See* letters from IMA; Society.

[108] *See* letters from RSM; E&Y (also observing that this quantitative disclosure can be challenging when such factors are not already quantified for internal purposes and that the resulting disclosure often yields discussion of individual drivers of change that are not material).

[109] *See* letters from CFA & CII (providing the following as examples: Economic trends and industry conditions that impact sales and costs related to key products and services including whether sales or revenues are attributable to changes in prices or to changes in volume of goods or services that are sold; information on fixed and variable costs in the cost structure; information on primitive value drivers of most businesses such as materials, labor costs, and the maintenance capex needed to survive as a business; currency effects on every line item; large acquisitions as a separate segment or required discussion so that investors can discern whether the synergies are actually emerging as expected; and the productivity of new investments (capex, R&D) as opposed to older investments); D. Jamieson.

[110] *See* Instruction 4 to current Item 303(a) of Regulation S–K.

[111] *See Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23915 (Apr. 22, 2016)] (''S–K Concept Release'') at Section IV.B.3.b.i.

[112] *See* S–K Concept Release at Section IV.B.4.b. *See also* SEC Comment Letter Trends *available at https://www.pwc.com/us/en/cfodirect/publications/sec-comment-letter-trends.html.*

[113] *See, e.g.,* letter from CFA & CII. *See also* letter from Better Markets to the S–K Concept Release dated July 21, 2016. Comment letters related to the S–K Concept Release are *available at https://www.sec.gov/comments/s7-06-16/s70616.htm.* We refer to these letters throughout as ''S–K Concept Release Letters.''

[114] *See* letters from CFA & CII; D. Jamieson.

[115] *See* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b-21 [17 CFR 240.12b-21], which generally states that information required need be given only insofar as it is known or reasonably available to the registrant.

segment and/or other subdivision. The Commission proposed removing the reference to a ''reportable'' segment and, instead, proposed requiring a discussion of ''each relevant segment and/or other subdivision.'' The Commission also proposed adding ''product lines'' as another example of a subdivision of a registrant's business that should be discussed where necessary to an understanding of the registrant's business. Finally, the Commission proposed certain other amendments to streamline the text of Item 303.

ii. Comments

Commenters were generally opposed to removing the term ''reportable'' before segment.[116] Many of these commenters suggested that registrants typically focus their MD&A on reportable segments, consistent with the financial statements.[117] Some of these commenters questioned whether removal of the term ''reportable'' was intended to effect a substantive change and sought clarification.[118] Another of these commenters stated that the proposal could create uncertainty among registrants about what must be disclosed and could lead to greater detail than is reasonably useful to investors.[119] Only one commenter provided input on the addition of ''product lines'' as an example of a subdivision, stating that the proposal could be interpreted as a requirement rather than an example.[120]

iii. Final Amendments

We are adopting the amendments largely as proposed, with some modifications in response to comments received. Specifically, we are retaining the term ''reportable'' segment in amended Item 303(b). As a result, and similar to current Item 303, the amendments require that the discussion focus on each ''reportable segment'' and/or or other subdivision of the business and on the registrant as a whole. While the proposal to remove the term ''reportable'' was not intended to suggest a further disaggregation of MD&A beyond the reportable segment level, we acknowledge commenter feedback about the potential confusion that could be created by removal of the term.

We are adopting the proposed amendment to include ''product lines'' as an example of a subdivision of a registrant's business that should be discussed where, in the registrant's judgment, it is necessary to an understanding of the registrant's business. This additional example is not intended to require product line disclosure where, in the registrant's judgment, it is not necessary to an understanding of the registrant's business. Rather, it is intended to remind registrants of the type of disclosure that may be required.

Lastly, we are adopting as proposed several amendments that will further streamline the text of Item 303:

- Instruction 8 to current Item 303(b) indicates that the term ''statement of comprehensive income'' is defined by Rule 1–02 of Regulation S–X.[121] We are moving this language to the full fiscal year requirement in amended Item 303(b) as Instruction 11 to clarify that the instruction applies to both full fiscal year and interim period MD&A disclosure.[122]
- We are also eliminating current Instructions 13 and 14 to Item 303(a) to simplify the item. These instructions call the attention of bank holding companies and property-casualty insurance companies to Guide 3 [123] and Guide 6,[124] respectively. Registrants that apply industry guides should still consider them in preparing their disclosures generally, but we do not believe the cross-reference is necessary to an understanding of the requirements of Item 303.

Capital Resources—Material Cash Requirements (New Item 303(b)(1) and Amended Item 303(b)(1)(ii))

a. Proposed Amendments

Current Item 303(a)(2) requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, and to indicate the general purpose of and the anticipated sources of funds needed to fulfill such commitments.[125] A registrant also must discuss, among other things, any known material trends, favorable or unfavorable, in its capital resources, and indicate any expected material changes in the mix and relative cost of such resources.[126]

The Commission proposed amending current Item 303(a)(2) to specify, consistent with the Commission's 2003 MD&A Interpretive Release, that a registrant should broadly disclose material cash commitments, including but not limited to capital expenditures. Specifically, the Commission proposed requiring a registrant to describe its material cash ''requirements,'' including commitments for capital expenditures, as of the end of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements, and the general purpose of such requirements.[127]

The proposal was intended to require registrants to disclose known material cash requirements and to modernize Item 303(a)(2) by specifically requiring this disclosure in addition to capital expenditures. The Commission recognized that, while capital expenditures remain important in many industries, certain expenditures and cash commitments that are not necessarily capital investments in property, plant, and equipment may be increasingly important to companies, especially those for which human capital or intellectual property are key resources. The proposals were intended to encompass these and other material cash requirements. The proposal was also intended to enhance the discussion of capital resources and complement the proposed deletion of the contractual obligations table.[128]

b. Comments

While commenters generally supported the proposal to amend Item 303(a)(2) to broaden the disclosure

[116] *See, e.g.,* letters from RSM; KPMG; FEI; Medtronic; E&Y; Deloitte.

[117] *See, e.g.,* letters from RSM; KPMG; IMA; Deloitte; E&Y.

[118] *See* letters from Deloitte; E&Y.

[119] *See* letter from IMA.

[120] *See* letter from KPMG.

[121] 17 CFR 210.1–02(cc). Rule 1–02 defines a ''statement of comprehensive income'' as follows: ''[t]he term statement(s) of comprehensive income means a financial statement that includes all changes in equity during a period except those resulting from investments by owners and distributions to owners. . . . A statement of operations or variations thereof may be used in place of a statement of comprehensive income if there was no other comprehensive income during the period.'' Thus, references to a statement of comprehensive income would include a statement of operations prepared by certain issuers, such as BDCs.

[122] *See* Section II.C.9.

[123] 17 CFR 229.801(c) and 17 CFR 229.802(c). We recently adopted rules relating to Guide 3. *See Update of Statistical Disclosures for Bank and Savings and Loan Registrants,* Release No. 33–10835 (Sept. 11, 2020) [85 FR 66108 (Oct. 16, 2020)]. The new rules update the disclosures that investors receive, codify certain Guide 3 disclosures and eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or International Financial Reporting Standards (''IFRS''). In addition, the Commission relocated the codified disclosures to a new subpart of Regulation S–K and rescinded Guide 3.

[124] 17 CFR 229.801(f).

[125] Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[126] Item 303(a)(2)(ii) [17 CFR 229.303(a)(2)(ii)].

[127] *See* 2003 MD&A Interpretive Release, at 75063.

[128] *See also* Section II.C.7 *infra.*

beyond capital expenditures,[129] a few commenters stated that use of material cash ''requirements'' was too broad and provided recommendations on how to limit the requirement to facilitate compliance.[130] These commenters stated that registrants would struggle to identify which commitments to disclose[131] and that the proposals could result in extensive new record keeping and controls.[132] These commenters recommended limiting the proposal by requiring ''material cash commitments'' instead of ''material cash requirements,''[133] focusing on material cash commitments outside of normal operations,[134] or providing guidance on the expected content of these disclosures, including examples.[135] One of these commenters recommended modernizing the liquidity and capital resources requirements, such as by merging and streamlining the two sections.[136]

Another commenter stated that the proposal may broaden the current capital resources requirement.[137] This commenter recommended limiting the proposal to require only a discussion of cash to fund current operations (*i.e.,* working capital cash requirements), but only if working capital is insufficient for the next 12 months. Other commenters supported the proposal and recommended enhancing it by retaining the contractual obligations table.[138]

c. Final Amendments

We are adopting amendments to the capital resources requirement as proposed. We acknowledge commenter suggestion to use the term material cash ''commitments.'' However, we are retaining the term material cash ''requirements'' as we believe this term is more consistent with the intended purpose of MD&A and with prior Commission guidance.[139] The Commission has consistently emphasized the need for attention to disclosure of cash requirements.[140]

We acknowledge commenters' concerns that registrants have numerous cash requirements and that the amendments could therefore result in extensive new record keeping and controls. As noted above, we do not expect that registrants would have to deviate substantially from current practices with respect to an assessment of material cash requirements as the amendments reflect current Commission guidance and resulting disclosure practices.[141] Further, our amendments are limited to and address only those cash requirements that are material and accordingly, do not reflect a new threshold for these disclosures and should not require extensive or new procedures or controls. We are not, as suggested by one commenter limiting the amendments to require only disclosure of material cash requirements outside of normal operations, as registrants can and do have cash requirements related to their normal operations that are material. Additionally, and consistent with the suggestion of one commenter, our amendments create Item 303(b)(1) to provide the overarching requirements for liquidity and capital resources disclosures in order to clarify the liquidity and capital resources requirements, as discussed in more detail below in Section II.C.7.

3. Results of Operations—Known Trends or Uncertainties (Amended Item 303(b)(2)(ii))

a. Proposed Amendments

Item 303(a)(3)(ii) currently requires a registrant to describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations.[142] In addition, if the registrant knows of events that will cause a material change in the relationship between costs and revenues, the change in the relationship must be disclosed.[143]

The Commission proposed amending Item 303(a)(3)(ii) to provide that when a registrant knows of events that are *reasonably likely* to cause (as opposed to *will* cause) a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments, the reasonably likely change must be disclosed. This proposed amendment was intended to conform the language in this paragraph to other Item 303 disclosure requirements for known trends,[144] and align Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure, which specifies that, where a trend, demand, commitment, event, or uncertainty is known, management must make an assessment consistent with the two-step test the Commission articulated for disclosure of forward-looking information.[145]

b. Comments

Commenters were mixed in their support for or opposition to the proposal. Several commenters either generally opposed the two-step test[146] or specified opposition to the ''reasonably likely'' standard for MD&A.[147] Some of these commenters stated the two-step test or the term ''reasonably likely'' is unclear,[148] with some stating that the current two-step test is not well understood and thus not well applied.[149] One of these commenters recommended replacing

[129] *See, e.g.,* letters from EEI & AGA; FEI; IMA; Chamber; Society; CFA & CII; D. Jamieson.

[130] *See, e.g.,* letters from FEI; IMA; E&Y.

[131] *See* letters from E&Y; FEI (stating that the term ''requirements'' is too broad, registrants have numerous cash requirements including the payment of operating expenses (*e.g.,* salaries and wages, raw materials, utilities, taxes) and the change from ''commitments'' to ''requirements'' would lead to inconsistent application).

[132] *See* letter from IMA.

[133] *See* letter from FEI.

[134] *See* letter from IMA.

[135] *See* letter from E&Y.

[136] *See id.*

[137] *See* letter from SIFMA (also recommending restating, in any final release, guidance from the 2003 MD&A Interpretive Release that a discussion of working capital cash requirements is required where there are material trends or uncertainties relating to the sufficiency of cash funding sources through working capital).

[138] *See* letters from CFA & CII; D. Jamieson.

[139] *See* 2003 MD&A Interpretive Release at 75062, which states that a ''company is required to include in MD&A, to the extent material, . . . the existence and timing of commitments for capital expenditures and other known and reasonably likely cash requirements.''

[140] *See* 2003 MD&A Interpretive Release.

[141] Commission staff has observed that registrants have provided discussion of material cash requirements pursuant to the requirements of MD&A and consistent with the 2003 MD&A Interpretive Release.

[142] Item 303(a)(3)(ii) of Regulation S–K [17 CFR 229.303(a)(3)(ii)].

[143] Examples given include known future increases in costs of labor or materials or price increases or inventory adjustments. *See id.*

[144] *See, e.g.,* Item 303(a)(1), which requires registrants to ''[i]dentify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way.'' Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)].

[145] *See* 1989 MD&A Interpretive Release, at 22430, where the Commission articulated a two-step test for assessing when forward-looking disclosure is required in MD&A; Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments: (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required. (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.

[146] *See, e.g.,* letters from Nareit; FEI; ABA.

[147] *See, e.g.,* letters from SIFMA; ABA; CalPERS.

[148] *See, e.g.,* letters from ABA; FEI; SIFMA.

[149] *See* letters from ABA; FEI.

the two-step test with the probability/magnitude test in *Basic* v. *Levinson,* stating this test is simple, understandable, and already applied regularly in other contexts.[150] This commenter also recommended, if the two-step test is retained, replacing the negative presumption in the test with an affirmative determination. This commenter stated that the negative presumption elicits disclosure that may not be material.[151] Another of these commenters requested clarification on whether use of the term ''reasonably likely'' is intended to expand the scope of required disclosure.[152] This commenter also requested additional Commission guidance on the timeframe for which management should consider its outlook.

Several commenters, however, supported the proposal,[153] with some of these commenters stating that it reflects current practice.[154] One of these commenters further stated that because the second step in the two-step test requires a registrant to prove a negative while the proposal does not specifically incorporate this negative, the final release should state the two-step test is being superseded by the proposed language.[155] This commenter further recommended replacing throughout Item 303 the term ''reasonably likely'' with ''reasonably expects,'' stating the latter is a clearer standard in practice.

c. Final Amendments

We are adopting Item 303(b)(2)(ii) with these amendments substantially as proposed, but with slight modifications to clarify that the ''reasonably likely'' threshold applies throughout Item 303. Furthermore, our amendments to Item 303(a) state that, as part of MD&A's objectives, whether a matter is ''reasonably likely'' to have a material impact on future operations is based on ''management's assessment.'' We believe that using a consistent threshold for forward-looking disclosure throughout MD&A will help avoid both potential confusion and inconsistent application that could result from disparate thresholds. Additionally, our amendments reflect a standard that is consistent with longstanding Commission guidance, and we agree with those commenters that stated this term reflects current practice.

We acknowledge that some commenters stated that the term ''reasonably likely'' may be unclear or not well understood. After careful consideration of these comments, we continue to believe that the ''reasonably likely'' threshold is the appropriate standard for prospective matters and forward-looking information that is required under Item 303. In response to commenters who suggested that the two-step test is unclear, not well understood, or difficult to apply, we are clarifying and explaining further how registrants should analyze and disclose information regarding known trends, demands, commitments, or uncertainties. In doing so, we reiterate the Commission's longstanding emphasis that analysis in this area should be based on objective reasonableness.[156]

As the Commission has previously stated with respect to the evaluation of whether a known trend or uncertainty is reasonably likely, ''the development of MD&A disclosure should begin with management's identification and evaluation of what information. . .is important to providing investors and others an accurate understanding of the company's current and prospective financial position and operating results.'' [157] When considering whether disclosure of a known event or uncertainty is required,[158] the analysis is based on materiality and what would be considered important by a reasonable investor in making a voting or investment decision.[159] The ''reasonably likely'' threshold does not require disclosure of any event that is known but for which fruition may be remote, nor does it set a bright-line percentage threshold by which disclosure is triggered. Rather, this threshold requires a thoughtful analysis that applies an objective assessment of the likelihood that an event will occur balanced with a materiality analysis regarding the need for disclosure regarding such event.[160]

Taking these concepts into account, when applying the ''reasonably likely'' threshold, registrants should consider whether a known trend, demand, commitment, event, or uncertainty is *likely* to come to fruition. If such known trend, demand, commitment, event or uncertainty would reasonably be likely to have a material effect on the registrant's future results or financial condition, disclosure is required. Known trends, demands, commitments, events, or uncertainties that are not remote or where management cannot make an assessment as to the likelihood that they will come to fruition, and that would be reasonably likely to have a material effect on the registrant's future results or financial condition, were they to come to fruition, should be disclosed if a reasonable investor would consider omission of the information as significantly altering the mix of information made available in the

[150] *See* letter from ABA citing *Basic Inc.* v. *Levinson,* 485 U.S. 224 (1988) (''*Basic*'').

[151] This commenter recommended making the two-step test a preliminary note to Item 303 and rewording it as follows: Where a trend, demand, commitment, event or uncertainty is known, management should make two assessments: (1) Does management reasonably expect that the known trend, demand, commitment, event or uncertainty will occur?, and (2) If so, the registrant should assess materiality as if the known trend, demand, commitment, event or uncertainty will occur, and provide disclosure if the impact on financial condition, results of operations or liquidity would be material.

[152] *See* letter from Nareit.

[153] *See, e.g.,* letters Pfizer; EEI & AGA; SIFMA; Chamber; Society.

[154] *See* letters from IMA; EEI & AGA.

[155] *See* letter from Society.

[156] *See* 1989 MD&A Interpretive Release at Section III.B (stating ''Each final determination resulting from the assessments made by management must be objectively reasonable, viewed as of the time the determination is made.'').

[157] *See* 2002 Commission Statement at 3747.

[158] *See* 1989 MD&A Interpretive Release at 22429 (''Required disclosure is based on currently known trends, events, and uncertainties that are reasonably expected to have material effects. . . . In contrast, optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable impact of a known event, trend or uncertainty.'').

[159] *See Basic Inc.* v. *Levinson,* 485 U.S. 224 (1988) at 231, quoting *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976) (''TSC Industries'') at 449 (''to fulfill the materiality requirement, 'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.' ''). *See also* Exchange Act Rule 12b–2 [17 CFR 240.12b–2] (''The term ''material,'' when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.''); Securities Act Rule 405 [17 CFR 230.405] (''The term material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.''); Adoption of Integrated Disclosure System, Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] (noting that the definitions in Rule 12b–2 and Rule 405 were ''based on the definition as set forth by the Supreme Court in *TSC Industries*''); S–K Concept Release at Section III.B.1 (quoting the Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33–9106 (Feb. 8, 2010) [75 FR 6290 (Feb. 8, 2010)] at 6292–6293 in stating that ''materiality standards for disclosure under the federal securities laws . . . provide that information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision, or, put another way, if the information would alter the total mix of available information.'').

[160] We are not adopting the suggested ''reasonably expects'' threshold suggested by some commenters. Consistent with our discussion herein, we believe the analysis should focus on an objective determination of the likelihood of an event occurring, rather than on whether management's expectation of such event occurring would be objectively reasonable.

registrant's disclosures.[161] This analysis should be made objectively and with a view to providing investors with a clearer understanding of the potential material consequences of such known forward-looking events or uncertainties. Because the analysis does not call for disclosure of immaterial or remote future events, it should not result in voluminous disclosures or unnecessarily speculative information.[162]

As noted above, some commenters also indicated that application of the two-step test as the Commission articulated it in 1989 may result in disclosure that is not material or present challenges to registrants, such as by requiring a registrant to prove a negative. This was not the intended result of that test, and we believe that the clarifications we have provided above regarding the appropriate application of the analysis should alleviate these concerns. The ''reasonably likely'' threshold, which requires that management evaluate the consequences of the known trend, demand, commitment, event, or uncertainty, is grounded in whether disclosure of the event or uncertainty would be material to investors. We remind registrants that this approach is not intended to, nor does it require, registrants to affirm the non-existence or non-occurrence of a material future event.[163] Instead, it requires management to make a thoughtful and objective evaluation, based on materiality, including where the fruition of future events is unknown.[164]

We are not, as recommended by one commenter, adopting the probability/magnitude test of *Basic.* In *Basic,* the Supreme Court framed the issue of materiality of forward-looking disclosure as depending on a balancing of both ''the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity.'' [165] We agree with commenters that the probability/magnitude test could result in disclosure of issues that are large in potential magnitude but low in probability.[166] The probability/magnitude test in *Basic* was developed in the context of a potential merger, where the probability of the event, the potential timing, and the expected effects may be readily estimated. Some commenters have noted that the probability/magnitude test can be difficult to apply where there is uncertainty as to the probability, timing, and magnitude of the financial impact of future events.[167] As articulated above, we believe that the ''reasonably likely'' threshold provides registrants with a tailored and meaningful framework from which to objectively analyze whether forward-looking information is required and provides specific guidance on how registrants should evaluate known events or uncertainties where the likelihood of fruition cannot be ascertained.

4. Results of Operations—Net Sales and Revenues (Amended Item 303(b)(2)(iii))

a. Proposed Amendments

Item 303(a)(3)(iii) currently specifies that, to the extent the ''financial statements'' disclose ''material increases'' in net sales or revenues, a registrant must provide a narrative discussion of the extent to which such ''increases'' are attributable to increases in prices, or to increases in the volume or amount of goods or services being sold, or to the introduction of new products or services.[168] The Commission previously clarified that a results of operations discussion should describe not only increases but also decreases in net sales or revenues.[169] Accordingly, the Commission proposed amending Item 303(a)(3)(iii) to apply to disclosures in the ''statement of comprehensive income,'' codify prior guidance, and clarify the requirement by tying the required disclosure to ''material changes'' in net sales or revenues, rather than solely to ''material increases'' in these line items.

b. Comments

Several commenters specifically supported this proposal,[170] with one of these commenters stating that registrants already provide this disclosure.[171] No commenters specifically opposed this proposal.

c. Final Amendments

We are adopting Item 303(b)(2)(iii) with these amendments as proposed. We believe clarifying in the rule text that disclosure is required of ''material changes'' in net sales or revenues will facilitate compliance. This clarification is consistent with MD&A's focus on the importance of an analysis that should consist of material substantive information and present a balanced view of the underlying dynamics of the business.[172] We also believe this amendment will complement our change to Item 303(b) which will require that, where the financial statements reveal material changes from period-to-period in one or more line items, registrants must describe the underlying reasons for these material changes in quantitative and qualitative terms.

5. Results of Operations—Inflation and Price Changes (Current Item 303(a)(3)(iv), and Current Instructions 8 and 9 to Item 303(a))

a. Proposed Amendments

Item 303(a)(3)(iv) [173] generally requires registrants, either for the three most recent fiscal years or for those fiscal years in which the registrant has been engaged in business, whichever period is shorter, to discuss the impact of inflation and price changes on their net sales, revenue, and income from continuing operations. Instruction 8 to

[161] *Id.*

[162] *See, e.g.,* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release at 5985 (stating ''We believe that the 'reasonably likely' threshold best promotes the utility of the disclosure requirements by reducing the possibility that investors will be overwhelmed by voluminous disclosure of insignificant and possibly unnecessarily speculative information.''). *See also Matrixx Initiatives, Inc.* v. *Siracusano,* 131 U.S. 1309 (2011) (''*Matrixx Initiatives*'') at 1318, quoting *TSC Industries* at 449. In *Matrixx Initiatives,* the Court applied the materiality standard, as set forth in *TSC Industries* and *Basic.* In articulating these standards, the Supreme Court recognized that setting too low of a materiality standard for purposes of liability could cause management to ''bury shareholders in an avalanche of trivial information.'' *Id.* at 1318, quoting *TSC Industries* at 448–449.

[163] We are not, as suggested by a commenter, reformulating the language to require an affirmative determination. Such reformulated language would substantively alter the called for disclosures as it would not account for circumstances where management cannot determine whether a known trend, demand, commitment, event or uncertainty is likely to come to fruition.

[164] Accordingly, we are not, as suggested by one commenter, providing specific guidance on a timeframe for which management should consider its outlook for forward-looking information as such timeframe will depend on the nature of and the facts and circumstances surrounding the forward-looking disclosure.

[165] See *Basic* (quoting *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 849 (2d Cir. 1968)).

[166] *See* S–K Concept Release Letter from Stephen Percoco dated July 24, 2016.

[167] *See, e.g.,* S–K Concept Release Letters from the Sustainability Accounting Standards Board dated July 1, 2016; *See also* letters from Edward D. White dated July 20, 2016; Thomas F. Steyer dated July 20, 2016; Michael R. Bloomberg dated July 26, 2016; Brita Voss dated July 6, 2016 (supporting the recommendations of the Sustainability Accounting Standards Board).

[168] Item 303(a)(3)(iii) of Regulation S–K [17 CFR 229.303(a)(3)(iii)].

[169] *See* 1989 MD&A Interpretative Release, at n. 36 (''Although Item 303(a)(3)(iii) speaks only to material increases, not decreases, in net sales or revenues, the Commission interprets Item 303(a)(3)(i) and Instruction 4 as seeking similar disclosure for material decreases in net sales or revenues.'').

[170] *See, e.g.,* letters from FEI; IMA; Chamber; Society; CFA & CII; D. Jamieson.

[171] *See* letter from FEI.

[172] *See* 2003 MD&A Interpretive Release at Section III.B.4.

[173] Item 303(a)(3)(iv) of Regulation S–K [17 CFR 229.303(a)(3)(iv)].

Item 303(a) clarifies that a registrant is only required to provide this disclosure to the extent material. The instruction further states that the discussion may be made in whatever manner appears appropriate under the circumstances and that no specific numerical financial data is required, except as required by Rule 3–20(c) of Regulation S–X,[174] which applies to FPIs. Instruction 9 to Item 303(a) states that registrants that elect to disclose supplementary information on the effects of changing prices may combine such disclosures with the Item 303(a) discussion and analysis or provide it separately (with an appropriate cross-reference).[175]

The Commission proposed eliminating Item 303(a)(3)(iv) and Instructions 8 and 9 to encourage registrants to focus their MD&A on material information that is tailored to their respective facts and circumstances. In the Proposing Release, the Commission stated that a specific reference to inflation and changing prices may give undue attention to the topic.[176] Registrants are already expected to discuss the impact of inflation or price changes if they are part of a known trend or uncertainty that has had, or is reasonably likely to have, a material favorable or unfavorable impact on net sales, revenue, or income from continuing operations.[177]

b. Comments

Commenters generally supported eliminating Item 303(a)(3)(iv) and Instructions 8 and 9 to Item 303(a), as proposed.[178] Some commenters stated that registrants should focus their MD&A on registrant-specific material information and that eliminating this item and the related instructions would aid in that endeavor.[179] Other commenters stated that where inflation is material, registrants would still be required to disclose this under current rules.[180] One commenter noted that in order to satisfy this item, many registrants provide ''boilerplate disclosures'' and stated that as a result, few, if any, disclosures in response to this item have been of value to investors.[181] No commenters specifically opposed this proposal.

c, Final Amendments

We are eliminating Item 303(a)(3)(iv) and Instructions 8 and 9 to Item 303(a) as proposed. Consistent with the discussion above and in the Proposing Release, under amended Item 303, registrants will be required to discuss the impact of inflation or changing prices if they are part of a known trend or uncertainty that had, or is reasonably likely to have a material impact on net sales, revenue, or income from continuing operations. Further, amended Item 303 requires that, where the financial statements reveal material changes from period-to-period in one or more line items, registrants must describe the underlying reasons for these material changes in quantitative and qualitative terms, which may also implicate a discussion of inflation and changing prices.[182]

6. Off-Balance Sheet Arrangements (New Instruction 8 to Item 303(b))

a. Proposed Amendments

In 2002, the Sarbanes-Oxley Act[183] was enacted and added Section 13(j) to the Exchange Act, which required the Commission to adopt rules providing that each annual and quarterly financial report required to be filed with the Commission disclose all material off-balance sheet arrangements.[184] To implement Section 13(j), in 2003, the Commission adopted specific disclosure requirements for off-balance sheet arrangements in current Item 303(a)(4).[185] When adopting Item 303(a)(4), the Commission reiterated that, while at that time only one item in Item 303 specifically identified off-balance sheet arrangements,[186] other requirements ''clearly require[d] disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition or results of operations.''[187] The 2003 amendments supplemented and clarified the disclosures that registrants must make about off-balance sheet arrangements and required registrants to provide those disclosures in a separately designated section of MD&A.[188]

In the release proposing Item 303(a)(4), the Commission recognized that parts of the proposed off-balance sheet arrangements disclosure requirements might overlap with disclosure presented in the footnotes to the financial statements.[189] The Commission stated, however, that the proposed rules were designed to provide more comprehensive information and analysis in MD&A than the disclosure that U.S. GAAP required in footnotes to financial statements.[190]

Since the adoption of Item 303(a)(4), as described further in the Proposing Release,[191] the FASB has issued additional requirements that have caused U.S. GAAP to further overlap with the item.[192] In the Commission staff's experience, this overlap often leads to registrants providing cross-references to the relevant notes to their financial statements or providing disclosure that is duplicative of information in the notes in response to Item 303(a)(4).

As a result, and consistent with the other proposed amendments intended to promote the principles-based nature of MD&A, the Commission proposed that the current more prescriptive off-balance sheet arrangement definition and related disclosure requirement in Item 303(a)(4) be replaced with a new

[174] Rules 3–20(c) and 3–20(d) of Regulation S–X provide the situations when a registrant must discuss hyperinflation. Rule 3–20(d) generally describes a hyperinflationary environment as one that has cumulative inflation of approximately 100 percent or more over the most recent three-year period.

[175] Instruction 9 to Item 303(a).

[176] *See* Proposing Release at Section II.C.5.

[177] *See* Item 303(a)(3)(ii) [CFR 229.303(a)(3)(ii)] and amended Item 303(b)(2)(ii).

[178] *See, e.g.,* letters from EEI & AGA; FedEx; Nasdaq; FEI; IMA; Chamber; Society.

[179] *See, e.g.,* letters from EEI & AGA; Nasdaq.

[180] *See, e.g.,* letters from FEI; IMA.

[181] *See* letter from IMA.

[182] *See* amended Item 303(b).

[183] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat 745 (Jul. 2002) (''Sarbanes-Oxley Act'').

[184] Section 401(a) of the Sarbanes-Oxley Act added Section 13(j) to the Exchange Act [15 U.S.C. 78m(j)], which directed the Commission to adopt rules requiring each annual and quarterly financial report filed with the Commission to disclose ''all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''

[185] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5983.

[186] Item 303(a)(2)(ii) of Regulation S–K [17 CFR 229.303(a)(2)(ii)].

[187] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5983.

[188] *See id.*

[189] *See Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments,* Release No. 33–8144 (Nov. 4, 2002) 67 FR 68054 (Nov. 8, 2002), at n.72.

[190] *See id.*

[191] *See* Proposing Release at Section II.C.6.

[192] In June 2009, the FASB Issued SFAS No. 166, *Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140,* which requires enhanced disclosures about transfers of financial assets and a transferor's continuing involvement with transfers of financial assets accounted for as sales. Also in June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R),* which requires enhanced disclosures about an enterprise's involvement in a variable interest entity, including unconsolidated entities. SFAS No. 166 and 167 have been codified as ASC Topics 860 (Transfers and Servicing) and 810 (Consolidation), respectively. *See also* Section II.D.1.b and *see infra* note 344 for a discussion of IFRS requirements that overlap with Item 5.E of Form 20–F.

Instruction to Item 303(b). This proposed instruction would require registrants to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.[193] This proposed instruction was intended to build on the current requirement in Item 303(a)(2) that specifically requires consideration of off-balance sheet financing arrangements as part of the capital resources discussion.[194]

b. Comments

Many commenters supported the proposal to replace Item 303(a)(4) with a principles-based instruction.[195] One of these commenters further recommended modifying the proposal to allow registrants discretion to make this disclosure under a separate caption within the capital resources section.[196] Another commenter stated that if there are concerns about specific matters that are not addressed under U.S. GAAP, these concerns should be addressed by the FASB.[197] One commenter recommended reiterating that the amendment is not intended to broaden or narrow the scope of off-balance sheet arrangements disclosure requirements in MD&A, but rather, it is intended to incorporate this disclosure in a more holistic, principles-based discussion.[198]

Several commenters expressed concern with the proposal.[199] One commenter cautioned that the proposed amendments may result in the loss of discussion of the nature and business purpose of off-balance sheet arrangements and any known event, demand, commitment, trend, or uncertainty that will result, or is likely to result, in a material change in the availability of the off-balance sheet arrangement.[200] Another commenter stated that the separate section for off-balance sheet arrangements remains important because the overlapping information required to be disclosed in the financial statements is dispersed.[201] One commenter stated that the proposed amendments would allow management to hide off-balance sheet arrangements.[202] Additionally, some commenters recommended that we provide illustrative guidance.[203]

c. Final Amendments

We are adopting the amendments to replace Item 303(a)(4) with a principles-based instruction as proposed.[204] For the reasons discussed in the Proposing Release, we continue to believe that the updates to U.S. GAAP since the adoption of Item 303(a)(4), as well as the current amendments designed to emphasize the principles-based nature of MD&A, justify the replacement of the current, more prescriptive requirement with a principles-based instruction.[205]

With respect to commenters that suggested that the amendments may result in a loss of discussion of the nature and business purpose of off-balance sheet arrangements or other information, we continue to believe that new Instruction 8 would mitigate any potential loss of information by requiring, among other things, a discussion of material matters of liquidity, capital resources, and financial condition as they relate to off-balance sheet arrangements.[206] Furthermore, we highlight that current Item 303(a)(4) does not require disclosure of certain types of off-balance sheet arrangements that do not meet the specific definition in Item 303(a)(4)(ii). For example, many registrants in the pharmaceutical industry are contingently obligated to make milestone payments to licensors of drug compounds. These milestone payments are not covered by the definition of ''off-balance sheet arrangement'' in Item 303(a)(4) and currently are not required to be disclosed in the separately-captioned section called for by that item. We have nonetheless observed that registrants typically discuss these contingent milestone payments in MD&A to provide investors with an appropriate understanding of their liquidity and capital resources, which we believe can be useful to a broader understanding of the impact of off-balance sheet arrangements to a registrant's financial condition, and the nature and purpose of such arrangements. Accordingly, we believe that the principles of MD&A, supplemented with the new instruction, and the requirements of U.S. GAAP will elicit discussion sufficient to enable an understanding of the off-balance sheet arrangement.

By no longer requiring this disclosure in a separately-captioned section, we expect that a registrant will incorporate its discussion of off-balance sheet arrangements into its broader discussion of liquidity and capital resources. We also acknowledge the commenters that stated that a separately-captioned section is useful. We continue to believe that a discussion of off-balance sheet arrangements that is more integrated with other aspects of MD&A will produce better disclosure and facilitate a more meaningful understanding of the impact of such arrangements; however, to the extent that a registrant determines that some discussion of off-balance sheet arrangements should be highlighted separately or in a separately captioned section in order to facilitate an understanding of such disclosure, or to highlight particularly material information about such arrangements, it has the discretion to do so.[207] Finally, we have not given examples or guidance for the disclosure of off-balance sheet arrangements, as suggested by some commenters. Disclosures will need to be tailored to a registrant's arrangements and circumstances, and we do not want to promote a checklist approach to the disclosures.

7. Contractual Obligations Table (Current Item 303(a)(5)) and Amended Item 303(b)(1)—*Liquidity and Capital Resources*)

a. Proposed Amendments

Under Item 303(a)(5),[208] registrants other than SRCs must disclose in tabular format their known contractual obligations. The item requires a registrant to arrange its table to disclose contracts by type of obligations,[209] the

[193] *See* Proposing Release at Section II.C.6.

[194] *See* Item 303(a)(2)(ii) of Regulation S–K [17 CFR 302(a)(2)(ii)].

[195] *See, e.g.,* letters from EEI & AGA; FedEx; FEI; SIFMA; IMA; E&Y; Medtronic; Chamber; and Society.

[196] *See* letter from EEI & AGA.

[197] *See* letter from IMA.

[198] *See* letter from Society.

[199] *See, e.g.,* letters from Pfizer; CalPERS; CFA & CII; and D. Jamieson.

[200] *See* letter from Pfizer.

[201] *See* letter from CFA & CII.

[202] *See* letter from CalPERS.

[203] *See* letters from Pfizer and Society.

[204] For the same reasons discussed in the Proposing Release, we believe our amendments are consistent with the statutory mandate in Section 13(j) of the Exchange Act. *See* Proposing Release at Section II.C.6.

[205] We are also adopting the amendments to Items 2.03 and 2.04 of Form 8–K as proposed to include the definition of ''off-balance sheet arrangements'' that is currently in Item 303(a)(4). As stated in the Proposing Release, we believe it is appropriate to retain the current definition of ''off-balance sheet arrangements'' in Form 8–K in light of the Form's four business day filing requirement. *See* Proposing Release at footnotes 188 and 189. In addition, we are making technical amendments to Item 2.03 of Form 8–K to refer to FASB ASC Topic 842, which has superseded FASB ASC Topic 840.

[206] For a discussion of the requirements in Item 303(a)(4) that overlap with U.S. GAAP see the Proposing Release at Section II.C.6.

[207] *See, e.g.,* Instruction 3 to amended Item 303(b).

[208] Item 303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)].

[209] The types of obligations required to be included are long-term debt obligations, capital

overall payments due, and by four prescribed periods.[210] A registrant may disaggregate the categories of obligations, but it must disclose all obligations falling within the prescribed five categories and for the prescribed time periods. A registrant may provide footnotes to the table to the extent such information is necessary to understand the disclosures in the contractual obligations table. There is no materiality threshold for this item, meaning registrants must disclose all contractual obligations falling within the prescribed five categories.[211]

When the Commission implemented this disclosure requirement, its purpose was to ensure that aggregated information about contractual obligations was presented in one place and to improve transparency of a registrant's short- and long-term liquidity and capital resources needs and demands.[212] This was intended to aid investors in determining the effect such obligations would have in the context of off-balance sheet arrangements.[213] Commission guidance that followed the implementation of this requirement encouraged registrants to include narratives to the table to provide more context and analysis for the numbers presented.[214]

The Commission proposed eliminating Item 303(a)(5). As part of its rationale, the Commission stated its belief that eliminating the requirement would not result in a loss of material information to investors given the overlap with information required in the financial statements and in light of the concurrent proposed expansion of the capital resources requirement, discussed above in Section II.C.2.[215]

b. Comments

Many commenters supported eliminating this item,[216] while a few commenters opposed the proposal.[217] Of the commenters who supported eliminating this item, a few emphasized the burdens imposed by the table.[218] One of these commenters stated that producing the table is burdensome because, as a multinational company with hundreds of subsidiaries, the table ''takes a significant amount of time . . . especially as the information is not referenced in how we operate our business.'' [219] Another commenter stated that the contractual obligations table requires resources beyond those needed for the financial statements and involves departments across their organization including, but not limited to, accounting, information technology, real estate, legal, tax, and merchandising.[220]

Commenters that opposed the proposal questioned the cost savings to registrants from the proposal and suggested the proposal would increase burdens to investors to gather this data.[221] A few of these commenters stated that the table is more important during a crisis such as the COVID–19 crisis.[222] Some of these commenters stated that during periods of liquidity stress, such as the COVID–19 pandemic, investors find it extremely useful to have aggregated disclosure of cash commitments in a single location.[223] Another of these commenters observed that this requirement was adopted during an economic crisis.[224] A few of these commenters also specified that the information in the table is useful and material and suggested augmenting the table,[225] such as with internal hyperlinks [226] or by requiring the data be tagged and accompanied with a narrative.[227] Some of these commenters also stated that the table is not entirely duplicative of disclosures elsewhere and instead is critical to assessing the cadence or funding of liabilities.[228]

c. Final Amendments

We are eliminating Item 303(a)(5) as proposed and, in consideration of comments received, we are also amending Item 303(b) to specifically require disclosure of material cash requirements from known contractual and other obligations as part of a liquidity and capital resources discussion. As discussed in the Proposing Release, the Commission believed that eliminating current Item 303(a)(5) should not result in the loss of material information. The Commission stated that, in addition to disclosure in the financial statements, registrants would, under the proposals to amend the discussion of capital resources, be required to discuss material cash requirements, which would include material contractual obligations.[229] The amendments described below further clarify and enhance this point.

We are adopting amendments to the liquidity and capital resources requirements in Item 303(b) that are a change from what was proposed. These changes are in response to commenter input on the proposed elimination of Item 303(a)(5) and on the proposals related to the liquidity and capital resource requirements. The amendments to Item 303(b) are intended to clarify the requirements while continuing to emphasize a principles-based approach focused on material short- and long-term liquidity and capital resources needs, while also specifying that material cash requirements from known contractual and other obligations should be considered as part of these disclosures. Specifically, these amendments:

- Create a new Item 303(b)(1) to provide the overarching requirements for liquidity and capital resources

lease obligations, operating lease obligations, purchase obligations, and other long-term liabilities reflected on the registrant's balance sheet under GAAP.

[210] The payment obligations must be disclosed for the following timeframes: Less than one year; one to three years; three to five years; and more than five years.

[211] The first three categories of obligations required under current Item 303(a)(5) (*i.e.,* long-term debt, capital leases, and operating leases) are defined by reference to the relevant U.S. GAAP accounting pronouncements that require disclosure of these obligations in the financial statements or notes thereto. The fourth category, purchase obligations, is defined as an agreement to purchase goods or services that is enforceable, legally binding on the registrant and specifies all significant terms. The fifth category of contractual obligations captures all other long-term liabilities that are reflected on the registrant's balance sheet under generally accepted accounting principles applicable to the registrant.

[212] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release at 5990. *See also* Off-Balance Sheet Arrangements and Contractual Obligations Proposing Release.

[213] *See id.*

[214] *See Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis,* Release No. 33–9144 (Sept. 17, 2010) [75 FR 59894 (Sept. 28, 2010)] (''2010 MD&A Interpretive Release''), at 59896.

[215] *See* Proposing Release at Section II.C.7.

[216] *See, e.g.,* letters from Pfizer; EEI & AGA; FedEx; Nasdaq; Nareit; FEI; SIFMA; IMA; E&Y; UnitedHealth; Costco Wholesale Corporation dated April 28, 2020 (''Costco''); Chamber; Society.

[217] *See, e.g.,* letters from CalPERS; CFA & CII; D. Jamieson. *See also* IAC Recommendation.

[218] *See, e.g.,* letters from Eli Lilly; FEI; UnitedHealth; Costco.

[219] *See* letter from Eli Lilly (also opposing retaining the table in modified form).

[220] *See* letter from Costco.

[221] *See* letters from CalPERS (stating that registrants already have systems in place to provide this disclosure while investors do not have the technology to efficiently find these disclosures elsewhere); CFA & CII; D. Jamieson. *See also* IAC Recommendation.

[222] *See* letters from CalPERS; CFA & CII; D. Jamieson.

[223] *See* letter from CFA & CII; D. Jamieson.

[224] *See* letter from CalPERS.

[225] *See* letters CFA & CII; D. Jamieson. *See also* IAC Recommendation (providing, as an example of the potential materiality of the table, a recent analyst report on the cruise line industry during the COVID–19 crisis and the report's reliance on the table to juxtapose the mismatch between revenue shortfalls and near-term obligations).

[226] *See, e.g.,* letters from CFA & CII; D. Jamieson. *See also* IAC Recommendation.

[227] *See, e.g.,* letters from CFA & CII; D. Jamieson.

[228] *See* letters from CFA & CII and D. Jamieson (providing purchase obligations as an example of disclosure in the table that is not duplicated elsewhere).

[229] *See* Proposing Release at Section II.C.7.

disclosures in order to clarify these requirements;[230]

- Incorporate in Item 303(b)(1) portions of current Instruction 5 to Item 303(a), which defines ''liquidity'' as the ability to generate adequate amounts of cash to meet the needs for cash, clarifying its applicability to the liquidity and capital resources requirements more generally;
- Codify prior Commission guidance that specifies that short-term liquidity and capital resources covers cash needs up to 12 months into the future while long-term liquidity and capital resources covers items beyond 12 months;[231]
- Require the discussion on both a short-term and long-term basis;
- Require the discussion to analyze material cash requirements from known contractual and other obligations and such disclosures to specify the type of obligation and the relevant time period for the related cash requirements;
- Include a new instruction that states that the discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the registrant's balance sheet; and
- Include a new instruction that states, consistent with prior Commission guidance,[232] the analysis for all of Item 303(b) should be in a format that facilitates easy understanding and does not duplicate disclosure already provided in the filing.[233]

The Commission's objective in adopting current Item 303(a)(5) was to provide aggregated information about contractual obligations in a single location and to improve transparency of a registrant's short- and long-term liquidity and capital resources needs and demands.[234] Much of the disclosure required by current Item 303(a)(5) is now provided in the financial statements, unlike when the requirement was first adopted. As a result, much of this information is also required to be tagged in XBRL, allowing users to extract and compare this data. Given these developments since the adoption of the contractual obligations table, and consistent with the long-standing principles-based focus of MD&A, we are eliminating Item 303(a)(5) as proposed. Combined with the amended liquidity and capital resource requirements, our amendments are intended to improve the transparency of a registrant's short- and long-term liquidity and capital resources needs and demands while reducing undue burdens to prepare such disclosure.

Our amendments are also intended to address commenters' concerns about the challenges imposed by the current contractual obligations table. We recognize that, because the current contractual obligations table does not have a materiality threshold, the burdens imposed by the table on registrants can include identifying, evaluating, and aggregating contracts that are not material. By eliminating the prescriptive requirement to prepare a contractual obligations table and refocusing instead on a principles-based approach that requires a robust discussion of liquidity and capital resources, including a discussion of contractual obligations, our intent is to relieve registrants of these burdens while continuing to provide investors with material information.

Our amendments allow registrants flexibility in discussing material cash requirements from known contractual and other obligations. To that end, while amended Instruction 4 provides examples of the types of known contractual obligations that may be included that are generally consistent with those required by current Item 303(a)(5), unlike the current requirement, the amendments do not prescribe specific categories of contractual obligations. We acknowledge a commenters' observation that the current table is not entirely duplicative of U.S. GAAP, and therefore the elimination of Item 305(a)(5) could result in a loss of certain information.[235] Examples in amended Instruction 4 are deliberately not tied to U.S. GAAP to provide flexibility for company-specific disclosure, avoid unnecessary duplication with the financial statements, and allow registrants to consider disclosing other categories of contractual obligations appropriate for its business.[236] Additionally, as registrants prepare their financial statements in accordance with U.S. GAAP, and with the exception of certain purchase obligations, they are already required to assess currently prescribed categories of contractual obligations. To the extent obligations under these currently prescribed categories are material, they are required to be discussed in MD&A, regardless of whether our rules prescribe these categories. Likewise, our amendments do not specify or provide examples of ''other obligations'' that may be material to a registrant, allowing registrants flexibility to determine what may be material and necessary to be disclosed.

While the current table requires disclosure of all contractual obligations aggregated by type of obligation and for specified periods, we recognize not all obligations presented nor the periods for which they are presented are material. Accordingly, our amendments to Item 303(b)(1) further require that the disclosures specify the type of obligation and relevant time period for the related cash requirements, in recognition of commenter concerns that such information may be lost with the elimination of Item 303(a)(5). Our amendments are intended to focus only on material disclosures and specifically, disclosure of those periods where the cash requirements or reasonably likely effect of these cash requirements on liquidity and capital resources is material. For example, if a financial obligation is reasonably likely to have a material effect on liquidity and capital resources over a number of subsequent periods or sometime within a range of future periods, these amendments would require registrants to identify and discuss this obligation and related effects.

We are mindful of commenters who stated that the current table is an easy-to-use format as it aggregates disclosure in a single location or otherwise requested that the table be retained and expanded. We also acknowledge input from registrants who emphasized that preparation of the table can be burdensome and costly. On balance, we believe our amendments help ensure that material information of contractual obligations continues to be provided to investors, while reducing some of the burdens and costs associated with the prescriptive requirements of current Item 303(a)(5).

We further believe that, consistent with the objectives in the Proposing Release of enhancing and clarifying certain requirements in MD&A, the

[230] *See* Section II.C.2 *supra.*

[231] See 1989 MD&A Interpretive Release.

[232] *See, e.g.,* 2003 MD&A Interpretive Release.

[233] Notwithstanding the adoption of Item 303(b)(1) that sets forth the overarching requirements for a liquidity and capital resources discussion and the related elimination of language in Item 303 indicating that discussions of liquidity and capital resources may be combined whenever the two topics are interrelated, this new instruction would, for example, continue to allow registrants flexibility to either combine or separate the two topics.

[234] *See* Off-Balance Sheet Arrangements and Contractual Obligations Proposing Release.

[235] For example, information relating to certain purchase obligations is not specifically called for under U.S. GAAP and is therefore not typically disclosed in the financial statements. Additionally, information related to the ''payments due by period'' currently required by the item may not be required to be disclosed in a registrant's financial statements.

[236] *See also* amended Instruction 3 to Item 303(b).

changes we are making to Item 303(b)(1) will assist registrants in considering what disclosure is needed in that context, both in connection with the impact of contractual obligations on those areas and more generally.[237]

8. Critical Accounting Estimates (New Item 303(b)(3))

a. Proposed Amendments

While not specified in Item 303, the Commission has stated in prior guidance that, while preparing MD&A, registrants should consider whether accounting estimates and judgments could materially affect reported financial information. Specifically, the Commission addressed critical accounting estimates in the 2003 MD&A Interpretive Release.[238] The Commission stated that when preparing MD&A disclosure, companies should consider whether they have made accounting estimates or assumptions where the nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and the impact of the estimates and assumptions on financial condition or operating performance is material.[239] This guidance further stated that if critical accounting estimates or assumptions are identified, a registrant should analyze, to the extent material, factors such as how it arrived at the estimate, how accurate the estimate/assumption has been in the past, how much the estimate/assumption has changed in the past, and whether the estimate/assumption is reasonably likely to change in the future. This guidance also stated that a registrant should analyze its specific sensitivity to change based on other outcomes that are reasonably likely to occur. Any disclosure should supplement, not duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements, and provide greater insight into the quality and variability of information regarding financial condition and operating performance.[240]

The Commission proposed amending Item 303 to add new Item 303(b)(4), which would explicitly require disclosure of critical accounting estimates in order to clarify the required disclosures of critical accounting estimates, facilitate compliance, and improve the resulting disclosure. Because registrants often repeat the information in the financial statement footnotes about significant accounting policies, the proposals were also intended to eliminate disclosure that duplicates the financial statement discussion of significant accounting policies and, instead, promote enhanced analysis of measurement uncertainties.

As proposed, critical accounting estimates were defined as those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the registrant's financial condition or results of operations. By focusing the definition on estimation uncertainties, the Commission stated that it intended to avoid any unnecessary repetition of significant accounting policy footnotes.[241] For each critical accounting estimate, the proposal would require registrants to disclose, to the extent material, why the estimate is subject to uncertainty, how much each estimate has changed during the reporting period, and the sensitivity of the reported amounts to the methods, assumptions, and estimates underlying the estimate's calculation.[242] Lastly, the proposal specified that the discussion should provide quantitative as well as qualitative information when quantitative information is reasonably available and will provide material information to investors.

b. Comments

Commenters were generally supportive of the proposed amendments to add critical accounting estimates to Item 303.[243] However, many commenters raised concerns with the proposed requirements to disclose the sensitivity of the reported amounts to the methods, assumptions, and estimates underlying the estimate's calculation and how much each estimate has changed during the reporting period.[244]

Some commenters supported the proposed requirement to disclose a sensitivity analysis and requested that it be rigorously enforced.[245] In contrast, several commenters suggested this requirement—by virtue of the nature of some critical accounting estimates, the potential interrelatedness of assumptions, and the degree of inputs used to arrive at the estimate—would result in investor confusion, disclosure that is not useful to investors, unwarranted questioning of past judgments, or heightened liability exposure.[246]

Many commenters stated that a sensitivity analysis is challenging for registrants to provide,[247] with a number of these commenters stating that quantitative disclosures can be particularly challenging or costly.[248] Several commenters asked the Commission to allow management discretion in providing the disclosure based on consideration of factors such as whether: a sensitivity or quantitative analysis would be meaningful or relevant;[249] a reasonably likely change to an assumption would be material;[250] or a sensitivity analysis is either practicable[251] or produced in the ordinary course of business rather than solely to satisfy the disclosure requirement.[252] Other commenters

[237] *See* Section II.C.2.c *supra.* With respect to the application of the enhanced liquidity and capital resource requirements on SRCs, *see* Section II.C.11. *infra.*

[238] *See* 2003 MD&A Interpretive Release. Prior to this release, the Commission reminded registrants that, under the existing MD&A disclosure requirements, a registrant should address material implications of uncertainties associated with the methods, assumptions, and estimates underlying the registrant's critical accounting measurements, and encouraged companies to explain the effects of the critical accounting policies applied and the judgments made in their application. *See Cautionary Advice Regarding Disclosure,* Release No. 33–8040 (Dec. 12, 2001) [66 FR 65013 (Dec. 17, 2001)].

[239] *See id.*

[240] *See id.*

[241] Additionally, the proposals included an instruction stating that critical accounting estimate disclosure should supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements

[242] These proposed requirements are similar to those found in IFRS. *See* IAS 1, paragraph 129.

[243] *See, e.g.,* letters from CFA & CII; D. Jamieson; RSM; PWC; Pfizer; EEI & AGA; Deloitte; KPMG; Grant Thornton; CAQ; BDO; FEI; SIFMA; IMA; UnitedHealth; Medtronic; Chamber; ABA; E&Y; Society.

[244] *See, e.g.,* letters from RSM; PWC; Pfizer; EEI & AGA; Deloitte; KPMG; Grant Thornton; CAQ; BDO; FEI; SIFMA; IMA; UnitedHealth; Medtronic; Chamber; ABA; E&Y; Society.

[245] *See, e.g.,* letters from CFA & CII and D. Jamieson.

[246] *See, e.g.,* letters from PWC; Pfizer; KPMG; CAQ; BDO; SIFMA; UnitedHealth; Medtronic; ABA.

[247] *See, e.g.,* letters from RSM; PWC; Pfizer (stating that, for the pharmaceutical industry, critical accounting estimates are often based on many complex judgments and assumptions that can be inherently uncertain and unpredictable, including qualitative changes in the industry and that disclosing sensitivity of the reported amounts to the assumptions would be highly subjective and not provide additional insight); KPMG; CAQ; BDO; FEI; SIFMA (stating that ''[it understood] from discussions with outside auditors that preparation of these kinds of quantitative disclosures, which are required under IFRS, is extremely burdensome on both registrants and their auditors''); IMA; E&Y (noting concerns about disclosing potentially confidential assumptions); UnitedHealth; ABA.

[248] *See, e.g.,* letters from KPMG, CAQ, BDO, FEI, SIFMA, E&Y.

[249] *See, e.g.,* letters from FEI; UnitedHealth; Medtronic; PWC; ABA.

[250] *See, e.g.,* letters from RSM; KPMG; CAQ; E&Y.

[251] *See, e.g.,* letters from KPMG; Chamber.

[252] *See* letter from SIFMA.

recommended limiting the disclosure to only qualitative disclosure, which they believed would be more meaningful to investors than quantitative disclosure,[253] or disclosures of rough ranges due to the difficulty in quantifying sensitivities.[254] One commenter asked the Commission to specify that registrants are not required to quantify individual assumptions underlying their critical accounting estimates as long as they quantify how reasonably likely changes would materially affect the critical accounting estimates.[255] Another commenter stated that, if the final rule requires a quantitative sensitivity analysis and it is impracticable to disclose the extent of the possible effects on an assumption, the rule should state that the registrant can disclose that it is reasonably possible that outcomes within the next fiscal year that are different than the assumption could require a material adjustment, similar to disclosure required under IFRS about estimation uncertainty.[256]

Several commenters asked the Commission to clarify the period over which the changes in estimates should be described (*i.e.,* most recent period or all periods presented, including interim periods).[257] A few commenters opposed the proposed requirement to disclose how much an estimate has changed over the reporting period,[258] stating that the disclosure either could result in confusion and unwarranted questioning of past judgments [259] or would be reflected in amounts that are reported in the financial statements and discussed in Item 303(a) pursuant to requirements to discuss material changes.[260] One commenter recommended that an ''estimate'' in this context be the key assumptions or inputs underlying the estimate recognized in the financial statements.[261] Two commenters that opposed disclosure of how much an estimate has changed over the reporting period stated their belief that ASC Topic 275 (Risks and Uncertainties) acknowledges that actual results and estimates can differ and that such differences are not necessarily an indication of an error or deviation from U.S. GAAP so long as the risks and uncertainties relating to such estimates are disclosed.[262]

We received several comments related to aspects of the proposal other than disclosure of sensitivity analysis and changes in estimates. One commenter stated that it is challenging for registrants to determine ''a reference point (*i.e.,* at the assumption level or at the financial statement level) in determining materiality for disclosure of the methods, assumptions and estimates underlying the calculation of the critical accounting estimate.'' [263] Several commenters expressed support for the proposed instruction stating that critical accounting estimate disclosure is intended to supplement, not repeat, the description of significant accounting policies in the notes to the financial statements,[264] though one commenter asked that this be moved to the rule itself to elevate its prominence.[265] Several commenters recommended that the Commission provide illustrative examples of critical accounting estimate disclosures [266] or further guidance [267] to facilitate application of the final rule. Some commenters recommended clarifying whether this proposal is intended to modify current Commission guidance on critical accounting estimates or to change existing practice.[268]

In response to the Commission's request for comment, a few commenters stated that they did not perceive any issues with or overlap between critical accounting estimates and critical audit matters.[269] One commenter recommended aligning the definition of critical accounting estimates with the definition of critical accounting estimate used by the Public Company Accounting Oversight Board in AS 1301: *Communications with Audit Committees* (''AS 1301'').[270] While we did not specifically solicit comment on the submission format of critical accounting estimates, one commenter recommended that information provided be submitted in machine-readable format, stating that tagged critical accounting estimates disclosure may help investors compare critical accounting estimates with critical audit matters.[271]

c. Final Amendments

We are adopting new Item 303(b)(3) [272] substantially as proposed for the reasons described in the Proposing Release and above, but with certain modifications in response to commenters' concerns to make clear that: (i) The application of the material and reasonably available qualifier applies to all parts of the disclosure, not just to quantitative information; (ii) the discussion on how much each estimate has changed may also be met through a discussion of changes in the assumptions during the period; and (iii) the disclosure of changes in the estimate/assumption will cover a ''relevant period,'' rather than a ''reporting period.'' [273]

We agree with commenters who raised concerns that, as proposed, the requirements to disclose the sensitivity of reported amounts to the methods, assumptions, and estimates underlying a calculation and how much each estimate has changed during the reporting period for each critical accounting estimate could have been read to require disclosure that is not material, or that was costly or otherwise challenging to prepare. Specifically, these commenters stated that the proposed requirement could suggest that registrants are required to provide

[253] *See* letter from SIFMA (stating the current proposal's language of ''reasonably available'' would, in the event of a lawsuit predicated on omission of this information, still require resolution of the factual issue of whether this information was reasonably available).

[254] *See* letter from IMA.

[255] *See* letter from E&Y.

[256] *See* letter from KPMG (citing International Accounting Standards (IAS) 1, paragraph 131).

[257] *See, e.g.,* letters from RSM; Deloitte; KPMG; CAQ.

[258] *See, e.g.,* letters from Medtronic; ABA; Society.

[259] *See* letter from Medtronic.

[260] *See* letters from ABA and Society.

[261] *See* letter from KPMG.

[262] *See* letters from PWC; Medtronic.

[263] *See* letter from RSM.

[264] *See, e.g.,* letters from Grant Thornton; BDO; Chamber; ABA; Society.

[265] *See* letter from Grant Thornton.

[266] *See, e.g.,* letters from KPMG; BDO; IMA; Society.

[267] *See* letter from IMA.

[268] *See* letters from Deloitte; E&Y (recommending this clarification specifically for quantitative disclosures).

[269] *See, e.g.,* letters from IMA; Chamber; BDO.

[270] *See* letter from RSM. AS 1301 defines critical accounting estimate as ''[a]n accounting estimate where (a) the nature of the estimate is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change and (b) the impact of the estimate on financial condition or operating performance is material.'' This definition is consistent with that contained in the 2003 MD&A Interpretive Release.

[271] *See* letter from CFA.

[272] Proposed as Item 303(b)(4).

[273] Consistent with the proposal, new Item 303(b)(3) does not require a registrant to submit the critical accounting estimates disclosure in a machine-readable format as requested by a commenter, who stated that this may help investors compare critical accounting estimates with critical audit matters. *See* letter from CFA. The communications auditors are expected to provide on critical audit matters in an audit report have a different objective than disclosures related to critical accounting estimates. Critical audit matters provide insight into matters that are especially challenging, subjective, and complex to audit from the perspective of the auditor. On the other hand, critical accounting estimates disclosure should provide management's insights into estimation uncertainties that have had or are reasonably likely to have a material impact on reported financial statements. *See* Proposing Release at Section II.C.8. Likewise, we are not adopting any new XBRL requirements for this Item more broadly. *See* Section IV.E *infra* for discussion on alternatives considered for Item 303 of Regulation S–K, including submission in a machine readable format.

quantification for ''every'' critical accounting estimate,[274] have limited flexibility in presenting such disclosures,[275] or are subject to a different standard than the rest of MD&A.[276] In order to clarify that this was not our intent, new Item 303(b)(3) more clearly states that the reasonably available and material qualifier applies to all information about a critical accounting estimate that has had or is reasonably likely to have a material impact on financial condition or results of operations, whether qualitative or quantitative, including whether the information relates to sensitivity of the reported amount or how much the estimate has changed.[277]

While some commenters asked the Commission to adopt different thresholds, such as when ''practicable'' or ''in the ordinary course of business and not solely for purposes of disclosure,'' we believe that ''reasonably available'' is the appropriate standard as it is familiar to registrants and consistent with current Commission rules.[278] We believe that, in practice, if the disclosure is ''impracticable'' to provide, it would not be ''reasonably available.'' In addition, limiting the discussion to material information is intended to avoid disclosure that is not useful to investors and is consistent with the principles-based nature of MD&A.

New Item 303(b)(3) will require registrants to disclose how much an estimate and/or assumption has changed over a relevant period. This is intended to allow an investor to better evaluate the uncertainty associated with the critical accounting estimate by observing changes in estimates or assumptions over time. The revised item also specifically references ''assumptions'' in addition to estimates because, as suggested by one commenter, this would make clear that registrants have flexibility to provide appropriate context in the discussion of changes underlying a critical accounting estimate. This disclosure requirement, along with the required sensitivity disclosure, is not intended to yield discussions of quantitative changes to reported amounts, which would be disclosed in response to other requirements in Item 303, such as the discussion of results of operations under new Item 303(b)(2). Instead, our intent is for registrants to provide investors with a greater understanding of the variability that is reasonably likely to affect the financial condition or results of operations so investors can adequately evaluate the estimation uncertainty of a critical accounting estimate.

We also believe that such information would not be duplicative of financial statement disclosures, as suggested by some commenters. While U.S. GAAP requires discrete disclosure of the underlying assumptions for certain accounting estimates,[279] it does not require a discussion of material changes in those assumptions over a relevant period, and there is no general requirement to disclose underlying assumptions for all material accounting estimates included in the financial statements. For that reason, we believe that quantification of certain assumptions, when material and reasonably available, may be necessary to facilitate understanding of the material critical accounting estimate and allow an investor to better understand the degree of estimation uncertainty. To the extent the financial statements include information about specific changes in the estimate or underlying assumptions, the amendments include an instruction [280] that specifies that critical accounting estimates should supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements. Further, unlike existing requirements in U.S. GAAP, our amendments emphasize forward-looking information as they are intended to provide investors with greater insight into estimation uncertainty that is reasonably likely to have a material impact on financial condition and operating performance. We remind registrants that the principle that MD&A should not be a recitation of financial statements in narrative form extends to disclosure of critical accounting estimates.[281]

Our proposal would have required disclosure of how much estimates changed during a ''reporting period,'' and several commenters asked the Commission to specify this period. New Item 303(b)(3) will require disclosure of changes in each estimate and/or assumption over a ''relevant period,'' but does not specify the period over which a registrant should discuss the changes in the estimate or assumption. This approach is intended to give registrants the flexibility to determine the relevant period necessary to describe material changes in estimates or assumptions that would facilitate an understanding of estimation uncertainty, consistent with the principles-based nature of MD&A. For certain estimates or assumptions, providing information about estimates and/or assumptions only as of the balance sheet date may be appropriate to inform investors about the nature of the estimation uncertainty and how reported amounts bear the risk of change. In contrast, other estimates or assumptions may require disclosure over the number of years presented in the financial statements to facilitate an understanding of the estimation uncertainty. We do not believe that the requirement to disclose changes in the estimate and/or assumption over a relevant period is inconsistent with the provisions of ASC Topic 275, *Risks and Uncertainties,* that were cited by some commenters.[282] In this regard, disclosure of changes in an estimate/assumption should not be implied to mean that the earlier estimate was made in error. Rather, the disclosure provides insight into the estimation uncertainty and the variability that could result over time.

Some commenters recommended specifying a reference point *(i.e.,* assumption-level or financial statement-level) in determining materiality for disclosure of the methods, assumptions, and estimates underlying the calculation of the critical accounting estimate. We are not specifying a reference point in order to allow flexibility to discuss the level that provides material information to an investor about the critical accounting estimate. Similarly, we have not given examples or guidance for particular estimates at this time, as suggested by some commenters. Disclosures will need to be tailored to a registrant's particular business, uncertainties

[274] *See* letter from ABA.

[275] *See* letter from PWC.

[276] *See* letter from E&Y.

[277] For both qualitative and quantitative information, the disclosure requirement is only triggered if the information is necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations.

[278] *See, e.g.* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b–21 [17 CFR 240.12b–21] which generally state that information required need be given only insofar as it is known or reasonably available to the registrant.

[279] For example, ASC 820 *Fair Value* requires disclosure of the valuation techniques and inputs used to arrive at a measure of fair value, including judgments and assumptions made. We also note that while ASC 275, *Risks and Uncertainties* requires a discussion of estimates, it includes specific criteria including a reasonably possible ''change in the near term due to one or more future confirming events.'' By contrast, the critical accounting estimate requirement is broader as it is not tied only to changes in the near term and encompasses items that may not be affected by future events, such as the range in methods a registrant may use in estimation.

[280] *See* amended Instruction 3 to Item 303(b).

[281] *See* 2003 MD&A Interpretive Release.

[282] *See* letters from PWC and Medtronic.

underlying its financial statement line items, and other circumstances, and we do not want to promote a checklist approach to the disclosures. In addition, although a commenter requested that we conform the definition of critical accounting estimate to that found in AS 1301, *Communications with Audit Committees,*[283] we continue to believe that the rule's definition, which places greater focus on describing the estimation uncertainty, will promote disclosure that avoids any unnecessary repetition of significant accounting policy footnotes.

We acknowledge commenters' request for clarification on whether the proposed critical accounting estimate disclosure requirements are intended to change how registrants currently approach these disclosures.[284] We believe the principles of new Item 303(b)(3) are not materially different from the guidance on critical accounting estimates set forth in the 2003 MD&A Interpretive Release. Our amendments, including the modifications to the proposed amendments, are intended to clarify the required disclosures under this requirement, facilitate compliance, and improve the resulting disclosure.

In addition, as required by current Item 303(b), new Item 303(c) will continue to require that MD&A disclosure for interim periods include a discussion of the material changes in items specified in the full fiscal year requirements in amended Item 303(b).[285] As this applies to critical accounting estimates disclosure in discussion of interim periods, registrants would be required to discuss material changes to the full fiscal year disclosures.

9. Interim Period Discussion (Amended Item 303(c))

a. Proposed Amendments

Current Item 303(b) requires registrants to provide MD&A disclosure for interim periods that enables market participants to assess material changes in financial condition and results of operations between certain specified periods.[286] Current Item 303(b)(1) requires registrants to discuss any material change in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet.[287] Current Item 303(b)(2) requires registrants to discuss any material changes in their results of operations for the most recent fiscal year-to-date period presented in their income statement, along with a similar discussion of the corresponding year-to-date period of the preceding fiscal year. If a registrant is required or elects to provide an income statement for the most recent fiscal quarter, the discussion must also cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year.[288] Current Item 303(b)(2) also states that registrants subject to Rule 3–03(b) of Regulation S–X[289] providing statements of comprehensive income for the twelve-month period ended as of the date of the most recent interim balance sheet must discuss material changes of that twelve-month period as compared to the preceding fiscal year rather than the preceding period.

The Commission proposed amending current Item 303(b) (to be renumbered as proposed Item 303(c)) to allow for flexibility in comparisons of interim periods and to simplify the item. Specifically, the Commission proposed permitting registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) *or* the immediately preceding quarter. Under the proposal, if a registrant elects to discuss changes from the immediately preceding quarter, the registrant must provide summary financial information that is the subject of the discussion for that quarter or identify the prior EDGAR filing that presents such information so that a reader may have ready access to the prior quarter financial information being discussed. In addition, under the proposed amendment, if in a subsequent Form 10–Q, a registrant changes the comparison from the comparison presented in the immediately prior Form 10–Q, the registrant would be required to explain the reason for the change and present both comparisons in the filing where the change is announced.[290]

b. Comments

Commenters generally supported amending current Item 303(b) as proposed.[291] Some of these commenters recommended allowing registrants additional flexibility by revising the existing requirement to compare current year-to-date information to prior year-to-date information and giving registrants discretion to decide whether this disclosure would be meaningful.[292] Two of these commenters also stated that investors do not use the year-to-date comparative information.[293] Both of these commenters recommended amending the year-to-date comparative information requirement to make such information optional, with greater guidance provided to registrants to help them determine whether to include such information.[294]

Two commenters opposed the proposal to allow registrants flexibility in comparisons of interim periods.[295] Both of these commenters stated that current prescribed disclosure requirements ''provide uniformity of information essential to making assessments.'' [296] Both commenters also stated that if a comparison to the prior quarter were relevant or material, the current structure provides the registrants the flexibility to make such comparisons in addition to the year-to-date comparative information.[297]

c. Final Amendments

We are adopting Item 303(c) with the amendments as proposed. We acknowledge commenters' concerns regarding the benefits of uniform disclosures. However, we continue to believe that the flexibility provided by these amendments will help registrants

[283] *See* letter from RSM.

[284] *See* letters from Deloitte; E&Y (recommending this clarification specifically for quantitative disclosures).

[285] *See infra* Section II.C.9.

[286] Item 303(b) of Regulation S–K [17 CFR 229.303(b)].

[287] If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding year, the registrant must also discuss any material changes in financial condition from that date to the date of the most recent interim balance sheet provided. At their discretion, registrants may combine discussions of changes from both the end and the corresponding interim date of the preceding fiscal year when such discussions are required. *See* Item 303(b)(1).

[288] In addition, if the registrant elects to provide a statement of comprehensive income for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the registrant must also discuss material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. *See* Item 303(b)(2).

[289] These registrants include those primarily engaged in: The generation, transmission, or distribution of electricity; the manufacture, mixing transmission, or distribution of gas; the supplying or distribution of water; or the furnishing of telephone or telegraph services; or in holding securities of companies engaged in such business.

[290] The Commission also proposed eliminating language in current Item 303(b)(2) relating to requirements for registrants subject to Rule 3–03(b) of Regulation S–X. *See* Proposing Release at Section II.C.9.

[291] *See, e.g.,* letters from Pfizer; Nareit (noting, however, that some members of their task force ''reasoned that a requirement to only disclose information in one manner could mislead investors if a company had a material transaction that was not reflected in the comparative period presented''); FEI; SIFMA; IMA; Medtronic; Chamber; Society.

[292] *See, e.g.,* letters from FEI; Medtronic; Chamber.

[293] *See, e.g.,* letters from FEI; Medtronic.

[294] *See id.*

[295] *See, e.g.,* letters from CFA & CII; D. Jamieson.

[296] *See id.*

[297] *See id.*

provide a more tailored and meaningful analysis that is relevant to their specific business cycles while also providing investors with material information to assess quarterly performance. Because not all businesses are seasonal, a comparison to the corresponding quarter of the preceding year may not be as meaningful as a comparison to the preceding quarter. Additionally, by requiring registrants not only to explain the reasons for a change in comparison from prior periods but also to provide both comparisons when there is such a change, we believe investors will benefit from greater insight into a registrant's decision making and have sufficient disclosure to understand any period-over-period change.

We are not, as suggested by some commenters, amending the year-to-date comparative information requirement in current Item 303(b) to make it optional. When adopting the precursor to current Item 303(b), the Commission noted the item was intended to complement discussion in annual reports.[298] At that time, the Commission stated ''that the most meaningful discussion of financial condition for interim reporting purposes would deal with the end of the preceding fiscal year and the date of the most recent interim balance sheet provided.'' [299] We continue to believe that a discussion of material year-to-date changes remains valuable and complements the MD&A provided in annual reports. We also believe that a comparative year-to-date discussion provides important context for the current quarter.

Additionally, we are adopting as proposed several amendments that will further streamline the item. These amendments will:

- Eliminate the text that states that registrants need not provide a discussion of the impact of inflation and changing prices, consistent with the amendments described above; [300] and
- Amend current Item 303(b)(2) (amended Item 303(c)(2)) material changes in results of operations—to break the requirements into two subsections:
  - Amended Item 303(c)(2)(i) will continue to require registrants to discuss any material changes in their results of operations between the most recent year-to-date interim period(s) and the corresponding period(s) of the preceding fiscal year for which statements of comprehensive income are provided; and
  - Amended Item 303(c)(2)(ii) will, as discussed above, require registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) *or* the immediately preceding quarter.[301] Additionally, amended Item 303(c) will continue to require that the interim discussion and analysis must include a discussion of the material changes in items specified in the full fiscal year requirements in amended Item 303(b).

We are also amending as proposed the item to eliminate language requiring registrants subject to Rule 3–03(b) of Regulation S–X [302] that elect to provide a statement of comprehensive income for the 12-month period ended as of the date of the most recent interim balance sheet to discuss material changes in that 12-month period with respect to the preceding fiscal year, rather than the corresponding preceding period. These amendments are intended to give these registrants the same flexibility as other registrants to make the most meaningful comparisons in their interim period MD&A.

Finally, as proposed, and for the reasons discussed in the Proposing Release, our amendments delete Instructions 2, 3, 5, 6, 7, and 8 to current Item 303(b) to help streamline the item and eliminate unnecessary instructions.[303] The following table outlines the current and amended structure of amended Item 303(c): [304]

Current structure	Amended structure
Item 303(b), *Interim periods.*	Item 303(c), *Interim periods.*
(1) Material changes in financial condition	(1) Material changes in financial condition.
(2) Material changes in results of operations, Rule 3–03(b) of Regulation S–X matters.	(2) Material changes in results of operations. (i) Material changes in results of operations (year-to-date). (ii) Material changes in results of operations (quarter comparisons).
Instruction 1 to Item 303(b)	Instruction 1 to Item 303(c) (with amendments to reference Instructions 2, 3, 4, 6, 8, and 11 to amended Item 303(b)).
Instruction 2 to Item 303(b)	Eliminate.
Instruction 3 to Item 303(b)	Eliminate.
Instruction 4 to Item 303(b)	Instruction 2 to Item 303(c).
Instruction 5 to Item 303(b)	Eliminate.
Instruction 6 to Item 303(b)	Eliminate.
Instruction 7 to Item 303(b)	Eliminate.
Instruction 8 to Item 303(b)	Instruction 11 to amended Item 303(b).

10. Safe Harbor for Forward-Looking Information (Current Item 303(c))

a. Proposed Amendments

Item 303(c) [305] currently states that the safe harbors provided in Section 27A of the Securities Act and Section 21E of the Exchange Act (together, ''statutory safe harbors'') apply to all forward-looking information provided in response to current Item 303(a)(4) (off-balance sheet arrangements) and current Item 303(a)(5) (tabular disclosure of contractual obligations), provided such disclosure is made by

[298] *See New Interim Financial Information Provisions and Revisions of Form 10–Q for Quarterly Reporting,* Release No. 33–6288 (Feb. 9, 1981), 46 FR 12480 (Feb. 17, 1981) (adopting current Item 303(b) of Regulation S–K as then Item 11(b) of Regulation S–K)(''Item 303(b) Adopting Release''). *See also* 1982 Integrated Disclosure Adopting Release (reorganizing Regulation S–K to, among other things, move the substance of Item 11(b) of Regulation S–K to Item 303(b) of Regulation S–K).

[299] *See* Item 303(b) Adopting Release.

[300] *See supra* discussion at Section II.C.5.

[301] As described above, if a registrant changes the comparison from the prior interim period comparison, the registrant would be required to explain the reason for the change.

[302] *See supra* footnote 289.

[303] Instruction 5 to Item 303(b) is currently reserved.

[304] The information in this table is not comprehensive and is intended only to highlight the general structure of the current rules and amendments. It does not reflect all of the substance of the amendments or all of the rules and forms that will be affected. All changes are discussed in their entirety throughout this release. As such, this table should be read together with this Section II.C.9.

[305] Item 303(c) of Regulation S–K [17 CFR 229.303(c)].

certain enumerated persons.[306] For current Item 303(a)(4), current Item 303(c) further states that the ''meaningful cautionary statements'' element of the statutory safe harbors is satisfied if a registrant satisfies all of current Item 303(a)(4)'s requirements.[307]

The Commission added current Item 303(c) in 2003 when it adopted Items 303(a)(4) and (5).[308] Item 303(c) was intended to remove possible ambiguity about the application of the statutory safe harbors to these items and to promote more meaningful disclosure.[309]

Because the Commission proposed to eliminate both Items 303(a)(4) and (5), it also proposed eliminating current Item 303(c), which specifically and exclusively refers to those disclosure requirements. The proposed amendments were not intended to alter the application of the statutory safe harbors, which protect eligible forward-looking statements in MD&A against private legal actions that are based on allegations of a material misstatement or omission, with certain exceptions. [310] The Proposing Release also reiterated the availability of the safe harbors in Securities Act Rule 175 [311] and Exchange Act Rule 3b–6 [312] (the ''regulatory safe harbors''), which expressly apply to forward-looking information in MD&A disclosure.[313]

b. Comments

A few commenters recommended revising the proposal to expand the safe harbors available to registrants.[314] One of these commenters recommended harmonizing the treatment of forward-looking information in MD&A and the financial statements.[315] This commenter also asked the Commission to reiterate, in any final release, its statements in the Proposing Release regarding its commitment to the statutory safe harbors and that the amendments are not intended to alter application of this safe harbor. Another commenter asked the Commission to ''expand the statutory safe harbors to apply to all forward-looking statements wherever they appear in MD&A, for all transactions and registrants.'' [316] This commenter also asked the Commission to ''expand the . . . statutory safe harbors to cover any forward-looking critical accounting estimates disclosure for all types of companies and transactions (including IPOs).'' [317]

c. Final Amendments

We are adopting amendments to eliminate current Item 303(c) as proposed. As the Commission stated when adopting Item 303(c), the item was intended to remove possible ambiguity about the application of the statutory safe harbors to the specific disclosures called for by current Items 303(a)(4) and (5).[318] While the final amendments continue to require disclosure regarding off-balance sheet arrangements and contractual obligations,[319] such disclosure will now be integrated into a registrant's broader MD&A discussion. We therefore believe the potential ambiguity that motivated the Commission to adopt current Item 303(c) in the context of the prescriptive requirements of Item 303(a)(4) and (5) no longer exists. Rather, whether and the extent to which disclosure related to contractual obligations or off-balance sheet arrangements constitutes forward-looking statements that fall under the protections of either the statutory or regulatory safe harbors would be evaluated consistently with other forward-looking disclosures in MD&A.

Because our amendments to eliminate current Item 303(c) do not alter the availability or scope of the statutory and regulatory safe harbors, and because we are eliminating the prescriptive requirements associated with Items 303(a)(4) and (5), we are eliminating the item, as proposed. While we acknowledge the suggestion of one commenter to consider expanding the scope of the statutory safe harbors to apply more broadly, including to cover all transactions and issuers, an expansion would warrant a broader review of the statutory and regulatory safe harbors and any areas where expansion may be necessary or appropriate. It is therefore beyond the scope of the current rulemaking.

As requested by a commenter, we explicitly confirm that eliminating current Item 303(c) does not alter the application or availability of the statutory safe harbors or the regulatory safe harbors for all of amended Item 303, including the new requirement to disclose critical accounting estimates.[320] We continue to believe that the statutory and regulatory safe harbors for eligible forward-looking statements have encouraged greater disclosure of forward-looking information that has benefited investors and our markets. As registrants prepare their MD&A disclosures under the amendments, we remind registrants of the availability and scope of these safe harbors and encourage greater disclosure of forward-looking information.

11. Smaller Reporting Companies (Current Item 303(d))

a. Proposed Amendments

Current Item 303(d) [321] states that an SRC may provide current Item 303(a)(3)(iv) information for the most recent two fiscal years if it provides financial information on net sales and revenues and income from continuing operations for only two years. Item 303(d) also states that an SRC is not required to provide the contractual obligations table specified in Item 303(a)(5). Because the Commission proposed to eliminate current Items 303(a)(3)(iv) and (a)(5), the Commission also proposed eliminating current Item

[306] Such persons are the issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

[307] Item 303(c)(2)(ii) of Regulation S–K [17 CFR 229.303(c)(2)(ii)].

[308] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release at 5992 (''To encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements and to reduce the burden of estimating the payments due under contractual obligations, the amendments include a safe harbor for forward-looking information.'').

[309] *See id.*

[310] *See* Sections 27A of the Securities Act and 21E of the Exchange Act. The statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with generally accepted accounting principles. Notably, the statutory safe harbors also would not apply to MD&A disclosure if the MD&A forward-looking statements were made: (1) In connection with an initial public offering; a tender offer; an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program, an offering of securities by a blank check company; a roll-up transaction; or a going private transaction; or (2) or by an issuer of penny stock. *See* Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act. Also, the statutory safe harbors do not, absent a rule, regulation, or Commission order, apply to forward-looking statements by issuers covered by Section 27A(b)(1)(A) of the Securities Act and Section 21E(b)(1)(A) of the Exchange Act. Because the statutory safe harbors only apply to forward-looking statements made by or on behalf of an issuer that is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, they would not apply to forward-looking statements made in connection with an offering under Regulation A unless the issuer is a reporting company and no other exclusions from the safe harbor apply.

[311] [17 CFR 230.175].

[312] [17 CFR 240.3b–6].

[313] *See* Proposing Release at Section II.C.10.

[314] *See* letters from SIFMA; Chamber.

[315] *See* letter from Chamber.

[316] *See* letter from SIFMA.

[317] *See id.*

[318] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release.

[319] *See* amended Instruction 8 to Item 303(b).

[320] Instruction 7 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)], Securities Act Rule 175 [17 CFR 230.175], and Exchange Act Rule 3b–6 [17 CFR 240.3b–6]. Our amendments to Item 303 retain Instruction 7 to current Item 303(a), which will be renumbered as Instruction 6 to amended Item 303(b).

[321] Item 303(d) of Regulation S–K [17 CFR 229.303(d)].

303(d), which specifically and exclusively references these two disclosure requirements.

b. Comments

One commenter supported the proposal to eliminate current Item 303(d).[322] Some commenters, while not commenting on this specific proposal, indicated they generally opposed any further accommodations allowing SRCs to provide scaled disclosure.[323]

c. Final Amendments

In light of the elimination of current Items 303(a)(3)(iv) and (5), we are adopting amendments to current Item 303(d) as proposed. Notwithstanding the elimination of current Item 303(a)(5), new Item 303(b) specifically requires disclosure of material cash requirements from known contractual and other obligations as part of a liquidity and capital resources discussion.[324] SRCs are currently required to provide MD&A disclosure addressing liquidity and capital resources, and we believe that SRCs should continue to provide this disclosure under the amended requirements. Excluding SRCs from the relevant discussion of liquidity and capital resources would be inconsistent with the objectives and requirements stated in amended Item 303(a), as such disclosure may be necessary to an understanding of the registrant's financial condition, cash flows, and other changes in financial condition and results of operations.

Although SRCs are not currently required to include a contractual obligations table, they are already required under U.S. GAAP to assess most of the currently prescribed categories that would otherwise be included in this table. Additionally, some of the revisions to the liquidity and capital resources disclosure requirements codify current MD&A guidance, which already applies to SRCs.[325]

When adopting the contractual obligations table requirement, the Commission excluded the predecessor to SRCs, small business issuers, stating that the exclusion was consistent with the policies of facilitating capital raising by small businesses and reducing the compliance burdens placed on these registrants by the federal securities laws.[326] Because the basis for current Item 303(d) was a reduction in the burdens associated with the preparation of the contractual obligations table itself, and because we are eliminating that prescriptive requirement, we believe that the elimination of current Item 303(d) is likewise appropriate.

D. Application to Foreign Private Issuers

We are adopting corresponding amendments that will apply to FPIs providing disclosure required by Form 20–F or Form 40–F largely as proposed.[327] We are also adopting amendments to current Instruction 11 to Item 303 as proposed, which specifically applies to FPIs that choose to file on domestic forms. Similar to our discussions above and for the reasons discussed in greater detail below, our amendments to these forms are intended to modernize, clarify, and streamline these disclosure requirements.

Generally, commenters did not specifically comment on the proposed amendments related to FPIs. One commenter stated that, unless otherwise specified, its comments apply to all registrants, including FPIs.[328]

1. Form 20–F

a. Selected Financial Data (Item 3.A of Form 20–F)

i. Proposed Amendments

Similar to Item 301, Item 3.A of Form 20–F requires FPIs to provide selected historical financial data for the most recent five financial years (or such shorter period that the company has been in operation). Also similar to Item 301, Item 3.A specifies the information that must be included in the selected financial data and provides that EGCs are not required, in a Securities Act registration statement, to present selected financial data for any period prior to the earliest audited financial statements presented in connection with the registrant's initial public offering of its common equity securities.[329] In a registration statement, periodic report, or other report filed under the Exchange Act, an EGC need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's first registration statement that became effective under the Exchange Act or the Securities Act.[330] However, unlike Item 301, Item 3.A also permits a FPI to omit either or both of the earliest two years of data if it represents that it cannot provide the information, or cannot provide the information on a restated basis, without unreasonable effort or expense. Given the similarities between Item 3.A and Item 301, the Commission proposed deleting Item 3.A and the related instructions.

ii. Final Amendments

For reasons similar to those discussed above with respect to the elimination of Item 301, we are eliminating Item 3.A of Form 20–F, as proposed.[331] We recognize that, unlike Item 301, Item 3.A. permits an FPI in certain situations to omit either or both of the earliest two years of data. However, as with Item 301, trend disclosure elicited by Item 3.A typically would be discussed in response to Item 5 of Form 20–F, which requires MD&A disclosure similar to Item 303. Despite the deletion of Item 3.A., FPIs should continue to consider whether such tabular disclosure as part of an introductory section or overview, including to demonstrate material trends, would be appropriate.[332]

b. Operating and Financial Review and Prospects (Item 5 of Form 20–F)

i. Proposed Amendments

The disclosure requirements for Item 5 of Form 20–F (Operating and Financial Review and Prospects) are substantively comparable to the MD&A requirements under Item 303 of Regulation S–K.[333] To maintain a consistent approach to MD&A for domestic registrants and FPIs, the Commission proposed amendments to Form 20–F that generally conformed to the proposed amendments to Item 303.[334]

ii. Final Amendments

We are adopting the amendments to Item 5 of Form 20–F largely as proposed, with some modifications to conform to our amendments to Item 303 by incorporating any relevant changes made to Item 303 in response to

[322] *See* letter from Chamber.

[323] *See* letters from CFA & CII; D. Jamieson.

[324] *See* Section II.C.7 *supra.*

[325] *See* 1989 MD&A Interpretive Release and 2003 MD&A Interpretive Release.

[326] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release. *See also* Small Business Initiatives, Release No. 33–6949 (July 30, 1992) [57 FR 36442 (Aug. 13, 1992)].

[327] To the extent that other forms, such as Form F–1, require information provided by Form 20–F, these amendments to Form 20–F will also apply to those other forms.

[328] *See* letter from CAQ.

[329] *See* Instruction 3 to Item 3.A.

[330] *Id.*

[331] *See supra* Section II.A.

[332] *See* 2003 MD&A Interpretive Release (''Companies should consider whether a tabular presentation of relevant financial or other information may help a reader's understanding of MD&A.''). *See also* footnote 1 of 2003 MD&A Interpretive Release which states that the guidance in that release is intended to apply to FPIs.

[333] When the Commission revised the wording of Item 5 of Form 20–F in 1999, the adopting release noted that the requirements correspond with Item 303 of Regulation S–K. *See International Disclosure Standards,* Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)], at 53904 (''International Disclosure Standards Release'').

[334] *See* Proposing Release at Section II.D.

comments received. Specifically, and for reasons similar to those discussed above with respect to the amendments to Item 303, we are adopting, the amendments modify the proposals for Item 5 of Form 20–F by:

• Consistently using the term ''reasonably likely'' throughout; [335]

• Eliminating the contractual obligations table and amending the item to include a principles-based liquidity and capital resources requirement focused on material short- and long-term cash requirements from known contractual and other obligations; [336] and

• Modifying the critical accounting estimate proposal to emphasize that this disclosure is only required to the extent reasonably available and material.[337]

More generally, similar to our amendments to Item 303 and consistent with what was proposed, we are amending the forepart of Item 5 to specify the purpose of MD&A and highlight the item's objective. These amendments state that the disclosure responsive to Item 5 must:

• Include other statistical data that will enhance a reader's understanding of the company's financial condition, changes in financial condition, and results of operations;

• Focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or future financial condition;

• Provide a narrative explanation of the financial statements that enables investors to see a registrant ''through the eyes of management;'' [338] and

• Provide information relating to other subdivisions, such as geographic areas or product lines, in addition to providing information relating to all separate segments.[339]

Additionally, the amendments:

• Amend Item 5 to specify that the discussion must include a quantitative and qualitative description of the reasons underlying material changes, including where material changes within a line item offset one another; [340]

• Revise the liquidity and capital resources requirement in Item 5.B to specify that a registrant must broadly disclose material cash commitments, including but not limited to capital expenditures; [341]

• Amend Item 5.A.2, which currently requires disclosure of inflation, if material, and hyperinflation if the currency in which the financial statements are presented is of a country that has experienced hyperinflation,[342] to require only disclosure of hyperinflation; [343] and

• Replace Item 5.E, which covers off-balance sheet arrangements, with a principles-based instruction.[344]

Our rationale for these amendments is consistent with the rationale discussed above for amending corresponding provisions of Item 303.

Some of the amendments to Form 20–F are unique to this form but consistent with MD&A's focus on materiality. Specifically, as proposed and for the reasons discussed in the Proposing Release, we are amending:

• Item 5.D of Form 20–F to require disclosure of ''material trends'' instead of ''the most significant recent trends;'' [345] and

• Instruction 1 to Item 5 to add references to the 2002 Commission Statement,[346] 2003 MD&A Interpretive Release, 2010 MD&A Interpretive Release, and the 2020 MD&A Interpretive Release [347] to explicitly direct FPIs to this guidance.

These and all of our amendments to Item 5 of Form 20–F are intended to ensure that existing MD&A requirements for FPIs continue to mirror the substantive MD&A requirements in Item 303.[348]

2. Form 40–F

a. Proposed Amendments

Form 40–F generally permits eligible Canadian FPIs to use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. As a result, the MD&A contained in Forms 40–F is largely prepared in accordance with Canadian disclosure standards. The Commission proposed replacing the off-balance sheet disclosure requirement in General Instruction B.(11) of Form 40–F with a principles-based instruction and deleting General Instruction B.(12), the contractual obligations disclosure requirement. The proposal would only require disclosure of off-balance sheet arrangements to the extent disclosure is not already provided under the MD&A required by Canadian law. Lastly, and consistent with the Item 303 proposals, the Commission proposed to eliminate General Instruction B.(13), which acknowledges application of the statutory safe harbor, and specifically and exclusively applies to General Instructions B.(11) and B.(12).

b. Final Amendments

We are adopting the amendments to Form 40–F largely as proposed, with modifications to conform to our amendments to Item 303 by incorporating relevant changes made to Item 303 in response to comments received. For the reasons discussed above with respect to the liquidity and capital resources requirements in Item 303(b), we are replacing the contractual obligations disclosure requirement in General Instruction B.(12) with a principles-based instruction that expands the MD&A discussion to require analysis of material cash requirements from known contractual and other obligations.[349] In addition, as

[335] *See supra* Section II.C.3.

[336] *See supra* Section II.C.7.

[337] *See supra* Section II.C.8.

[338] *See* 2003 MD&A Interpretative Release, at 75056. *See also* 1989 Interpretative Release, at 22428.

[339] *See supra* Section II.C.1.c.

[340] *See supra* Section II.C.1.b.

[341] *See supra* Sections II.C.2 and II.C.7.

[342] Rules 3–20(c) and 3–20(d) of Regulation S–X provide the situations when a foreign private issuer must reflect hyperinflation in its financial statements. Rule 3–20(d) generally describes a hyperinflationary environment as one that has cumulative inflation of approximately 100 percent or more over the most recent three-year period.

[343] *See supra* Section II.C.5. Consistent with our proposals, our amendments do not alter the requirement in Item 5.A.2 as it relates to hyperinflation. Instruction 1 to Item 5.A states that disclosure of hyperinflation must be provided if hyperinflation has occurred in any of the periods for which an FPI is required to provide audited financial statements or unaudited interim financial statements. We continue to believe that for FPIs in a hyperinflationary economy, hyperinflation is a salient issue such that it merits specific mention.

[344] *See* amended Instruction 7 to Item 5 of Form 20–F. For FPIs filing on Forms 20–F and 40–F that apply IFRS, the overlap between the requirements of those Forms and IFRS are similar to the overlap between Item 303(a)(4) and U.S. GAAP, as described in *supra* Section II.C.6. Certain IFRS standards require some disclosures that substantially overlap with the requirements of Item 5.E. of Form 20–F including but without limitation: Information that enables users of the financial statements to evaluate the nature and extent of risks arising from financial instruments to which the entity is exposed or has continuing involvement in at the end of the reporting period and how those risks have been managed (*see* Paragraphs 31, 32 and 42A of IFRS 7, Financial Instruments; Disclosures (''IFRS 7'')) such as: Credit risk relating to financial guarantee contracts (*see* Paragraph 35M of IFRS 7); risk relating to continuing involvement in transferred financial assets (*see* Paragraphs 42B(b), 42C and 42E of IFRS 7); and obligations under interests in unconsolidated entities (*see* Paragraphs 1 and 24 to 31 of IFRS 12, Disclosure of Interests in Other Entities).

[345] *See, e.g.,* 2003 MD&A Interpretive Release, at 75060.

[346] Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746 (Jan. 25, 2002)] (''2002 Commission Statement'').

[347] *See* Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–10751 (Jan. 30, 2020) [85 FR 10568 (Feb. 25, 2020)].

[348] *See* International Disclosure Standards Release. *See also* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release.

[349] *See supra* Section II.C.7.

proposed, we are amending the form to replace General Instruction B.(11) with a principles-based instruction.[350] As noted above, unlike Item 303 and Form 20–F, the MD&A required under Form 40–F is defined as required by Canadian law.[351] Accordingly, our amendments to Form 40–F only require disclosure of off-balance sheet arrangements and an analysis of material cash requirements to the extent it is not already provided under the MD&A required by Canadian law. Lastly, and as proposed, we are eliminating General Instruction B.(13), which acknowledges application of the statutory safe harbor and specifically and exclusively applies to General Instructions B.(11) and B.(12).[352] Notwithstanding this deletion and consistent with the amendments we are making to Item 303, given that eligible Canadian FPIs may still need to disclose certain contractual obligations and off-balance sheet transactions, the statutory safe harbors and regulatory safe harbors will continue to cover forward-looking statements, if applicable.

3. Item 303 of Regulation S–K (Hyperinflation Requirement in Item 303 for FPIs)

a. Proposed Amendments

FPIs may voluntarily choose to file on forms that would require disclosure under Item 303. Current Instruction 11 to Item 303 requires ''foreign private registrants'' to discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals.[353] The Commission proposed amending this FPI instruction to incorporate the requirement for FPIs to discuss hyperinflation in a hyperinflationary economy. The Commission also proposed replacing the reference to ''foreign private registrants'' with the defined term ''foreign private issuer.'' [354]

b. Final Amendments

For consistency with the requirements of Form 20–F,[355] we are adopting amendments to Item 303 as proposed. Specifically, current Instruction 11 to Item 303(a) is being amended as Instruction 9 to Item 303(b) to require a ''foreign private issuer'' to consider the impact of hyperinflation if hyperinflation has occurred in any of the periods for which audited financial statements or unaudited financial statements are filed. This modification is intended to align the requirement in Item 303 more closely with Form 20–F.

E. Additional Conforming Amendments

The Commission proposed additional conforming amendments, consistent with the rationale for the proposals.[356] No commenters opposed these proposals.

1. Roll-up Transactions—Item 914 of Regulation S–K

a. Proposed Amendments

The Commission proposed deleting references to Items 301 and 302 in Item 914(a) of Regulation S–K. This item applies to roll-up transactions, which, subject to certain exceptions, generally involve the combination or reorganization of one or more partnerships, directly or indirectly, where some or all of the investors in any such partnerships will receive new securities or securities in another entity.[357] Item 914(a) provides that, for each partnership to be included in a roll-up transaction, certain financial information, including disclosure under Item 301 and Item 302, must be provided.

b. Final Amendments

We are adopting amendments to Item 914(a) to eliminate the reference to Item 301, as proposed, but will retain the reference to Item 302 in light of our final amendments to retain that item.[358] For Item 301, we recognize that, in the context of Item 914(a), disclosure provided under this item would not be duplicative of the financial statements and would otherwise be unavailable. However, Item 914(a) requires disclosure of other specified financial information [359] and states that additional or other information should be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction. In light of these other requirements, we continue to believe that our amendment deleting references to Items 301 in Item 914(a) would not result in a loss of material information. As discussed above, our amendments to Item 302(a) are intended to address discrete areas of disclosure that we believe may be important to investors. Accordingly, we are retaining current references to Item 302(a).

2. Regulation AB—Items 1112, 1114, and 1115

a. Proposed Amendments

Item 1112 of Regulation AB requires disclosure of financial information required by Item 301 or Item 3.A of Form 20–F about significant obligors of pool assets if the pool assets relating to the significant obligor represent 10% or more, but less than 20%, of the asset pool in an asset-backed securities (''ABS'') transaction. Similarly, Items 1114 and 1115 of Regulation AB require disclosure of financial information required by Item 301 or Item 3.A of Form 20–F about credit enhancement providers and derivatives counterparties, respectively, whose support represents a similar level of concentration in an ABS transaction. As a result of the proposal to eliminate Item

[350] *See supra* Section II.C.6. We believe our amendments to General Instruction B.(11) of Form 40–F is consistent with the statutory mandate in Section 13(j) of the Exchange Act for the same reasons discussed in the Proposing Release. *See* Proposing Release at Section II.C.6.

[351] *See* General Instruction B.(3) of Form 40–F.

[352] *See supra* Section II.C.10.

[353] *See* Instruction 11 to Item 303(a) of Regulation S–K.

[354] *See* Rule 405 and Rule 3b–4(c).

[355] *See supra* Section II.D.1.

[356] In addition to the conforming amendments discussed in this section, we are also amending certain rules and forms to update references to the items we are amending, as follows: remove references to Item 301 or Item 3.A of Form 20–F (Item 10 of Regulation S–K [17 CFR 229.10]; Forms S–1 [17 CFR 239.11], N–2 [17 CFR 274.11a–1], S–11 [17 CFR 239.18], S–4 [17 CFR 239.25], F–1 [17 CFR 239.31], F–4 [17 CFR 239.34], 1–A [17 CFR 239.90], 10 [17 CFR 249.208c], and 10–K [17 CFR 249.310]; Schedule 14A [17 CFR 240.14a–101]; and Exchange Act Rule 14a–3 [17 CFR 240.14a–3]); and update references to subparagraphs of Item 303 (Securities Act Rule 419 [17 CFR 230.419]). While the disclosure requirements for Item 9 of Form 1–A for Regulation A issuers are similar to the MD&A requirements under Item 303, we did not propose amendments to Form 1–A. *See* Proposing Release at footnote 2. However, in the preparation of Part II of Form 1–A, Regulation A issuers have the option of disclosing either the information required by (i) the Offering Circular format (including Item 9 referenced above) or (ii) Part I of Forms S–1 or S–11 (except for the financial statements, selected financial data, and supplementary information called for by those forms). Accordingly, while the final rules do not amend Item 9 of Form 1–A, they would still impact Regulation A issuers that choose to disclose the information required by Part I of Forms S–1 or S–11. *See* Paragraph (a)(1)(ii) of Part II of Form 1–A.

[357] *See* Rule 901(c) of Regulation S–K [17 CFR 229.901(c)].

[358] We are also including a technical amendment to Item 914 to eliminate the reference to the ratio of earnings to fixed charges. *See* Disclosure Update and Simplification, Release No. 33–10532 (Aug. 17, 2018) [83 FR 50234 (Oct. 4, 2018)] at Section III.B.1.f.

[359] In addition to disclosure under Items 301 and 302, Item 914(a) calls for the following financial disclosures: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital).

301 and Item 3.A of Form 20–F for corporate issuers, financial information about these third parties to an ABS transaction, including any trend information comparable to information required by Item 303 or Item 5 of Form 20–F, would not otherwise be available. Accordingly, the Commission proposed replacing in Regulation AB those requirements to disclose selected financial data under Item 301 or Item 3.A of Form 20–F with requirements to disclose summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X,[360] for each of the last three fiscal years (or the life of the relevant entity or group of entities, if less).

b. Final Amendments

We are adopting amendments to Items 1112, 1114, and 1115 of Regulation AB as proposed. We continue to believe the information required under Rule 1–02(bb) is similar to the information currently required and is consistent with other types of financial statement disclosures that are required to be disclosed when certain significance thresholds have been met.[361] The amendments require disclosure of the same periods as the historical data that the ABS registrant is required to provide for the pool assets under Item 1111 of Regulation AB.[362] We recognize that the amendments would generally result in fewer periods being presented under these items. However, we do not believe requiring disclosure beyond three years is necessary as such disclosure would cover periods beyond those presented for the underlying pool assets to which the third-party financial information would relate.

3. Summary Prospectus in Forms S–1 and F–1

a. Proposed Amendments

The Commission proposed replacing references to Item 301 and Item 3.A of Form 20–F in Form S–1 and Form F–1, respectively, with Rule 1–02(bb) of Regulation S–X, where these forms provide for use of a summary prospectus under Rule 431.[363] A summary prospectus is intended to provide prospective investors with a condensed statement of the more important information in the registration statement.[364] Consistent with this purpose, the Instructions as to Summary Prospectuses in Forms S–1 and F–1 call for disclosure of selected financial data under Item 301 or Item 3.A of Form 20–F, respectively. These instructions also state that, with the exception of these items, the summary prospectus shall not contain any other financial information.[365]

b. Final Amendments

We are adopting amendments to Forms S–1 and F–1 as proposed. To preserve disclosure of financial information in summary prospectuses, our amendments replace the requirement for selected financial data in Forms S–1 and F–1 with summarized financial information under Item 1–02(bb) of Regulation S–X. We continue to believe the information required under Rule 1–02(bb) is similar to the information currently required and is consistent with other types of financial statement disclosures that should be included when certain significance thresholds have been met.

4. Business Combinations—Form S–4, Form F–4, and Schedule 14A

a. Proposed Amendments

The Commission proposed eliminating references to Items 301 and 302 in Form S–4, Form F–4, and Schedule 14A. Where these forms are used in conjunction with a business combination, pro forma financial statements for the most recent fiscal year and interim period under Article 11 of Regulation S–X are required.[366] Additionally, Item 3(e) and (f) in both Forms S–4 and F–4 require Item 301 or Item 3.A of Form 20–F information, respectively, on a pro forma basis. Item 14(b)(9) and (10) of Schedule 14A generally call for similar pro forma information in the context of a business combination. A related instruction stipulates that, for a business combination accounted for as a purchase, financial information is required for the same periods required by Article 11 of Regulation S–X. Because these pro forma requirements are effectively duplicative of the pro forma financial statements required elsewhere by the form, the Commission proposed deleting them.[367]

Similarly, the Commission proposed eliminating references to Item 301 and Item 3.A of Form 20–F in Item 17(b)(3) of both Form S–4 and Form F–4. Lastly, the Commission proposed deleting the reference to Item 302 in Item 17(b)(4) of Form S–4. Because Item 17(b) of Forms S–4 and F–4 applies to non-reporting target companies in a business combination, this disclosure may not be available elsewhere. In connection with this, the Commission stated its belief that the requirement for discussion and analysis of trends in Item 303 would also be sufficient to address material information related to a target company in a business combination context.

b. Final Amendments

We are adopting amendments to Form S–4, Form F–4, and Schedule 14A, to eliminate the reference to Item 301, as proposed, but will retain the reference to Item 302 in light of our final amendments, which will retain that item. As discussed above, our amendments to Item 302(a) are intended to address discrete areas of disclosure that we believe may be important to investors. Accordingly, we are retaining current references to Item 302(a), including in Form S–4 and Schedule 14A.

5. Form S–20

a. Proposed Amendments

The Commission proposed a conforming change to Form S–20 to remove references to Item 302 of Regulation S–K.[368] Form S–20 is used to register standardized options under the Securities Act and requires limited information about the clearing agency registrant and the options being registered. Since the adoption of Rule 238 in 2002, which exempts from Securities Act Section 5 the registration of offerings of standardized options that are issued by a registered clearing agency and traded on a national securities exchange, Form S–20 is rarely used.[369]

[360] [17 CFR 210.1–02(bb)].

[361] We are also amending Rule 1–02(bb) of Regulation S–X as proposed, which calls for disclosure of summary financial information. To eliminate any implication that a registrant would need to prepare disclosure that is not consistent with the disclosure in the entity's financial statements, the amendments clarify that the disclosure of summary financial information may vary, as appropriate, to conform to the nature of the entity's business.

[362] While ABS registrants are generally not required to provide financial statements, under Item 1111 of Regulation AB, ABS registrants must provide historical data on the pool assets as appropriate (*e.g.,* the lesser of three years or the time such assets have existed) to allow material evaluation of the pool data. *See* 17 CFR 229.1111.

[363] *See* 17 CFR 230.431. *See also* Instruction 1(f) under Instructions as to Summary Prospectuses in Form S–1 and Instruction 1(c)(v) under Instructions as to Summary Prospectuses in Form F–1.

[364] *See* Adoption of Summary Prospectus Rule and Amendments to Form S–1 and S–9, Release No. 33–3722 (Nov. 26, 1956) [21 FR 9642 (Dec. 6, 1956)].

[365] *See* Instruction 2 under Instructions as to Summary Prospectuses for Form S–1 and Form F–1.

[366] *See* Item 5 under Part 1 of Forms F–4 and S–4.

[367] The Commission also proposed deleting the related instruction to these items.

[368] 17 CFR 239.20. Current references in Form S–20 to Item 302 are references to the item's predecessor, Item 12.

[369] *See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities*

b. Final Amendments

As discussed above, our amendments to Item 302(a) are intended to address discrete areas of disclosure that we believe may be important to investors. Accordingly, we are retaining current references to Item 302(a), including in Form S–20.[370]

F. Compliance Date

The final rules are effective February 10, 2021. After considering feedback from commenters,[371] registrants will be required to apply the amended rules for their first fiscal year ending on or after August 9, 2021 (the ''mandatory compliance date''). Registrants will be required to apply the amended rules in a registration statement and prospectus that on its initial filing date is required to contain financial statements for a period on or after the mandatory compliance date.

Although registrants will not be required to apply the amended rules until their mandatory compliance date, they may provide disclosure consistent with the final amendments any time after the effective date, so long as they provide disclosure responsive to an amended item in its entirety. For example, upon effectiveness of the final amendments, a registrant may immediately cease providing disclosure pursuant to former Item 301, and may voluntarily provide disclosure pursuant to amended Item 303 before its mandatory compliance date. In this case, the registrant must provide disclosure pursuant to each provision of amended Item 303 in its entirety, and must begin providing such disclosure in any applicable filings going forward.[372]

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provisions or application.

Pursuant to the Congressional Review Act,[373] the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

A. Introduction

As discussed above, we are adopting amendments to modernize, simplify, and enhance certain financial disclosure requirements in Regulation S–K. Specifically, the final amendments will (1) eliminate Item 301 of Regulation S–K, Selected Financial Data, (2) streamline Item 302 of Regulation S–K, Supplementary Financial Information; and (3) amend Item 303 of Regulation S–K, Management's Discussion & Analysis of Financial Condition and Results of Operations. The amendments are intended to eliminate duplicative disclosures and enhance MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants.

Overall, investors and registrants may benefit from the amendments to the extent that they help avoid duplicative disclosure and result in more tailored disclosures that allow investors to better understand the registrant's business through the eyes of management. We acknowledge the risk that modernizing and simplifying the approach to MD&A may result in the loss of certain information to investors. However, we believe that any loss of information would be limited because the disclosures eliminated as a result of the amendments are mostly duplicative. Additionally, under the principles-based approach we are adopting, registrants will still be required to disclose material information relevant to an assessment of the financial condition and results of operations, further mitigating the effects of any potential loss of information.

We are mindful of the costs and benefits of the final amendments. The discussion below addresses the potential economic effects of these amendments, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.[374] At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the final amendments. In many cases, however, we are unable to quantify the potential economic effects because we lack information necessary to provide a reasonable estimate. For example, we are unable to reasonably quantify the costs to investors of accessing and assessing alternative information sources, such as the footnotes to financial statements or voluntary earnings announcements. We are also unable to quantify the potential information processing cost savings that may arise from the elimination of disclosures that are duplicative or immaterial. No commenters provided data or estimates that would allow us to quantify benefits or costs generated by the amendments. Where we are unable to quantify the economic effects of the final amendments, we provide a qualitative assessment of their potential effects.

Two commenters expressed their concerns regarding the cost estimates in the proposal.[375] One of these commenters stated that we failed to quantify the negative impact on investors.[376] Further, one of these commenters stated that we should empirically study the costs and benefits of the proposed rule, and cited to specific studies.[377] We have qualitatively discussed the costs and benefits of the rule below, including

Exchange Act of 1934, Release No. 33–8171 (Dec. 23, 2002) [68 FR 188 (Jan. 2, 2003)] (''New Securities Act Rule 238 does not make Form S–20 obsolete. We are retaining Form S–20 for use by an issuer of standardized options that is not a clearing agency registered under Section 17A of the Exchange Act, such as a foreign clearing agency, or for use by issuers of standardized options that do not trade on a registered national securities exchange or on a registered national securities association.''). Since the effective date of Rule 238 in 2003, we estimate that approximately one entity has used Form S–20.

[370] We are making a technical amendment to Form S–20 to update the reference from Item 12, the predecessor to Item 302, to reference Item 302.

[371] *See, e.g.,* letters from RSM; Nareit; SIFMA; CalPERS; E&Y; ABA; Society; CAQ; Chamber. Commenters generally supported a transition period greater than 180 days. *See, e.g.,* letters from RSM; Nareit; SIFMA; CalPERS; E&Y; ABA; Society. Several of these commenters stated that registrants may need more time to transition to certain of the proposed amendments, such as to prepare disclosures in response to the proposed critical accounting estimate requirements. *See, e.g.,* letters from RSM; SIFMA; E&Y; Society. Some commenters recommended a longer transition period because of the COVID–19 pandemic. *See* letters from Nareit; CalPERS. Other commenters recommended modifying the compliance date to require compliance in the first annual report on Form 10–K or Form 20–F that is due on or after the proposed effective date of 180 days, thereby allowing registrants a minimum of 180 days and requiring initial compliance on an annual report. *See* letters from ABA and Society. However, a few commenters supported a transition period of 180 days. *See* letters from Chamber; CAQ.

[372] To the extent that registrants have questions about application of the amended rules in advance of their mandatory compliance date, they should reach out to Commission staff for additional transition guidance.

[373] 5 U.S.C. 801 *et seq.*

[374] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[375] *See* CalPERS and PRI Letters.

[376] *See* CalPERS Letter.

[377] *See* PRI Letter.

those to investors.[378] However, as discussed above, in many cases, we are unable to accurately quantify the potential economic effects of the final amendments, and we lack information necessary to undertake empirical study of the final rule. For example, we are unable to quantify the costs to investors of the increased flexibility provided to registrants under the final amendments because we lack the data (*e.g.,* search or information processing costs) necessary for such quantification. Commenters did not provide data or estimates on such costs. We have, however, addressed the additional studies referenced by these commenters.[379]

B. Baseline and Affected Parties

The current disclosure requirements under Items 301, 302, and 303 of Regulation S–K, and the related requirements under Items 3.A and 5 of Form 20–F, and General Instructions B.(11), (12), and (13) of Form 40–F, together with the current disclosure practices registrants have adopted to comply with these requirements, form the baseline from which we estimate the likely economic effects of the final amendments.[380] The disclosure requirements apply to various filings, including registration statements, periodic reports, and certain proxy statements filed with the Commission. Thus, the parties that are likely to be affected by the amendments include investors and other market participants that use the information in these filings (such as financial analysts, investment advisers, and portfolio managers), as well as registrants subject to the relevant disclosure requirements discussed above.

One commenter stated that we did not attempt to identify who uses the disclosures affected by the rule and why.[381] We continue to believe that investors, financial analysts, investment advisers, and portfolio managers use the information in these filings. We believe that these parties use the information in these filings in connection with making investment decisions, such as comparing information across companies, valuing companies, investing in companies, exercising control of voting securities, etc. Investors affected by the final amendments may directly hold a variety of types of securities issued by reporting companies, such as stocks or bonds, or they may indirectly hold these securities by investing in funds that hold securities issued by reporting companies. In addition, prospective investors may also be affected by the rule as they may derive information from those filings affected by the final amendments. Because the final amendments would affect current and potential individual and institutional investors, both large and small investors will be affected.

The final amendments may affect both domestic registrants and FPIs.[382] We estimate that during calendar year 2019 there were approximately 6,987 registrants that filed on domestic forms[383] and 849 FPIs that filed on F–forms, other than registered investment companies. Among the registrants that filed on domestic forms, approximately 30 percent were large accelerated filers, 18.5 percent were accelerated filers, and 51.5 percent were non-accelerated filers. In addition, we estimate that approximately 43 percent of these domestic issuers were SRCs and 21.1 percent were EGCs. The final amendments will also affect ABS issuers. ABS issuers are required to file on Forms SF–1 and SF–3 and, as a result, may be subject to the changes to Regulation AB requirements in this release. We estimate that during calendar year 2019, there were 24 unique depositors filing at least one Form SF–1 or Form SF–3.

C. Potential Benefits and Costs of the Amendments

In this section, we discuss the anticipated economic benefits and costs of the final amendments. We first analyze the overall economic effects of the amendments. We then discuss the potential benefits and costs of specific amendments.

1. Overall Potential Benefits and Costs

We anticipate the final amendments[384] will benefit registrants and investors in several ways. First, by eliminating certain duplicative disclosure requirements, the amendments could reduce registrants' disclosure burden and associated compliance costs. Second, by modernizing and simplifying Item 303 disclosure requirements, the final amendments may benefit registrants and investors by reducing disclosure burdens and associated compliance costs. In addition, to the extent the amendments result in more tailored and informative disclosure, they could potentially reduce information asymmetry between registrants and investors, which could enhance the investment decision process, improve firms' liquidity, and decrease the cost of capital. Finally, certain of the amendments emphasize a more principles-based approach to MD&A, which we believe will benefit registrants and investors by underscoring the flexibility available in presenting financial results that are more indicative of their business and accordingly provide investors with better information on which to base decisions.[385] A more principles-based

[378] *See infra* Section C.

[379] *See infra* Section IV(C)(1).

[380] *See supra* Section I.

[381] *See* CalPERS Letter.

[382] The number of domestic registrants and FPIs affected by the final amendments is estimated as the number of unique companies, identified by Central Index Key (CIK), that filed a Form 10–K, Form 20–F, and Form 40–F, an amendment thereto, or both a Form 10–Q and a Form S–1, S–3, or S–4 with the Commission during calendar year 2019. For purposes of this economic analysis, these estimates do not include registrants that filed only a Securities Act registration statement during calendar year 2019, or only a Form 10–Q not preceded by a Securities Act registration statement, in order to avoid including entities, such as certain co-registrants of debt securities, which may not have an independent reporting obligation and therefore would not be affected by the amendments. We believe that most registrants that have filed a Securities Act registration statement or a Form 10–Q not preceded by a Securities Act registration statement, other than such co-registrants, would be captured by this estimate. The estimates for the percentages of SRCs, EGCs, accelerated filers, large accelerated filers, and non-accelerated filers are based on data obtained by Commission staff using a computer program that analyzes SEC filings, with supplemental data from Ives Group Audit Analytics.

[383] This number includes fewer than 20 FPIs that filed on domestic forms in 2019 and approximately 100 BDCs.

[384] *See supra* Sections II.A. through II.F.

[385] A number of academic studies have explored the use of prescriptive thresholds and materiality criteria. Many of these papers highlight a preference for principles-based materiality criteria. *See, e.g.,* Eugene A. Imhoff Jr. and Jacob K. Thomas, *Economic consequences of accounting standards: The lease disclosure rule change,* 10 J. Acct. & Econ. 277 (1988) (providing evidence that management modifies existing lease agreements to avoid crossing rules-based criteria for lease capitalization); Cheri L. Reither, *What are the best and the worst accounting standards?,* 12 Acct. Horizons 283 (1998) (documenting that due to the widespread abuse of bright-lines in rules for lease capitalization, SFAS No. 13 was voted the least favorite FASB standard by a group of accounting academics, regulators, and practitioners); Christopher P. Agoglia, Timothy S. Doupnik, and George T. Tsakumis, *Principles-based versus rules-based accounting standards: The influence of standard precision and audit committee strength on financial reporting decisions,* 86 The Acct. Rev. 747 (2011) (conducting experiments in which experienced financial statement preparers are placed in a lease classification decision context and finding that preparers applying principles-based accounting are less likely to make aggressive reporting decisions than preparers applying a more precise rules-based standard and supporting the notion that a move toward principles-based accounting could result in better financial reporting); Usha Rodrigues and Mike Stegemoller, *An inconsistency in SEC disclosure requirements? The case of the ''insignificant'' private target,* 13 J. Corp. Fin. 251 (2007) (providing evidence, in the context of mergers and acquisitions, where rule-based [disclosure] thresholds deviate from investor preferences). Papers that highlight a preference for

approach, however, could lead to registrants incurring increased costs associated with assessing materiality.

Many commenters agreed that the final amendments would decrease compliance costs for registrants.[386] Some commenters, however, questioned whether the elimination of duplicative disclosure would result in cost savings, stating that registrants already have the procedures in place to disclose this information.[387] However, the elimination of disclosure requirements, even where the information must be disclosed elsewhere and registrants already have the disclosure procedures in place, would lead to certain costs savings to registrants. For example, registrants will not need to devote time or resources to preparing or reviewing the duplicative disclosure. The resulting cost savings may be small, but we do not believe they are negligible.

We believe the final amendments could provide various benefits to investors. First, the amendments that clarify and codify existing guidance, such as the amendments related to critical accounting estimates and capital resources, could enhance MD&A disclosure. More robust and informative disclosure on these topics could facilitate investors' decision making and enhance investor protection. Second, if the amendments result in enhanced and improved disclosure, they could allow investors to more efficiently process the disclosure and make better-informed investment decisions. In particular, investors may benefit from more tailored disclosures that allow them to better understand the registrant's business through the eyes of management. Investors also could benefit from the reduction of duplicative disclosure, because reducing such duplication may improve the readability and conciseness of the information provided, help investors focus on material information, and facilitate more efficient information processing.[388]

However, investors could incur certain transition costs under the final amendments. For example, investors who are used to the current disclosure format might experience costs when adjusting to the new format. Several commenters expressed concern that eliminating duplicative disclosure could result in greater work for investors to locate this disclosure, with particular burdens on investors who lack skills to navigate EDGAR effectively, and potential direct and indirect impacts of having to adjust to operating in this way.[389] Investors could incur monetary costs such as database subscriptions, or opportunity costs such as time spent, if they need to obtain or reconstruct information through alternative sources. However, any such costs should decrease over time as investors become more familiar with the new disclosure format. In a similar vein, some commenters stated that the elimination of certain disclosure items as a result of the final amendments would increase the time and costs for investors to obtain such disclosure through other means.[390] However, we do not expect such costs to be significant since registrants would still need to disclose material information relevant to an assessment of the financial condition and results of operations.

There could be certain additional costs associated with the amendments to the extent that they result in the elimination of disclosure material to an investment decision if registrants misjudge what information is material, or if disclosure becomes less comparable across firms.[391] The risk of misjudgment may be mitigated by factors including accounting, financial reporting, and disclosure controls or procedures,[392] as well as the antifraud provisions of the securities laws.[393] There also may be incentives for registrants to voluntarily disclose additional information if the benefits of reduced information asymmetry exceed the disclosure costs. One commenter further cited academic studies it believes indicate how issuers could respond to the increased flexibility provided under the final rule, including through the increased use of boilerplate disclosure.[394] For example, one study shows that MD&A disclosure has become longer and its usefulness (measured by stock market reaction to changes in MD&A) has declined.[395] This study, however, acknowledges that its documented decrease in the usefulness of MD&A disclosure could be due to a host of factors (*e.g.,* increased corporate interim disclosures, more media outlets, faster information dissemination, ease of private information search), and not necessarily the use of more principles-based disclosure requirements in MD&A. Two of the academic studies cited by the commenter also purport to provide evidence of increasing use of boilerplate disclosure in companies' annual reports, and a correlation between boilerplate disclosure and liquidity as well as analyst coverage.[396] However, one of the studies presents evidence that three specific disclosure requirements that are not part of MD&A—fair value, internal controls, and risk factors—play a significant role

rules-based materiality criteria are cited below in footnote 391.

[386] *See* letters from PWC; Pfizer; Eli Lilly; EEI & AGA; KPMG; CAQ; FedEx; Nasdaq; Nareit; FEI; SIFMA; IMA; E&Y; UnitedHealth; Medtronic; Chamber; ABA; Society.

[387] *See* letters from NASAA; CalPERS. *See also* IAC Recommendation.

[388] *See* Alastair Lawrence, *Individual Investors and Financial Disclosure,* 56 J. Acct. & Econ., 130 (2013). Using data on trades and portfolio positions of 78,000 households, this article shows that individuals invest more in firms with clear and concise financial disclosures. This relation is reduced for high frequency trading, financially literate investors, and speculative individual investors. The article also shows that individuals' returns increase with clearer and more concise disclosures, implying such disclosures reduce individuals' relative information disadvantage. A one standard deviation increase in disclosure readability and conciseness corresponds to return increases of 91 and 58 basis points, respectively. The article acknowledges that, given the changes in financial disclosure standards and the possible advances in individual investor sophistication, the extent to which these findings, which are based on historical data from the 1990s, would differ from those today is unknown. Recent advances in information processing technology, such as machine learning for textual analysis, may also affect the generalizability of these findings.

[389] *See* letters from CalPERS; CFA & CII; D. Jamieson; NASAA. *See also* IAC Recommendation.

[390] *See* letters from NASAA; CalPERS; CFA & CII; D. Jamieson; E&Y. *See also* IAC Recommendation.

[391] *See* Mark W. Nelson, *Behavioral Evidence on the Effects of Principles- and Rules-Based Standards,* 17 Acct. Horizons 91 (2003); and Katherine Schipper, *Principles-based accounting standards,* 17 Acct. Horizons 61 (2003) (noting potential advantages of rules-based accounting standards, including: Increased comparability among firms, increased verifiability for auditors, and reduced litigation for firms). *See also* Randall Rentfro and Karen Hooks, *The effect of professional judgment on financial reporting comparability,* 1 J. Acct. & Fin. Res. 87 (2004) (finding that comparability in financial reporting may be reduced under principles-based standards, which rely more heavily on the exercise of professional judgment, but comparability may improve as financial statement preparers become more experienced and hold higher organizational rank); Andrew A. Acito, Jeffrey J. Burks, and W. Bruce Johnson, *The Materiality of Accounting Errors: Evidence from SEC Comment Letters,* 36 Contemp. Acct. Res. 839, 862 (2019) (studying managers' responses to SEC inquiries about the materiality of accounting errors and finding that managers are inconsistent in their application of certain qualitative considerations and may omit certain qualitative considerations from their analysis that weigh in favor of an error's materiality).

[392] *See, e.g.,* Exchange Act Rules 13b–2b [17 CFR 240.13b–2b], 13a–15e [17 CFR 240.13a–15e], and 13a–15f [17 CFR 240.13a–15f].

[393] *See, e.g.,* Exchange Act Rule 10b–5(b) [17 CFR 240.10b–5(b)].

[394] *See* PRI Letter.

[395] *See, e.g.* Stephen V. Brown and Jennifer Wu Tucker, *Large-Sample Evidence on Firms' Year-over-Year MD&A Modifications,* 49 J. Acct. Res. 309 (2011)

[396] *See, e.g.* Travis Dyer, Mark H. Lang and Lorien Stice-Lawrence, *The Evolution of 10–K Textual Disclosure: Evidence from Latent Dirichlet Allocation,* J. Acct. & Econ., forthcoming, at Fig. 5, panel B (Mar. 7, 2016); Mark Lang & Lorien Stice-Lawrence, *Text Analysis and International Financial Reporting: Large Sample Evidence,* J. Acct. & Econ., forthcoming, at 17 (Mar. 13, 2014).

in any increase in boilerplate disclosure.[397] To the extent that the increased flexibility of the final amendments may encourage opportunistic behavior by management of the registrants, this could result in boilerplate disclosure in some circumstances. However, we continue to believe that this potential risk may be mitigated by other factors including accounting disclosure requirements, financial reporting, and disclosure controls or procedures, as well as the antifraud provisions of the securities laws. To the extent that the final amendments will increase the relevancy and materiality of the information disclosed in the registrants filings, investors would benefit from the final rule.

Another commenter suggested that we did not make an effort to examine the impacts on investors seeking to compare different issuers.[398] We acknowledge the more principles-based approach resulting from certain final amendments may lead to decreased comparability among different registrants. However, to the extent that such an approach will result in the disclosure of important information for each issuer, we believe that it will be beneficial to investors despite the potential decrease in comparability. With respect to costs related to comparability of information provided by a single issuer over time, to the extent that investors may incur costs in comparing such information, we expect such costs to be limited to the initial adjustment period for investors, and to decline over time as investors become more familiar with the amended disclosures. The potential loss of comparability within the same registrant over time, for example, from the elimination of selected historical financial data, should be minimal as investors in most instances can pull that data from previously filed financial statements via XBRL.

The final amendments likely would affect individual registrants and investors differently. For example, any compliance cost reduction might be more beneficial to smaller registrants that are financially constrained. Similarly, although eliminating information that is not material should benefit all investors, retail investors could benefit more as they are less likely to have the time and resources to devote to reviewing and evaluating disclosure. On the other hand, retail investors could also incur additional costs as a result of the amendments because they may need to obtain information from alternative sources, which could involve monetary costs, such as database subscriptions, or opportunity costs, such as time spent searching for alternative sources. These costs may be higher for retail investors than for institutional investors. One commenter broadly stated that we did not attempt to examine the impacts on investment decisions across different asset classes.[399] We believe that investors, whether shareholders, bondholders, or holders of other securities, use information derived from registrants' filings to make informed investment decisions. We do not anticipate different effects of the final amendments on investors of different asset classes.

2. Benefits and Costs of Specific Amendments

We expect the final amendments to result in costs and benefits to registrants and investors, and we discuss those costs and benefits item by item in this section. The changes to each item would impact the compliance burden for registrants in filing forms that require disclosures that are responsive to such items. Overall, we expect the net effect of the amendments on a registrant's compliance burden to be limited. As explained in this section, we expect certain aspects of the proposed amendments to increase compliance burdens, and others to decrease the burdens. The quantitative estimates of changes in those burdens for purposes of the Paperwork Reduction Act of 1995 (''PRA'')[400] are further discussed in Section V below. For purposes of the PRA, we estimate that the effect of the amendments would vary for different forms. However, taken together, the amendments are likely to result in a net decrease in burden hours for all forms, ranging from 0.1 to 5.9 burden hours per form.[401] Similarly, we believe the final amendments will not have significant economic effect on investors overall. Investors would benefit from the increased relevance and materiality of the disclosure resulting from the amendments, but in the meantime, investors may incur some costs to adapt to the new form of disclosure.

a. Selected Financial Data (Item 301)

Current Item 301 requires certain registrants[402] to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years and any additional fiscal years necessary to keep the information from being misleading.[403] The purpose of this disclosure is to supply in a convenient and readable format selected financial data that highlights certain significant trends in the registrant's financial conditions and results of operations. For certain registrants, information disclosed under Item 301 has also been disclosed in historical financial data and related XBRL data submissions that can be accessed through prior filings on EDGAR. Several commenters noted that much information disclosed under Item 301 is readily available in such prior filings.[404]

The current disclosure requirement under Item 301 can result in duplicative disclosure, and it can be costly for registrants to provide such disclosures under certain circumstances.[405] For example, providing disclosure of the earliest two years often creates challenges for registrants when such information has not been previously provided.[406] Therefore, eliminating this requirement may facilitate capital raising activity and increase efficiency for non-EGC issuers contemplating an IPO. Overall, we expect the elimination of Item 301 will benefit registrants by eliminating duplicative disclosures and reducing compliance costs. We also note that the benefit associated with eliminating the costs of providing Item 301 disclosure may be offset by the costs associated with making materiality determinations under a principles-based disclosure framework. In general, we do not expect the elimination of Item 301 will affect the cost of capital given that the eliminated disclosures are largely

[397] Travis Dyer, Mark H. Lang and Lorien Stice-Lawrence, *The Evolution of 10–K Textual Disclosure: Evidence from Latent Dirichlet Allocation,* J. Acct. & Econ., forthcoming.

[398] *See* letter from CalPERS.

[399] *See* CalPERS Letter.

[400] 44 U.S.C. 3501 *et seq.*

[401] *See infra* Section V.B.

[402] As discussed *supra* in Section II.A, SRCs are not required to provide Item 301 information and an EGC that is providing the information called for by Item 301 in a Securities Act registration statement need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the EGC's IPO of its common equity securities. In addition, an EGC that is providing the information called for by Item 301 in a registration statement, periodic report, or other report filed under the Exchange Act need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with its first registration statement that became effective under the Exchange Act or Securities Act. *See* Item 301(c) of Regulation S–K; Item 301(d)(1) of Regulation S–K.

[403] *See supra* Section II.A.

[404] *See* letters from FEI; Eli Lilly; UnitedHealth.

[405] *See* letters from FEI; Eli Lilly; UnitedHealth; and [EEI & AGA]

[406] *See supra* Section II.A. *See also* Proposing Release at Section II.A.

duplicative. To the extent that there is information loss under certain circumstances, such as in the case of non-EGC IPOs, these registrants could potentially experience an increase in the cost of capital as a result of reduced disclosure. However, if the increase in the cost of capital were significant, registrants would likely voluntarily provide the disclosures.

To the extent the final amendments result in the elimination of disclosure that is not material, investors may benefit. In particular, if the readability and conciseness of the information provided improves,[407] investors may be able to process information more effectively by focusing on the material information. Also, the other amendments we are making to Item 303, as well as our reiteration of prior Commission MD&A guidance, may permit or encourage registrants to present more tailored information, which also may benefit investors by allowing them to better understand the registrant's business.

Investors may incur costs to the extent the amendments result in a loss of information.[408] While we do not anticipate significant information loss from the elimination of Item 301, we recognize that selected financial data for the two earliest years would no longer be disclosed in non-EGC IPOs. However, the purpose of the item is to highlight certain significant trends in the registrant's financial condition and results of operations, and we expect that any material trend information that would have been disclosed pursuant to Item 301 would be disclosed under Item 303.[409] We also recognize investors may incur certain other costs that, for example, result from the inability to view the information required by Item 301 in one place.[410] In particular, investors would incur search costs if they have to spend more time to retrieve the information from prior filings and to the extent investors are used to the current format and rely on the compiled comparable data, they may incur costs to adjust to new disclosure formats. One commenter expressed concern that our analysis fails to quantify the costs to investors.[411] We do not, however, believe that it is feasible to accurately measure and quantify these costs because we lack information necessary to provide a reasonable estimate. For example, we are unable to quantify search costs and costs of adjustment to the new disclosure format because they would differ among different investors (*e.g.,* retail investors or institutional investors) and investors of different degrees of sophistication. In addition, one commenter stated that the loss of this information may ease pressure on registrants to explain results, and therefore weaken management discipline, which could harm long-term investors.[412] We believe, however, that pressure on registrants to explain results will remain as a result of Item 303 disclosure requirements, among other factors.

Elimination of Item 301 will also affect the financial information disclosure by ABS issuers. As discussed above, Items 1112, 1114, and 1115 of Regulation AB require disclosure of financial information required by Item 301 or Item 3.A of Form 20–F about certain significant obligors of pool assets, credit enhancement providers, and derivatives counterparties. By eliminating Item 301 and Item 3.A of Form 20–F for corporate issuers, this financial information about these third parties to an ABS transaction, including any trend information comparable to information required by Item 303 or Item 5 of Form 20–F, may not otherwise be available. To mitigate this potential information loss, the final amendments will replace in Regulation AB those requirements to disclose selected financial data under Item 301 or Item 3.A of Form 20–F with requirements to disclose summarized financial information, as defined by Rule 1–02(bb) of Regulation S–X, for each of the last three fiscal years (or the life of the relevant entity or group of entities, if less).

Since the changes related to ABS issuers are intended to conform to the other changes related to selected financial data and MD&A, our analysis of the costs and benefits for registrants and their investors under the amendments to Item 301 and Item 3.A of Form 20–F can be carried over to ABS issuers. In addition, while this amendment would generally result in the presentation of fewer periods, we do not expect this amendment to have a significant effect on ABS issuers and their investors. The presentation of the earlier years will cover periods beyond those presented for the underlying pool assets. ABS investors mainly rely on the information relating to the underlying pool assets.

b. Supplementary Financial Information (Item 302(a))

Under current Item 302(a), certain registrants are required to disclose quarterly financial data of specified operating results and variances in these results from amounts previously reported on a Form 10–Q.[413] Such registrants must provide quarterly information for each full quarter within the two most recent fiscal years and any subsequent period for which financial statements are included or required by Article 3 of Regulation S–X. Item 302(a) also requires disclosure related to effects of any discontinued operations and unusual or infrequently occurring items. As discussed above, we are amending Item 302(a) to only require disclosure where there are one or more retrospective changes to the statements of comprehensive income for any of the quarters within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S–X that, individually or in the aggregate, are material. In such cases, the disclosure must provide an explanation of the reasons for such material changes, and include, for each affected quarterly period and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income and earnings per share reflecting such changes.

Since the information required under the current item, other than fourth quarter data and the effect of a retrospective change in the earliest of the two years,[414] typically can be found in prior quarterly filings through EDGAR, the prescriptive requirements under current Item 302(a) typically result in duplicative disclosures. By eliminating these duplicative disclosures and reducing the associated compliance costs, the final amendments would benefit registrants. We do not expect the elimination of these duplicative disclosures to affect registrants negatively. While a decrease in disclosure could potentially increase the company's cost of capital in general, the final amendments should elicit information regarding material retrospective changes that should mitigate this risk. Additionally, a registrant can always choose to disclose the information required under the current item in its filings or through

[407] *See supra* footnote 388.

[408] *See* letter from NASAA.

[409] Commission guidance has also emphasized the importance of trend disclosure in MD&A. *See, e.g.,* 2003 MD&A Interpretive Release.

[410] *See* letters from CFA & CII and CalPERS.

[411] *See* CalPERS letter.

[412] *See* letter from NASAA.

[413] As discussed in Section II.B.1, SRCs, FPIs, issuers conducting an IPO, and registrants that have a class of securities registered under Section 15(d) of the Exchange Act are not subject to Item 302(a).

[414] *See supra* footnote 47 and corresponding text.

other channels. For example, as some commenters indicated, separate fourth quarter information is often disclosed in earnings releases.

Investors could benefit to the extent that the final amendments result in less duplicative disclosure and less disclosure of immaterial information. The final amendments may result in improved readability and conciseness of the information provided, helping investors focus on material information and facilitating more efficient information processing by investors. The amendments will also allow registrants to present financial information that is more reflective of their own industry and firm operating cycles, which could allow investors to better understand their business.

We anticipate information loss from the elimination of fourth quarter financial information currently required under Item 302(a), other than where there has been a material retrospective change during the year that would require disclosure of fourth quarter information. It is generally expected that fourth quarter financial data could be calculated from annual report and cumulative third quarter data. Nonetheless, calculating or otherwise obtaining fourth quarter data may be costly for investors. While such costs might be minimal for institutional investors, which have both resources and sophistication to obtain the needed financial information, for retail investors, the search costs might be substantially larger, which could involve monetary costs such as database subscriptions, or opportunity costs such as time spent searching for alternative sources and cross-referencing. Additionally, investors could make mistakes in deriving the fourth quarter financial information. To the extent that there is a lack of accurate fourth quarter information which cannot be obtained through alternative means, investors' decision making could be affected.[415]

However, such potential loss of information will be mitigated by the fact that the final amendments will require disclosure of fourth quarter financial information where there has been a material retrospective change during the fiscal year. Also, the potential information loss from the amendments to Item 302(a) might be mitigated under MD&A's principles-based framework. We believe that fourth quarter data may not be material to all registrants or in every fiscal year. For example, for investors in companies with long operating cycles, fourth quarter data might not be as incrementally important as annual data. However, to the extent that there are material trends or events in the fourth quarter or throughout the fiscal year, registrants would be required to address those matters in their MD&A.

c. Item 303(a) Restructuring and Streamlining

The final rules include multiple changes that are intended to clarify and streamline the requirements of Item 303. For example, we are adopting a new Item 303(a) to provide a succinct and clear description of the purpose of MD&A. As discussed above, emphasizing the purpose of MD&A at the outset of the item is intended to provide clarity and focus to registrants as they consider what information to discuss and analyze, which could encourage management to disclose those factors that are most specific and relevant to a registrant's business. Other changes include restructuring and streamlining language in Item 303 and the related instructions.

We anticipate that the amendments will provide registrants with more clarity on disclosure requirements. When there is confusion related to disclosure requirements, registrants may either over-disclose and incur additional compliance costs, or under-disclose and face increased litigation risk. To the extent that the final amendments reduce registrants' confusion, registrants could potentially benefit from reduced compliance costs and litigation risk. More informative disclosure could potentially benefit both registrants and investors by reducing information asymmetry in the market. Reduced information asymmetry could help investors make more informed investment decisions, which may benefit registrants in their capital raising. For registrants, reduced information asymmetry could also potentially improve firm liquidity and reduce cost of capital.

d. Capital Resources (Item 303(b)(1)(ii)))

Current Item 303(a)(2), which requires a registrant to discuss its material commitments for capital expenditures as of the end of the latest fiscal period, does not define the term ''capital resources.'' The lack of specificity was intended to provide management flexibility for a meaningful discussion when this disclosure requirement was adopted in 1980. Nonetheless, the Commission has previously provided guidance to clarify this requirement.[416] Further, while the required disclosure of material commitments of capital expenditures historically relates to physical assets, such as buildings and equipment, this requirement may not fully reflect market developments. While capital expenditures remain important in many industries, certain expenditures that are not necessarily capital investments may be increasingly important to companies. For example, expenditures for human resources or intellectual property may be essential for companies in certain industries. The amendments to current Item 303(a)(2) (new Item 303(b)(1)(ii)) are intended to encompass these types of expenditures. The amendments will also explicitly require, consistent with the Commission's 2003 MD&A Interpretive Release that registrants broadly disclose material cash commitments, including but not limited to capital expenditures. We believe the final amendments will modernize the requirement and make the disclosure more reflective of current and future industry outlays.

We believe that the final amendments could benefit registrants by providing additional clarity on the term ''capital resources'' and reducing confusion, thereby eliciting appropriate disclosure from registrants and potentially decreasing litigation risk. Capital expenditures vary across industries. While firms in traditional industries rely more on physical assets, firms in other industries such as the technology sector may invest more heavily in intellectual property and human capital. By specifying only capital expenditures, the rule may not be clear about what information should be provided. As a result, registrants may over-disclose and incur additional compliance costs, or under-disclose and face increased litigation risk. Further, we expect that registrants will benefit from decreased compliance costs to the extent that the amendments reduce the need to consult existing Commission guidance to process and understand the disclosure requirements. As many registrants may already be following relevant Commission guidance, this effect is not expected to be significant.

The amendments should also benefit investors through improved disclosure. As discussed above, lack of clarity might lead to under- or over-disclosure by registrants. For example, disclosure focusing only on capital expenditures rather than on material cash commitments more generally might lead to under-disclosure for less capital intensive industries. As a result, investors might not receive adequate or consistent information to make informed investment decisions. By providing clarity on the requirement,

[415] *See* letter from NASAA.

[416] *See* 2003 MD&A Interpretive Release.

the amendments may facilitate more informative disclosure.

The amendments might increase the disclosure burden for some registrants by prompting disclosure of material investments in non-physical assets that registrants might not otherwise be disclosing. However, we do not anticipate a significant increase in compliance costs. As discussed above, some registrants already include disclosure beyond capital expenditures, which the Commission's MD&A guidance has encouraged.[417] Also, better disclosure may eventually benefit registrants, because it could reduce information asymmetry between management and investors, reduce the cost of capital, and thereby improve firms' liquidity and their access to capital markets.[418]

e. Results of Operations—Known Trends or Uncertainties (Item 303(b)(2)(ii))

Current Item 303(a)(3)(ii) requires a registrant to describe any known trends or uncertainties that have had or that the registrant expects will have a material impact (favorable or unfavorable) on net sales or revenues or income from continuing operations. As discussed above, we are adopting the amendments to Item 303(b)(2)(ii) substantially as proposed but with a slight modification to use a ''reasonably likely'' disclosure threshold throughout amended Item 303. For example, the final amendments clarify that when a registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues, such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments, the reasonably likely change must be disclosed. This amendment aligns current Item 303(a)(3)(ii) with the Commission's guidance on forward-looking disclosure.[419] Since many registrants may already be following relevant Commission guidance, the marginal increase in compliance costs is not expected to be significant.

As discussed above, the language in current Item 303(a)(3)(ii) differs from other Item 303 disclosure requirements for forward-looking information.[420] This differing language may have led to confusion and inconsistent practice regarding what events should be disclosed. While the Commission has sought to alleviate some of these concerns by clarifying the standard for forward-looking information in its MD&A guidance,[421] the amendments could further benefit registrants by reducing any residual confusion, eliciting more consistent disclosure, and potentially decreasing compliance costs and litigation risk. In addition, a consistent disclosure threshold throughout Item 303 may allow investors to make more meaningful comparisons across firms and make more informed investment decisions. One commenter suggested that the changes could result in the disclosure of various alternative scenarios that could confuse or mislead investors,[422] but we believe that this increased consistency throughout Item 303 will decrease the likelihood of confusing disclosure overall.

Some registrants may experience an increased cost of compliance under the final amendments to the extent that these registrants, for example, have been disclosing events that *will* cause a material change in the relationship between costs and revenues as opposed to events that are *reasonably likely* to cause the change. One commenter, for example, noted that the amended Item 303(a)(3)(ii) will require new processes and controls to manage relevant judgments.[423] Also, some registrants might need to spend resources to evaluate the future likelihood that such events might occur. However, such registrants might be few in light of existing Commission guidance, and the increase in compliance costs could be offset by the potential decrease in the cost of capital as a result of enhanced disclosure and reduced information asymmetry.[424]

f. Results of Operations—Net Sales and Revenues (Item 303(b)(2)(iii))

Current Item 303(a)(3)(iii) requires management to discuss certain factors, such as changes in prices or volume, that led to certain material increases in net sales or revenues. The final amendments broaden the current requirement, which focuses on ''material increases in net sales or revenue'' in the ''financial statements'' to instead require disclosure of ''material changes from period to period in one or more line items'' in the ''statement of comprehensive income.'' Item 303(b) would similarly clarify that MD&A requires a narrative discussion of the underlying reasons for material changes in quantitative and qualitative terms.

The final amendments are intended to codify Commission guidance on results of operations disclosure. The Commission has previously stated that MD&A disclosure should include both qualitative and quantitative analysis and clarified that a results of operations discussion should describe increases or decreases in any line item, including net sales or revenues.[425] The need for registrants to consult both current Item 303(a)(3)(iii) and the Commission's guidance to understand the requirement could lead to confusion and inconsistent disclosure practice among registrants. The additional clarity provided by the amendments could benefit registrants by reducing any confusion, eliciting more consistent disclosure, and potentially decreasing compliance costs and litigation risk.

The final amendments could increase disclosure burdens for registrants, thus potentially increasing compliance costs. However, since many registrants may already be following relevant Commission guidance, the marginal increase in compliance costs is not expected to be significant.[426] Additionally, to the extent that registrants do incur additional

[417] *See supra* Section II.C.2 and 2003 MD&A Interpretive Release.

[418] *See* Douglas W. Diamond and Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. Fin. 1325 (1991) (finding that revealing public information to reduce information asymmetry can reduce a firm's cost of capital through increased liquidity). *See also* Christian Leuz and Robert E. Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000) (providing empirical evidence that increased disclosure leads to lower information asymmetry component of the cost of capital in a sample of German firms); Christian Leuz and Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54 J. Acct. Res. 525 (2016) (providing a comprehensive survey of the literature on the economic effect of disclosure). Studies that provide both theoretical and empirical evidence on the link between information asymmetry and cost of capital include Thomas E. Copeland and Dan Galai, *Information Effects on the Bid-Ask Spread,* 38 J. Fin. 1457 (1983) (proposing a theory of information effects on the bid-ask spread); David Easley and Maureen O'Hara, *Price, Trade Size, and Information in Securities Markets,* 19 J. Fin. Econ. 69 (1987) (using a model to provide explanation for the price effect of block trades); David Easley and Maureen O'Hara, *Information and the Cost of Capital*, 59 J. Fin. 1553 (2004) (showing that differences in the composition of information between public and private information affect the cost of capital, with investors demanding a higher return to hold stocks with greater private information); Yakov Amihud and Haim Mendelson, *Asset Pricing and the Bid-Ask Spread,* 17 J. Fin. 223 (1986) (predicting that market-observed expected return is an increasing and concave function of the spread, and providing empirical results that are consistent with the predictions of the model).

[419] *See supra* footnote 145.

[420] *See supra* Section II.C.3. *See also supra* footnote 144 and 145.

[421] *See* 1989 MD&A Interpretive Release.

[422] *See* letter from FEI.

[423] *See id.*

[424] *See supra* footnote 418.

[425] *See, e.g.,* 2003 MD&A Interpretative Release and 1989 MD&A Interpretative Release.

[426] *See* letter from FEI.

compliance costs, such costs could be offset by the potential decrease in the cost of capital as a result of improved disclosure and reduced information asymmetry.[427]

The amendments will require registrants to provide a nuanced discussion of the underlying reasons that may be contributing to material changes in line items, and therefore should enhance the disclosure. More consistent and informative disclosure would allow investors to make more meaningful comparisons across firms and make more informed investment decisions. However, any potential benefits to investors may be limited to the extent registrants already are following the relevant Commission guidance.

g. Results of Operations—Inflation and Price Changes (Current Item 303(a)(3)(iv), Instruction 8, and Instruction 9)

The final amendments will eliminate current Item 303(a)(3)(iv) and related Instructions 8 and 9, which generally require that registrants specifically discuss the impact of inflation and price changes on their net sales, revenue, and income from operations for the three most recent fiscal years, to the extent material. The purpose of the elimination is to streamline Item 303 by eliminating the specific reference to these topics, which may not be material to most registrants. This change is consistent with the principles-based disclosure framework of Item 303.

We do not believe that these changes will result in a loss of material information for market participants.[428] Registrants will still be required to discuss in their MD&A the impact of inflation and changing prices, if material, as is currently required.

The elimination of this item could benefit registrants by streamlining Item 303 and reducing compliance costs. Similar to what we have discussed above,[429] to the extent that the elimination encourages registrants that currently disclose inflation and changing prices even if not material to modify such disclosure,[430] investors could potentially benefit from a focus on material information, which would allow them to process information more effectively. Similarly, emphasizing a principles-based approach may encourage registrants to present more tailored information, which also may benefit investors.

h. Off-Balance Sheet Arrangements (Instruction 8 to Item 303(b))

Current Item 303(a)(4) requires, in a separately-captioned section, disclosure of a registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures, or capital resources that is material to investors. The final amendments will replace Item 303(a)(4) with a new principles-based instruction that will require registrants to discuss commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have, or are reasonably likely to have, a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements, or capital resources.

We do not believe the amendments will lead to significant information loss, as we expect the principles-based instruction will continue to elicit material information about off-balance sheet arrangements.[431] As discussed above, we believe that the amendments will encourage registrants to consider and integrate disclosure of off-balance sheet arrangements in the context of their broader MD&A disclosures and may avoid boilerplate disclosure that either duplicates information in the financial statements, or cross-references the financial statements without additional disclosure to put such information into appropriate context. We acknowledge that the flexibility associated with the principles-based approach might lead to certain opportunistic firm behavior if registrants cherry pick the information to be disclosed, although we do not believe this risk is significant.

The amendments could benefit registrants by avoiding duplicative disclosure and reducing compliance costs. As discussed above, to the extent the amendments improve the readability and conciseness of the information provided, they may help investors process information more effectively. Also, emphasizing a principles-based approach may encourage registrants to provide disclosure that is more tailored and informative, which could benefit investors.

One commenter noted that obtaining a complete picture of an entity's off-balance sheet exposures can be challenging for some investors because this information may be dispersed throughout a registrant's financial statements.[432] We believe that investors might need to spend time searching for the information and adjusting to the new format and location of the disclosure as the final amendments will no longer require the relevant disclosure in a separately captioned section. Retail investors are likely to be affected more than institution investors. Nevertheless, such costs are likely to be one-time or decrease over time for both retail and institutional investors.

i. Tabular Disclosure of Contractual Obligations (Current Item 303(a)(5))

Under current Item 303(a)(5), registrants other than SRCs must disclose in tabular format their known contractual obligations. There is no materiality threshold for this item. A registrant must arrange its table to disclose the aggregate amount of contractual obligations by type and with subtotals by four prescribed periods. The Commission originally adopted this requirement so that aggregated information about contractual obligations was presented in one place and to improve transparency of a registrant's short- and long-term liquidity and capital resources needs and demands.[433] However, as discussed above, most of the information presented in response to this requirement is already included in the notes to the financial statements. In order to promote the principles-based nature of MD&A and streamline disclosures by reducing overlapping requirements, the final amendments will eliminate Item 303(a)(5) and enhance the liquidity and capital resources requirements to specifically require disclosure of material cash requirements from known contractual and other obligations. The amendments also specify that such disclosures must include the type of obligation and the relevant time period for the related cash requirements. Under this approach, registrants will be relieved of the burden associated with the current prescriptive table and be afforded more flexibility to integrate a discussion of contractual obligations in the broader context of its liquidity and capital resources disclosures.

[427] *See supra* footnote 418.

[428] *See* letter from FEI.

[429] *See supra* Section III.B.2.i.

[430] *See supra* footnote 385.

[431] *See* letter from FEI.

[432] *See* letter from CFA & CII.

[433] *See* Off-Balance Sheet Arrangements and Contractual Obligations Adopting Release, at 5990. *See also* Off-Balance Sheet Arrangements and Contractual Obligations Proposing Release.

We believe the amendments could lead to reduced compliance costs by avoiding duplicative, prescriptive disclosures, therefore benefiting registrants, while also providing important information to investors regarding the registrants' liquidity and capital resource needs.[434] We recognize that there might be increased costs associated with assessing the materiality of contractual obligations under the principles-based approach. However we do not expect such costs to be significant given that the materiality standard is already used by registrants when preparing MD&A disclosures. As discussed above, to the extent the elimination of redundant or immaterial disclosure improves the readability and conciseness of the information provided, the amendments could potentially benefit investors by helping them process information more effectively. Also, since a principles-based approach allows registrants to present more tailored information, it could lead to more informative disclosure, which would benefit investors.

We recognize that there could be a loss of certain information due to the elimination of the item. As discussed in Section II.C.7, some of the information in the contractual obligations table such as purchase obligations is not specifically called for under U.S. GAAP and is therefore not typically disclosed in the financial statements. Additionally, information related to the ''payments due by period'' currently required by the item may be difficult to ascertain from a registrant's financial statements. However, since the final amendments will encompass material cash requirements from known contractual and other obligations, are not limited to those called for by U.S. GAAP, and will require that such disclosures specify the type of obligation and the relevant time period for the related cash requirements, we believe any loss of information will not be significant.

We expect investors could experience certain additional costs. A centralized location and tabular format make it convenient for investors to extract and analyze information.[435] Under the amendments, the absence of a centralized location and tabular format may cause investors to incur search costs to derive the data from the financial statements or from information embedded in MD&A, or monetary costs to obtain the information through alternative channels, such as database subscriptions. Investors may also incur opportunity costs, such as time spent searching for alternative sources, and these costs may fall more heavily on retail investors than on other types of investors, such as institutional investors. Additionally, one commenter suggested that the preparation of the contractual obligations table is a useful exercise for management to obtain a ''picture of such obligations,''[436] and to the extent that management needs but does not otherwise have such information, management and investors could be subjected to costs. However, to the extent management needs such a table to conduct its duties or the benefits of collecting this information in one place outweighs the costs, we expect that management will continue to obtain this information without the additional costs of preparing related disclosure.

j. Critical Accounting Estimates (Item 303(b)(3))

Item 303(a) does not currently explicitly require registrants to disclose critical accounting estimates. U.S. GAAP requires disclosure of significant accounting policies in the notes to the financial statements, but does not require similar disclosure of estimates and assumptions, except in limited circumstances. IFRS does require disclosures regarding sources of estimation uncertainty and judgments made in the process of applying accounting policies that have the most significant effect on the amounts recognized in the financial statements.[437] Although the Commission has issued guidance on disclosure of critical accounting estimates, many registrants repeat the discussion of significant accounting policies from the notes to the financial statements in their MD&A and provide limited additional discussion of critical accounting estimates. We are amending Item 303 to explicitly require such disclosure due to the importance of critical accounting estimates in providing meaningful insight into the uncertainties related to these estimates and reported financials and how accounting policies of registrants faced with similar facts and circumstances may differ, and also to eliminate disclosure that duplicates the financial statement discussion of significant accounting policies. Providing a clear disclosure framework could benefit registrants by reducing confusion and duplicative disclosure, thereby decreasing compliance costs.

A number of commenters expressed concerns that the required disclosure of critical accounting estimates may result in information that is not material and costly or otherwise challenging to prepare.[438] To allay such concerns, the final amendments will clarify that the material and reasonably available qualifier applies to all parts of the disclosure, not just to quantitative information.

Investors will likely benefit from the amendments. The amendments could elicit more informative disclosure from registrants related to their estimates and assumptions, which would help investors better understand any potential risk or uncertainty related to these estimates and make more informed investment decisions. The amendments could also promote more consistent disclosure practices among registrants by providing more clarity, allowing investors to make more meaningful comparisons across registrants and better informed investment decisions.

We recognize that this disclosure requirement could introduce additional costs to market participants. While we do not anticipate that investors would incur any direct costs (other than information processing costs) associated with this amendment, compliance costs might increase for registrants because of the more explicit disclosure requirement compared to the existing Commission guidance. However, some of these costs may be minimized because this disclosure requirement only applies to the extent the information is material and reasonably available. Additionally, the potential increase in compliance costs might decline over time as registrants become more accustomed to the new filing requirements. We also note that, consistent with Commission guidance, some registrants may already provide disclosures related to critical accounting estimates that do not duplicate the financial statement disclosures, thus the increase in compliance costs might be minimal to those registrants. Finally, the increase in compliance costs could be offset by a potential decrease in registrants' cost of capital, because such disclosure could reduce information asymmetry between investors and firms.[439]

[434] *See, e.g.,* letters from Costco; Eli Lilly; FEI

[435] *See* letter from CFA & CII.

[436] *See* letter from CFA & CII.

[437] *See* IAS 1, paragraphs 122 to 133.

[438] *See* letters from RSM; PWC; Pfizer; EEI & AGA; Deloitte; KPMG; Grant Thornton; CAQ; BDO; FEI; SIFMA; IMA; UnitedHealth; Medtronic; Chamber; ABA; E&Y; Society.

[439] *See supra* footnote 418.

k. Interim Period Discussion (Item 303(c))

Current Item 303(b) requires registrants to provide MD&A disclosure for interim periods that enables market participants to assess material changes in financial condition and results of operations between certain specified periods. The final rules will amend current Item 303(b) (renumbered as Item 303(c)), to allow for flexibility in comparisons of interim periods and to streamline the item. Specifically, under Item 303(c), registrants will be allowed to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter. The amendments will also streamline the instructions to current Item 303(b), consistent with the amendments to current Item 303(a) and the related instructions.

This more flexible approach is intended to allow registrants to provide an analysis that is better tailored to their business cycles. This may result in more informative disclosure that could reduce information asymmetry and firms' cost of capital, benefiting registrants.[440] In addition, streamlining the item could avoid duplicative disclosure and reduce associated compliance costs.

Investors also may benefit from the amendments. As noted above, the amendments will provide registrants flexibility to choose the interim period presented, which could allow them to provide a more tailored analysis. This, in turn, could allow investors to make better informed investment decisions. While this flexibility may encourage certain registrants to be opportunistic in terms of what to disclose, thus potentially negatively affecting investors, we do not anticipate this risk to be significant because we believe that other disclosure obligations are likely to provide material disclosure. More flexibility in disclosure could also decrease comparability across firms, potentially increasing the cost of investors' decision-making. However, we do not expect the flexibility in reporting to significantly reduce comparability, because registrants in the same industry are likely to have similar business cycles and choose similar interim periods. Therefore, concerns about a reduction of comparability across firms in the same industry could be mitigated. The resulting reduction of duplicative disclosure might increase the effectiveness of information processing by investors, thus helping them make more informed decisions. Investors will also benefit from the requirement that companies that choose to change the method of their presentation must discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made. This requirement is intended to prevent companies from using a change in presentations to obscure negative information, and to discourage frequent switching between them from quarter to quarter.

l. Safe Harbor for Forward-Looking Information (Current Item 303(c))

Current Item 303(c)[441] states that the safe harbors provided in Section 27A of the Securities Act and 21E of the Exchange Act apply to all forward-looking information provided in response to Item 303(a)(4) (off-balance sheet arrangements) and Item 303(a)(5) (contractual obligations), provided such disclosure is made by certain enumerated persons.[442] The final amendments will eliminate this item to conform to the elimination of Items 303(a)(4) and (a)(5). As discussed above, the final amendments replace the current prescriptive off-balance sheet disclosure required by these items with more principles-based requirements located in other paragraphs of Item 303. We do not believe eliminating Item 303(c) will have any economic effect by itself because forward-looking disclosure responsive to the new principles-based requirements will continue to be protected by the existing statutory and regulatory safe harbors. Therefore, we do not expect changes in market behavior. To the extent that the elimination of the section may result in any confusion as to the application of the safe harbors, there could be a cost to registrants. However, we believe such cost should be minimal, as registrants are already familiar with analyzing the applicability of the safe harbors.

m. Smaller Reporting Companies (Current Item 303(d))

Current Item 303(d)[443] states that an SRC may provide Item 303(a)(3)(iv) information for the most recent two fiscal years if it provides financial information on net sales and revenues and income from continuing operations for only two years. Item 303(d) also states that an SRC is not required to provide the contractual obligations chart specified in Item 303(a)(5). To conform to the elimination of the prescriptive requirements of Item 303(a)(3)(iv) and (a)(5), the final rules will eliminate Item 303(d). SRCs may rely on Instruction 1 to Item 303(b),[444] which states that an SRC's discussion shall cover the two-year period required in §§ 210.8–01 through 210.8–08 (Article 8 of Regulation S–X).

The elimination of Item 303(d) will have the effect of subjecting SRCs to the newly-adopted disclosure requirements in Item 303(b), a principles-based liquidity and capital resources disclosure requirement that includes a requirement to discuss material contractual obligations in the context of that disclosure.[445] We do not believe that the preparation of such disclosure will be burdensome for SRCs because SRCs are currently required to provide a discussion and analysis that addresses material impacts on their liquidity and capital resources and are also required under U.S. GAAP to assess most of the currently prescribed categories of contractual obligations. We believe that this disclosure will have a benefit to investors because such disclosure may be necessary to an understanding of the registrant's financial condition, cash flows, and other changes in financial condition and results of operations.

n. Foreign Private Issuers

The changes related to Item 3.A and Item 5 of Form 20–F and General Instructions B.(11), (12), and (13) of Form 40–F are intended to conform to the other changes related to selected financial data and MD&A. Therefore, our analysis of the costs and benefits for domestic issuers and their investors under the amendments to Item 301 can be carried over to FPIs and their investors under the amended items. The changes could benefit FPIs through a reduction in compliance costs, although the benefits are likely to be smaller given that current Item 3.A permits a FPI to omit either or both of the earliest two years of data under certain conditions and registrants that file on Form 40–F use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. Since FPIs would have more flexibility to provide information that is better tailored to their industry or country, investors could benefit from more informative disclosure. However, investors might incur additional search

[440] *See id.*

[441] Item 303(c) of Regulation S–K.

[442] Such persons are: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

[443] Item 303(d) of Regulation S–K.

[444] Amended Item 303(b).

[445] *See supra* Section II.C.7 and II.C.9.

costs when looking for information through alternative channels.

To maintain a consistent approach to MD&A for domestic registrants and FPIs, the final rules will make changes to Forms 20–F and 40–F that generally conform to the amendments to Item 303. Therefore, our discussion of the costs and benefits for domestic issuers and their investors under the amendments to Item 303 generally can be carried over to FPIs under the amended item. The final rules add to Item 303 the current Form 20–F instruction that requires FPIs that are not subject to the multijurisdictional disclosure system to discuss hyperinflation in a hyperinflationary economy. This disclosure can be beneficial to investors when analyzing FPIs, as hyperinflation in some FPIs' home countries might be an important risk factor for the firm's results of operations or financial health.

D. Anticipated Effects on Efficiency, Competition, and Capital Formation

We believe the final amendments could have positive effects on efficiency, competition, and capital formation. As discussed above, we expect the amendments could reduce duplicative disclosure and elicit disclosure that is more focused on material information and tailored to a registrant's business, making the disclosure more informative. We believe more informative disclosure could reduce information asymmetry between firms and investors, thereby improving firm liquidity and price efficiency.[446] We also believe the amendments could promote competition in the capital markets and facilitate capital formation. This is because more informative disclosure could allow investors to make more meaningful comparisons across firms and make more informed investment decisions, and as a result, more value-enhancing projects may receive more capital allocation.

However, as discussed above, since registrants no longer need to present certain information (*e.g.,* five-year comparable data), investors could incur costs when searching for alternative channels to obtain or reconstruct the information. Since each investor would have to consider the need for alternative sources of information, the final amendments could result in inefficiency in the information distribution process. Additionally, if registrants misjudge what information is material, there could be an increase in information asymmetries between registrants and investors, negatively affecting efficiency, competition, and capital formation. However, we expect this risk to be mitigated by factors such as accounting controls and the antifraud provisions of the securities laws.

The amendments, in particular by simplifying and codifying certain positions expressed in various Commission guidance, might reduce the compliance costs of private companies considering going public. For companies considering an IPO, the benefit of easing the burdens associated with preparing these disclosures for the first time could decrease the costs of going public and thus leave more capital for future investment. This could lead to more efficient capital formation.

E. Alternatives

1. Alternatives Regarding Item 301

As an alternative to the elimination of Item 301, which requires registrants to furnish selected financial data in comparative tabular form for each of the registrant's last five fiscal years, we considered amending the item to require only the same number of years of data as presented in the registrant's financial statements in that same filing. Similarly, another alternative we considered is expanding the current EGC accommodation to all initial registrants. The EGC accommodation generally provides that an EGC need not present selected financial data for any period prior to the earliest audited period presented in its initial filing.[447] This accommodation allows EGCs to build up to the full five years of selected financial data.

The benefit of these alternatives would be potential cost savings from a reduction in compliance burdens by not having to reproduce the earliest years of selected financial data. These alternatives might be sufficient for investors to make a quick comparison with the most recent financial data without cross-referencing to other sources. However, given the nature of electronic access to financial data through EDGAR, we think the potential benefits of these alternatives would be more limited than the elimination of Item 301. We decided not to adopt the alternative of requiring the same number of years of data as presented in the registrant's financial statements in that same filing because such disclosure would be largely duplicative and therefore, have limited utility. Regarding the alternative that we expand the current EGC accommodation to all initial registrants, while this approach could provide cost savings to non-EGC initial registrants at the beginning, in the long run, these registrants would still face the same duplicative disclosure problem that other registrants do currently. As a result, we decided not to adopt this alternative.

As another alternative, we considered amending Item 301 to require the earliest years only in circumstances where the company can represent that the information cannot be provided without unreasonable effort and expense, as is currently allowed under Item 3.A of Form 20–F. Under this approach, registrants would experience reduced compliance costs under the exempted circumstances, albeit a smaller reduction compared to the final amendments, because they would still need to disclose selected financial data for the earliest years when it is deemed not time consuming and costly. At the same time, while investors would still incur search costs if they prefer to analyze five years' financial data, such costs would be smaller compared to the proposed approach. We decided not to adopt this alternative because the lack of a consistent or objective standard to determine when additional financial disclosure is required could be time consuming or burdensome for registrants.

2. Alternatives Regarding Item 302

Some commenters stated that, in some instances, it was difficult to calculate fourth quarter data from data disclosed elsewhere.[448] As an alternative to streamlining Item 302(a) to only require disclosure of retrospective changes from amounts previously reported within the last two most recent fiscal years that, individually or in the aggregate, are material, we considered requiring a registrant to only disclose fourth quarter data elsewhere in its annual report, such as in MD&A. This approach could prevent or mitigate the potential loss of the fourth quarter financial data under the proposed approach. As discussed above, however, we believe that the revised disclosure requirements in Item 302(a) will allow investors to calculate this data in most instances without substantial costs, while also highlighting material retrospective changes better than the existing

[446] *See supra* footnote 418. *See also* David Hirshleifer and Siew Hong Teoh, *Limited attention, information disclosure, and financial reporting,* 36 J. Acct. & Econ. 337 (2003) (developing a theoretical model where investors have limited attention and processing power and showing that, with partially attentive investors, the means of presenting information may have an impact on stock price reactions, misvaluation, long-run abnormal returns, and corporate decisions).

[447] *See* Item 301(d) of Regulation S–K [17 CFR 229.301].

[448] *See, e.g.,* letters from NASAA and CFA & CII.

requirement. Therefore, we decided not to adopt this alternative.

3. Alternatives Regarding Item 303

We are amending current Item 303(a)(2) to specify that a registrant should broadly disclose material cash requirements, including but not limited to capital expenditures. We considered adopting a definition for the term ''capital resources.'' While defining the term could provide more clarity for registrants, it would also result in a disclosure requirement more prescriptive in nature, inconsistent with our current objective to promote the principles-based nature of MD&A. We therefore decided not to adopt this alternative.

Another alternative, as suggested by commenters, that we considered adopting was a term with a narrower meaning than material cash requirements such as ''material cash commitments'' or ''material cash commitments outside of normal operations.''[449] According to those commenters, using ''material cash requirements'' could increase compliance costs in the form of new record keeping and controls. We have decided not to adopt this alternative because, as mentioned above, our amendments are limited to and address only those cash requirements that are material and hence should not require extensive or new procedures or controls. Since registrants can and do have cash requirements related to their routine operations that are material, such an alternative could also result in material information remaining undisclosed, thus negatively affecting investors.

As an alternative to the replacement of the Item 303(a)(4) off-balance sheet arrangements disclosure requirement, we considered allowing registrants discretion to make the disclosure currently required under Item 303(a)(4) under a separate caption within the capital resources section. Compared to the final amendments, such an alternative would have kept information on off-balance sheet items in a single location instead of such information being dispersed throughout the financial statements, thus making it easier for investors to locate. Such an alternative, however, would still result in duplicate disclosure and compliance costs for issuers.

As an alternative to the elimination of Item 303(a)(5), which requires registrants to disclose in tabular format contractual obligations by type of obligation, overall payments due and prescribed periods, we considered maintaining the prescriptive contractual obligations disclosure requirement in a modified form. For example, we considered reducing the prescribed time periods that need to be disclosed, or requiring disclosures of only short-term or long-term obligations rather than requiring disclosure to be grouped in the four time periods currently specified in Item 303(a)(5). While this approach could be more beneficial to investors by reducing their search costs compared to the final approach, it would result in redundant disclosure and higher compliance costs to registrants.

As an alternative to the adopted Item 303(b)(3), we considered issuing additional guidance on critical accounting estimates that enhances the guidance issued in the 2003 MD&A Release. While this alternative could save compliance costs for registrants because it would not create a new requirement, the savings might not necessarily be significant, given the existing Commission guidance on this topic. Further, we believe that by codifying existing guidance, adopted Item 303(b)(3) should provide investors with more enhanced disclosure and protection by ensuring that companies consistently provide such disclosure. Therefore, we decided not to adopt this alternative.

Another alternative that we could have adopted is the use of different thresholds for information necessary to understand critical accounting estimates, such as when ''practicable'' or ''in the ordinary course of business and not solely for purposes of disclosure.'' As mentioned above, however, we believe that if the disclosure is ''impracticable'' to provide, it would not be ''reasonably available.'' In addition, limiting the discussion to material information is intended to avoid disclosure that is not useful to investors and is consistent with the principles-based nature of MD&A.

Another alternative that we considered was to require disclosure of how much a critical accounting estimate has changed during a reporting period. This alternative could have provided information on the quantitative changes to the reported amounts. But such an alternative could result in information that is not material and may impede investors' assessments of the uncertainty associated with the critical accounting estimate. We believe that the adopted requirement which allows issuers to address the change in a critical accounting estimate through a discussion of the change in the assumptions of that estimate over a relevant period would provide investors with a greater understanding of the variability that is reasonably likely to impact the financial condition or results of operations.

Another alternative that some commenters suggested is to specify a relevant period for which this disclosure is required (*e.g.,* most recent period, all periods presented, etc.).[450] Such a specification would make it easier for issuers to comply and hence reduce their compliance costs. We note, however, that for different estimates the relevant disclosure may vary over different periods of time to facilitate an understanding of the estimation uncertainty. Thus, such an alternative would have restricted issuers' flexibility in determining the relevant period necessary to describe material changes in estimates or assumptions that would facilitate an understanding of estimation uncertainty. Therefore, we decided not to adopt this alternative.

Item 303(c) would allow flexibility for registrants to compare their most recently completed quarter to either the corresponding quarter of the prior year (as is currently required) or to the immediately preceding quarter. As an alternative, we considered an approach under which registrants would be required to compare the most recent quarter to both the corresponding quarter of the prior year and the immediately preceding quarter. While this alternative approach would provide investors with more disclosure, it might not be clear to investors which time period is more representative of the registrant's business, and registrants would incur more compliance costs. Also, this alternative is less consistent with the principles-based nature of MD&A. Therefore, we decided not to adopt this alternative.

We proposed deleting Item 303(d) which, in part, provides that an SRC is not required to provide the contractual obligations table specified in Item 303(a)(5). In a change from the Proposing Release, the final amendments add a principles-based disclosure requirement for contractual obligations to Item 303 and, unlike the existing SRC carve-out in Item 303(d), do not carve out SRCs from this disclosure requirement. As an alternative, we could have carved out SRCs from this disclosure requirement. Such an alternative could have reduced SRCs' compliance costs. However, such an alternative could have discouraged the disclosure of material contractual obligations that may be important for investors. By adopting a principles-

[449] *See* letter from FEI and IMA.

[450] *See, e.g.,* letters from RSM; Deloitte; KPMG; CAQ.

based approach that requires a robust discussion of material contractual obligations, the final amendments will help ensure that investors are provided with information about material contractual obligations, without imposing significant new compliance burdens on SRCs.

4. Alternatives Regarding Structured Disclosure

The final amendments do not require registrants to structure disclosures required by the amendments in a machine-readable format. An alternative suggested by some commenters [451] would be to require registrants to structure MD&A in the Inline XBRL format. Requiring registrants to structure MD&A disclosures could create benefits for investors (either through direct use of the data or through reliance on the data as extracted and analyzed by intermediaries) as well as other market participants by enabling more efficient retrieval, aggregation, and analysis of disclosed information and facilitating comparisons across issuers and time periods.[452] However, filers could incur increased costs under this alternative, with a block text and detail tagging requirement imposing greater costs than a block text tagging-only requirement. In the Proposing Release, the Commission noted that such costs would be incremental to the costs that registrants already incur to structure financial statement and cover page disclosures in the Inline XBRL format and that concerns as to filer cost might be partially alleviated by the overall decline in the costs of XBRL tagging over time, including for small public companies.[453] In response to a request for comment on whether current XBRL-tagging requirements reliably facilitate compilation and comparison of certain financial information, and a separate request for comment as to whether to require MD&A to be structured in Inline XBRL format, one commenter recommended reconsidering current XBRL requirements more broadly, stating concerns about the cost and data quality.[454] This commenter also stated that XBRL should be optional and provided specific information based on a survey finding that issuers incur substantial costs associated with XBRL despite the fact that less than ten percent ''observ[e] active analyst or investor use of the XBRL data.'' [455] As discussed above, the final amendments emphasize MD&A's principles-based framework, which encourages registrants to provide meaningful disclosure that is tailored to their specific facts and circumstances. This may make MD&A less comparable across issuers, thereby reducing the benefits of this alternative. As a result, we did not adopt this alternative.

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules, and forms that would be affected by the final amendments contain ''collection of information'' requirements within the meaning of the PRA.[456] The Commission published a notice requesting comment on changes to these collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[457] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the collections of information are:

''Form 1–A'' (OMB Control No. 3235–0286);

''Form 10'' (OMB Control No. 3235–0064);

''Form 10–Q'' (OMB Control No. 3235–0070);

''Form 10–K'' (OMB Control No. 3235–0063);

''Schedule 14A'' (OMB Control No. 3235–0059);

''Form 20–F'' (OMB Control No. 3235–0288);

''Form 40–F'' (OMB Control No. 3235–0381);

''Form F–1'' (OMB Control No. 3235–0258);

''Form F–4'' (OMB Control No. 3235–0325);

''Form N–2'' (OMB Control No. 3235–0026);

''Form S–1'' (OMB Control No. 3235–0065);

''Form S–4'' (OMB Control No. 3235–0324);

''Form S–11'' (OMB Control No. 3235–0067);

The Commission adopted all of the existing regulations, schedules, and forms pursuant to the Securities Act, the Exchange Act, and/or the Investment Company Act. The regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic reports, and proxy and information statements filed by registrants to help investors make informed investment and voting decisions.

A description of the final amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the final amendments can be found in Section IV above.

B. Summary of Comment Letters and Revisions to PRA Estimates

In the Proposing Release, the Commission requested comment on the

[451] *See* letters from XBRL US dated April 28, 2020 (''XBRL US''); Data Coalition dated April 28, 2020 (''Data Coalition''); CFA & CII; D. Jamieson.

[452] *See* Rel. No. 33–10514 (Jun. 28, 2018), Inline XBRL Filing of Tagged Data [83 FR 40846 (Aug. 16, 2018)] (''Inline XBRL Adopting Release''), at 40851, footnote 71 and accompanying text, and 40862. *See also, e.g.,* Mohini Singh, *Data and Technology: How Information is Consumed in the New Age,* CFA Institute: Data Technology (Jul. 3, 2018) (describing examples of analytical, benchmarking, and regulatory XBRL usage); Chunhui Liu, Tawei Wang, and Lee J. Yao, *XBRL's Impact on Analyst Forecast Behavior: An Empirical Study,* 33 J. Acct. & Pub. Pol'y 69 (2014) (finding that XBRL adoption has significantly increased information quantity and quality, as measured by analyst following and forecast accuracy).

[453] A 2018 AICPA pricing survey of 1,032 reporting companies with $75 million or less in market capitalization found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* AICPA, ''XBRL costs for small reporting companies have declined 45% since 2014,'' *available at https://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/XBRL/DownloadableDocuments/XBRL%20Costs%20for%20Small%20Companies.pdf. See also* Mohini Singh, *The Cost of Structured Data: Myth vs. Reality,* CFA Institute: Survey (Aug. 2017), *available at https://www.cfainstitute.org/-/media/documents/survey/the-cost-of-structured-data-myth-vs-reality-august-2017.ashx.*

[454] *See* letter from Nasdaq.

[455] *Id.* (stating that a ''2019 Nasdaq survey of 151 issuers found that they spend, on average, over $334,000 per firm per quarter to outside vendors, lawyers, and other advisors to address the requirement of quarterly reporting, including $20,000 per firm per quarter in XBRL costs alone. Meanwhile, only eight percent of issuers reported observing active analyst or investor use of XBRL data.''). *See also* letter from Nasdaq, Inc. dated March 21, 2019 to the Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)] (providing selected survey results including an average response of $20,000, a median response of $7,500, and a maximum response of $350,000 in XBRL costs per quarter). Comment letters related to the Request for Comment on Earnings Releases and Quarterly Reports are *available at https://www.sec.gov/comments/s7-26-18/s72618.htm.*

[456] 44 U.S.C. 3501 *et seq.*

[457] 44 U.S.C. 3507(d); 5 CFR 1320.11.

PRA burden hour and cost estimates and the analysis used to derive such estimates. We did not receive any comments that directly addressed the PRA analysis of the proposed amendments. As discussed, above, however, we have made some changes to the proposed amendments as a result of comments received. We have revised our estimates from the Proposing Release accordingly, as discussed in more detail below.

C. Effects of the Amendments on the Collections of Information

The following PRA Table 1 summarizes the estimated effects of the final amendments on the paperwork burdens associated with the affected collections of information listed in Section V.A.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE FINAL AMENDMENTS

Final amendments and effects	Affected collections of information	Estimated net effect *
Item 301: Selected Financial Data		
• Elimination of Item 301 requirement to furnish selected financial data for each of the registrant's last five fiscal years because Item 303 already calls for disclosure of material trend information, which would decrease the paperwork burden by reducing repetitive information about a registrant's historical performance.	• Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A **	• 2 hour net decrease in compliance burden per form. • 0.2 hour net decrease in compliance burden per schedule.
• Replacing the reference to Item 301 with a reference to Rule 1–02(bb) of Regulation S–X in Items 1112, 1114, and 1115 of Regulation AB would generally result in similar disclosure being presented under these Items, and therefore not affect the burden estimate.	• Form N–2 ± • Forms SF–1 and SF–3	• 0.3 hour net decrease in compliance burden per form. • No change in compliance burden per form.
Item 302(a): Supplementary Financial Information		
• Streamlining Item 302(a) to eliminate disclosure requirement except when there are one or more retrospective changes to the statements of comprehensive income for any of the quarters within the two most recent fiscal years and any subsequent interim period for which financial statements are included or required to be included by Article 3 of Regulation S–X that, individually or in the aggregate, are material.	• Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A ** • Form N–2 ±	• 2 hour net decrease in compliance burden per form. • 0.2 hour net decrease in compliance burden per schedule. • 0.3 hour net decrease in compliance burden per form.
Item 303(a): Full Fiscal Years		
Restructuring and Streamlining:		
• Establishing a new paragraph Item 303(a), to emphasize the purpose of the MD&A section at the outset to clarify and focus registrants is expected to have a minimal impact on the paperwork burden, as the change would codify existing guidance. *Estimated burden increase: 0.1 hour per form and per schedule.*	• Forms 10, 10–K, 10–Q, S–1, S–4, and S–11. • Form 1–A^ • Schedule 14A **	• 2.1 hour net increase in compliance burden per form. • 0.3 hour net increase in compliance burden per form. • 0.3 hour net increase in compliance burden per schedule.
• Amendments to streamline the text of new Item 303 would have no effect on the paperwork burden because these amendments are clarifications of existing requirements.	• Form N–2 ±	• 0.5 hour net increase in compliance burden per form.
Liquidity and Capital Resources:		
• Expanding Item 303(b)(1)(ii) (current Item 303(a)(2)) to also require a discussion of material cash requirements, in addition to commitments for capital expenditures, would increase the paperwork burden.		
• Clarifying the liquidity and capital resources disclosure requirements of Item 303(b)(1), including to specifically require disclosure of material cash requirements from known contractual and other obligations. *Estimated burden increase: 1.5 hour per form and 0.2 hour increase per schedule.* Ω		
Results of Operations—Known Trends or Uncertainties:		
• Amending Item 303(b)(2)(ii) (current Item 303(a)(3)(ii)) to clarify that a registrant should disclose *reasonably likely* changes in the relationship between costs and revenues would increase the paperwork burden, although this effect is expected to be minimal because the amendment is consistent with existing guidance. *Estimated burden increase: 1.0 hour per form and 0.1 hour increase per schedule.*		
Results of Operations—Net Sales, Revenues, and Line Item Changes:		
• Amending Item 303(b) (current Item 303(a)(3), Item 303(a)(3)(iii) and Instruction 4 to Item 303(a)) to clarify that a registrant should include in its MD&A a discussion of the reasons underlying material *changes* from period-to-period in one or more line items could marginally increase the paperwork burden by requiring a more nuanced discussion consistent with the overall objective of MD&A. *Estimated burden increase: 1.0 hour per form and 0.1 hour increase per schedule.*		
Results of Operations—Inflation and Price Changes:		

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE FINAL AMENDMENTS—Continued

Final amendments and effects	Affected collections of information	Estimated net effect *
• Eliminating the specific reference to inflation within current Item 303(a)(3)(iv) for issuers should marginally reduce the paperwork burden, although such decrease is expected to be minimal. *Estimated burden decrease: 0.5 hours per form and 0.1 hour decrease per schedule*.		
Off-Balance Sheet Arrangements:		
• Replacing current Item 303(a)(4) with an instruction emphasizing a more principles-based approach with respect to off-balance sheet arrangement disclosures, would reduce duplicative disclosures and decrease the paperwork burden. *Estimated burden decrease: 1.0 hour per form and 0.1 hour decrease per schedule*.		
• Amending Items 2.03 and 2.04 of Form 8–K to retain the definition of ''off-balance sheet arrangements'' that is in current Item 303(a)(4) would not result in any changes in reporting obligations under Item 2.03 and Item 2.04 of Form 8–K, and would therefore result in no change in paperwork burden for this form.		
Contractual Obligations Table:		
• Eliminating current Item 303(a)(5), the requirement that registrants provide a tabular disclosure of contractual obligations, would reduce duplicative disclosures and decrease the paperwork burden. *Estimated burden decrease: 2.0 hour per form and 0.2 hour decrease per schedule*.		
Critical Accounting Estimates:		
• Adopting Item 303(b)(3) to explicitly require disclosure of critical accounting estimates would provide more clarity on the uncertainties involved in creating an accounting policy and how significant accounting policies of registrants may differ. This would increase the paperwork burden. *Estimated burden increase: 2.0 hours per form and 0.2 hour increase per schedule*.		
Item 303(c): Interim Periods		
• Amending Item 303(c) (current Item 303(b)) to allow for more flexibility in interim periods compared and eliminating certain instructions and providing cross-references to similar instructions to Item 303(b) would decrease the paperwork burden.	• Forms 10, 10–K, 10–Q, S–1, S–4, and S–11. • Form 1–A ^ • Schedule 14A ** • Form N–2 ±	• 4.0 hour net decrease in compliance burden per form. • 0.4 hour net decrease in compliance burden per form. • 0.4 hour net decrease in compliance burden per schedule. • 0.7 hour net decrease in compliance burden per form.
Current Item 303(c): Safe Harbor for Forward-Looking Information		
• Eliminating current Item 303(c) as a conforming change would have no effect on the paperwork burden.		
Current Item 303(d): Accommodations for SRCs		
• Eliminating current Item 303(d) as a conforming change would have no effect on the paperwork burden.		
Effect on FPIs		
• Eliminating Item 3.A and generally conforming Item 5 of Form 20–F to the final amendments to Item 303 would reduce the paperwork burden.	• Form 20–F	• 2.0 hour net decrease in compliance burden per form.
• Eliminating the contractual obligations disclosure requirement and replacing the off-balance sheet disclosure requirements in Forms 20–F and 40–F with a principles-based instruction would reduce the paperwork burden.	• Form 40–F	• 2.0 hour net decrease in compliance burden per form.
• Amending current Instruction 11 to Item 303 to conform to the hyperinflation disclosure requirements of Form 20-F would not affect the paperwork burden.	• Forms F–1 and F–4	• 3.5 hour net decrease per form.
Total	• Form 1–A • Form 10–Q • Forms 10, 10–K, S–1, S–4, and S–11. • Schedule 14A • Forms F–1 and F–4 • Form 20–F • Form 40–F	• 0.1 hour net decrease per form. • 1.9 hour net decrease per form. • 5.90 hour net decrease per form. • 0.5 hour net decrease per form. • 3.5 hour net decrease per form. • 2.0 hour net decrease per form. • 2.0 hour net decrease per form.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE FINAL AMENDMENTS—Continued

Final amendments and effects	Affected collections of information	Estimated net effect *
	• Form N–2	• 0.8 hour net decrease per form.

* Estimated net effect expressed as an increase or decrease of burden hours *on average* and derived from Commission staff review of samples of relevant sections of the affected forms and schedules.

** The lower estimated average incremental burden for Schedule 14A reflects the Commission staff estimates that no more than 10% of the Schedules 14A filed annually include Item 301–303 disclosures.

± Form N–2 states that disclosure under Items 301–303 of Regulation S–K is only required if "the Registrant is regulated as a business development company under the 1940 Act." The estimated average incremental burden for Form N–2 reflects the fact that approximately 13% of registrants are BDCs (of the estimated 765 closed-end funds that could file on Form N–2 as of July 20, 2020, only 99 were BDCs. *See Use of Derivatives by Registered Investment Companies and Business Development Companies,* Release No IC–34084 (Nov. 2, 2020) at 273.). The estimated burden has been reduced to adjust for this percentage.

^ In the preparation of Part II of Form 1–A, Regulation A issuers have the option of disclosing either the information required by (i) the Offering Circular format or (ii) Part I of Forms S–1 or S–11 (except for the financial statements, selected financial data, and supplementary information called for by those forms). The burden associated with Form 1–A is affected only to the extent that an issuer chooses to use Part I of these forms. The Commission staff estimates that 10.6% of Form 1–A filings reflect this election.

Ω The estimated burden increase associated with these amendments has been increased from 1.0 hour per form and 0.1 hour per schedule that was reflected in the Proposing Release. *See* Proposing Release at 12106. The increase has been made to account for amended Item 303(b)(1) (clarifying the liquidity and capital resources disclosure requirements of the item).

ϕ The estimated burden decrease has been increased from 1.0 hour per form and 0.2 hours per schedule that was reflected in the Proposing Release. *See* Proposing Release at 12106. Input from commenters suggested that the original estimate did not sufficiently reflect the amount of time required to produce the table of contractual obligations. *See e.g.,* letters from Eli Lilly; FEI; UnitedHealth; Costco.

[3] To the extent that SRCs may face some increased burden as a result of this change, it is reflected in the estimated burden associated with amended Item 303(b)(1).

D. Incremental and Aggregate Burden and Cost Estimates for the Final Amendments

Below we estimate the incremental and aggregate reductions in paperwork burden as a result of the final amendments. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. We do not believe that the final amendments would change the frequency of responses to the existing collections of information; rather, we estimate that the final amendments would change only the burden per response, as estimated above.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the final amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. PRA Table 2 below sets forth the percentage estimates we typically use for the burden allocation for each collection of information. We also estimate that the average cost of retaining outside professionals is $400 per hour.[458]

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED COLLECTIONS OF INFORMATION

Collection of information	Internal (%)	Outside professionals (%)
Forms 1–A, 10–K, 10–Q, 8–K, Schedule 14A	75	25
Forms S–1, S–4, S–11, F–1, F–4, SF–1, SF–3, and 10	25	75
Forms 20–F and 40–F	25	75
Form N–2	25	75

PRA Table 3 below illustrates the incremental change to the total annual compliance burden of affected collections of information, in hours and in costs, as a result of the final amendments.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Collection of Information	Number of estimated affected responses (A) *	Burden hour reduction per current affected response (B)	Reduction in burden hours for current affected responses (C) = (A) × (B) **	Reduction in company hours for current affected responses (D) = (C) × 0.25 or 0.75	Reduction in professional hours for current affected responses (E) = (C) − (D)	Reduction in professional costs for current affected responses (F) = (E) × $400
S–1	901	5.9	5,316	1,329	3,987	$1,594,800
S–4	551	5.9	3,251	813	2,438	975,200

[458] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS—Continued

Collection of Information	Number of estimated affected responses (A)*	Burden hour reduction per current affected response (B)	Reduction in burden hours for current affected responses (C) = (A) × (B)**	Reduction in company hours for current affected responses (D) = (C) × 0.25 or 0.75	Reduction in professional hours for current affected responses (E) = (C) − (D)	Reduction in professional costs for current affected responses (F) = (E) × $400
S–11	64	5.9	378	95	283	113,200
F–1	63	3.5	221	55	166	66,400
F–4	39	3.5	137	34	103	41,200
N–2	298	0.8	238	179	59	23,600
1–A	179	0.1	18	14	4	1,600
10	216	5.9	1,274	319	955	382,000
10–K	8,137	5.9	48,008	36,006	12,002	4,800,800
10–Q	22,907	1.9	43,523	32,642	10,881	4,352,400
20–F	725	2.0	1,450	363	1,087	434,800
40–F	132	2.0	264	66	198	79,200
Sch. 14A	5,586	0.5	2,793	2,095	698	279,200
Total	39,798	43.8	106,871	74,010	32,861	13,144,400

* The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average.
** The estimated reductions in Columns (C), (D), and (E) are rounded to the nearest whole number.

The following PRA Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

PRA TABLE 4—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

Collection of information	Current burden			Program change			Revised burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Reduction in company hours (E)†	Reduction in professional costs (F)‡	Annual responses (G) = (A)	Burden hours (H) = (B) − (E)	Cost burden (I) = (C) − (F)
S–1	901	147,208	$180,319,975	901	1,329	$1,594,800	901	145,879	$178,725,175
S–4	551	562,465	677,378,579	551	813	975,200	551	561,652	676,403,379
S–11	64	12,214	14,925,768	64	95	113,200	64	12,119	14,812,568
F–1	63	26,692	32,275,375	63	55	66,400	63	26,637	32,208,975
F–4	39	14,049	17,073,825	39	34	41,200	39	14,015	17,032,625
N–2	298	94,350	6,269,752	298	179	23,600	298	94,171	6,246,152
1–A	179	98,396	13,111,912	179	14	1,600	179	98,382	13,110,312
10	216	11,855	14,091,488	216	319	382,000	216	11,536	13,709,488
10–K	8,137	14,198,780	1,895,224,719	8,137	36,006	4,800,800	8,137	14,162,774	1,890,423,919
10–Q	22,907	3,209,558	425,120,754	22,907	32,642	4,352,400	22,907	3,176,916	420,768,354
20–F	725	479,304	576,875,025	725	363	434,800	725	478,941	576,440,225
40–F	132	14,237	17,084,560	132	66	79,200	132	14,171	17,005,360
Sch. 14A	5,586	551,101	73,480,012	5,586	2,095	279,200	5,586	549,006	73,200,812
Total	39,798	19,399,109	3,941,630,388	39,798	74,010	13,144,400	39,798	19,325,099	3,928,485,988

† From Column (D) in PRA Table 3.
‡ From Column (F) in PRA Table 3.

VII. Final Regulatory Flexibility Act Certification

In connection with the Proposing Release, the Commission certified that the proposals would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, including the factual bases for the determination, was published with the Proposing Release in satisfaction of Section 605(b) of the Regulatory Flexibility Act (''RFA'').[459] The Commission requested comment on the certification and received none.

We are adopting the amendments as proposed with several minor changes and two substantive changes relating to Item 302(a), disclosure of selected quarterly financial data of specified operating results, and Item 303, disclosure of liquidity and capital resources. As discussed above, we believe that the impact on small entities as a result of these changes will not be significant.[460] We expect the final amendments will reduce the paperwork burden for all registrants, including small entities.[461] Although, we anticipate that the economic impact of the reduction in the paperwork burden will be modest, the reduction in the burden will be beneficial to all registrants, including small entities. Accordingly, the Commission hereby certifies, pursuant to 5 U.S.C. 605(b),

[459] 5 U.S.C. 601 *et seq.*

[460] This includes elimination of current Item 303(d), which provides, in relevant part, an accommodation for SRCs with respect to the contractual obligations table required by current Item 303(a)(5). Because the basis for current Item 303(d) was a reduction in the burdens associated with the preparation of the contractual obligations table itself, and because we are eliminating that prescriptive requirement, we do not believe that the elimination of current Item 303(d) will have a significant impact on SRCs. *See* Section II.C.11 *supra.*

[461] *See supra* Section V.D.

that the final amendments will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VIII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, Sections 3(b), 12, 13, 14, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, and Sections 8, 24, 30, and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Parts 229, 239, 240, and 249

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of the Final Rule and Form Amendments

In accordance with the foregoing, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78*o*(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

■ 2. Amend § 210.1–02 by revising paragraphs (bb)(1) introductory text and (bb)(2) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(bb) * * *

(1) Except as provided in paragraph (bb)(2) of this section, *summarized financial information* referred to in this part shall mean the presentation of summarized information as to the assets, liabilities and results of operations of the entity for which the information is required. Summarized financial information shall include the following disclosures, which may be subject to appropriate variation to conform to the nature of the entity's business:

* * * * *

(2) Summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons referred to in and required by § 210.10–01(b) for interim periods shall include the information required by paragraph (bb)(1)(ii) of this section.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

§ 229.10 [Amended]

■ 4. Amend § 229.10(f) introductory text in the table by removing entries for ''Item 301'' and ''Item 303''.

§ 229.301 [Removed and Reserved]

■ 5. Remove and reserve § 229.301.

■ 6. Amend § 229.302 by revising paragraph (a) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) *Disclosure of material quarterly changes.* When there are one or more retrospective changes to the statements of comprehensive income for any of the quarters within the two most recent fiscal years or any subsequent interim period for which financial statements are included or are required to be included by §§ 210.3–01 through 210.3–20 of this chapter (Article 3 of Regulation S–X) that individually or in the aggregate are material, provide an explanation of the reasons for such material changes and disclose, for each affected quarterly period and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income as specified in § 210.1–02(bb)(1)(ii) of this chapter (Rule 1–02(bb)(1)(ii) of Regulation S–X) and earnings per share reflecting such changes.

(1) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in Auditing Standards issued by the Public Company Accounting Oversight Board (''PCAOB''), shall be followed by the reporting accountant with regard to the disclosure required by this paragraph (a).

(2) This paragraph (a) applies to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) (15 U.S.C. 78l(b)) (other than mutual life insurance companies) or 12(g) of the Exchange Act (15 U.S.C. 78l(g)) after the registrant's initial registration of securities under these sections.

(3) A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this section.

* * * * *

■ 7. Revise § 229.303 to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Objective.* The objective of the discussion and analysis is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources. The discussion and analysis must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations. The discussion and analysis must be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of the registrant's financial condition, cash flows and other changes in financial condition and results of operations. A discussion and analysis that meets the requirements of this paragraph (a) is expected to better allow investors to

view the registrant from management's perspective.

(b) *Full fiscal years.* The discussion of financial condition, changes in financial condition and results of operations must provide information as specified in paragraphs (b)(1) through (3) of this section and such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Where the financial statements reflect material changes from period-to-period in one or more line items, including where material changes within a line item offset one another, describe the underlying reasons for these material changes in quantitative and qualitative terms. Where in the registrant's judgment a discussion of segment information and/or of other subdivisions (*e.g.,* geographic areas, product lines) of the registrant's business would be necessary to an understanding of such business, the discussion must focus on each relevant reportable segment and/or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity and capital resources.* Analyze the registrant's ability to generate and obtain adequate amounts of cash to meet its requirements and its plans for cash in the short-term (*i.e.,* the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (*i.e.,* beyond the next 12 months). The discussion should analyze material cash requirements from known contractual and other obligations. Such disclosures must specify the type of obligation and the relevant time period for the related cash requirements. As part of this analysis, provide the information in paragraphs (b)(1)(i) and (ii) of this section.

(i) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(ii) *Capital resources.* (A) Describe the registrant's material cash requirements, including commitments for capital expenditures, as of the end of the latest fiscal period, the anticipated source of funds needed to satisfy such cash requirements and the general purpose of such requirements.

(B) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any reasonably likely material changes in the mix and relative cost of such resources. The discussion must consider changes among equity, debt, and any off-balance sheet financing arrangements.

(2) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, would be material to an understanding of the registrant's results of operations.

(ii) Describe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues (such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship must be disclosed.

(iii) If the statement of comprehensive income presents material changes from period to period in net sales or revenue, if applicable, describe the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of goods or services being sold or to the introduction of new products or services.

(3) *Critical accounting estimates.* Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. Provide qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations to the extent the information is material and reasonably available. This information should include why each critical accounting estimate is subject to uncertainty and, to the extent the information is material and reasonably available, how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation.

Instructions to paragraph (b): 1. Generally, the discussion must cover the periods covered by the financial statements included in the filing and the registrant may use any presentation that in the registrant's judgment enhances a reader's understanding. A smaller reporting company's discussion must cover the two-year period required in §§ 210.8–01 through 210.8–08 of this chapter (Article 8 of Regulation S–X) and may use any presentation that in the registrant's judgment enhances a reader's understanding. For registrants providing financial statements covering three years in a filing, discussion about the earliest of the three years may be omitted if such discussion was already included in the registrant's prior filings on EDGAR that required disclosure in compliance with § 229.303 (Item 303 of Regulation S–K), provided that registrants electing not to include a discussion of the earliest year must include a statement that identifies the location in the prior filing where the omitted discussion may be found. An emerging growth company, as defined in § 230.405 of this chapter (Rule 405 of the Securities Act) or § 240.12b-2 of this chapter (Rule 12b–2 of the Exchange Act), may provide the discussion required in paragraph (b) of this section for its two most recent fiscal years if, pursuant to Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)), it provides audited financial statements for two years in a Securities Act registration statement for the initial public offering of the emerging growth company's common equity securities.

2. If the reasons underlying a material change in one line item in the financial statements also relate to other line items, no repetition of such reasons in the discussion is required and a line-by-line analysis of the financial statements as a whole is neither required nor generally appropriate. Registrants need not recite the amounts of changes from period to period if they are readily computable from the financial statements. The discussion must not merely repeat numerical data contained in the financial statements.

3. Provide the analysis in a format that facilitates easy understanding and that supplements, and does not duplicate, disclosure already provided in the filing. For critical accounting estimates, this disclosure must supplement, but not duplicate, the description of accounting policies or

other disclosures in the notes to the financial statements.

4. For the liquidity and capital resources disclosure, discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the registrant's balance sheet. Except where it is otherwise clear from the discussion, the registrant must discuss those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition.

5. Where financial statements presented or incorporated by reference in the registration statement are required by § 210.4–08(e)(3) of this chapter (Rule 4–08(e)(3) of Regulation S–X) to include disclosure of restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances, the discussion of liquidity must include a discussion of the nature and extent of such restrictions and the impact such restrictions have had or are reasonably likely to have on the ability of the parent company to meet its cash obligations.

6. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See 17 CFR 230.175 [Rule 175 under the Securities Act], 17 CFR 240.3b-6 [Rule 3b-6 under the Exchange Act], and Securities Act Release No. 6084 (June 25, 1979).

7. All references to the registrant in the discussion and in this section mean the registrant and its subsidiaries consolidated.

8. Discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity under U.S. GAAP.

9. If the registrant is a foreign private issuer, briefly discuss any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, its operations or investments by United States nationals. The discussion must also consider the impact of hyperinflation if hyperinflation has occurred in any of the periods for which audited financial statements or unaudited interim financial statements are filed. See § 210.3–20(c) of this chapter (Rule 3–20(c) of Regulation S–X) for a discussion of cumulative inflation rates that may trigger the requirement in this instruction 9 to this paragraph (b).

10. If the registrant is a foreign private issuer, the discussion must focus on the primary financial statements presented in the registration statement or report. The foreign private issuer must refer to the reconciliation to United States generally accepted accounting principles and discuss any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes are necessary for an understanding of the financial statements as a whole, if applicable.

11. The term *statement of comprehensive income* is as defined in § 210.1–02 of this chapter (Rule 1–02 of Regulation S–X).

(c) *Interim periods.* If interim period financial statements are included or are required to be included by 17 CFR 210.3 [Article 3 of Regulation S–X], a management's discussion and analysis of the financial condition and results of operations must be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (c)(1) and (2) of this section. The discussion and analysis must include a discussion of material changes in those items specifically listed in paragraph (b) of this section.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided also must be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the registrant.

(2) *Material changes in results of operations.* (i) Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income is provided and the corresponding year-to-date period of the preceding fiscal year.

(ii) Discuss any material changes in the registrant's results of operations with respect to either the most recent quarter for which a statement of comprehensive income is provided and the corresponding quarter for the preceding fiscal year or, in the alternative, the most recent quarter for which a statement of comprehensive income is provided and the immediately preceding sequential quarter. If the latter immediately preceding sequential quarter is discussed, then provide in summary form the financial information for that immediately preceding sequential quarter that is subject of the discussion or identify the registrant's prior filings on EDGAR that present such information. If there is a change in the form of presentation from period to period that forms the basis of comparison from previous periods provided pursuant to this paragraph, the registrant must discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made.

Instructions to paragraph (c): 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information must be prepared pursuant to this paragraph (c) and the discussion of the full fiscal year's information must be prepared pursuant to paragraph (b) of this section. Such discussions may be combined. Instructions 2, 3, 4, 6, 8, and 11 to paragraph (b) of this section apply to this paragraph (c).

2. The registrant's discussion of material changes in results of operations must identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

■ 8. Amend § 229.914 by revising paragraph (a) to read as follows:

§ 229.914 (Item 914) Pro forma financial statements: selected financial data.

(a) In addition to the information required by § 229.302 (Item 302 of Regulation S–K), for each partnership proposed to be included in a roll-up transaction provide: cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital). This information must be provided for the previous two fiscal years. Additional or other information must be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction.

* * * * *

■ 9. Amend § 229.1112 by revising paragraph (b)(1) and Instruction 3.a. to paragraph (b) to read as follows:

§ 229.1112 (Item 1112) Significant obligors of pool assets.

* * * * *

(b) * * *

(1) If the pool assets relating to a significant obligor represent 10% or more, but less than 20%, of the asset pool, provide summarized financial information, as defined by § 210.1–02(bb) of this chapter (Rule 1–02(bb) of Regulation S–X), for the significant obligor for each of the last three fiscal years (or the life of the significant obligor and its predecessors, if less), provided, however, that for a significant obligor under § 229.1101(k)(2) (Item 1101(k)(2) of Regulation AB), only net operating income for the most recent fiscal year and interim period is required.

* * * * *

Instructions to Item 1112(b): * * *

3. * * *

a. If the summarized financial information required by paragraph (b)(1) of this section is presented on a basis of accounting other than U.S. GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), then present a reconciliation to U.S. GAAP and 17 CFR part 210 (Regulation S–X), pursuant to Item 17 of Form 20–F. If a reconciliation is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the summarized financial information from those accepted in the U.S.

* * * * *

■ 10. Amend § 229.1114 by revising paragraph (b)(2)(i) and Instruction 4a. to paragraph (b) to read as follows:

§ 229.1114 (Item 1114) Credit enhancement and other support, except for certain derivatives instruments.

* * * * *

(b) * * *

(2) * * *

(i) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any offered class of the asset-backed securities, provide summarized financial information, as defined by § 210.1–02(bb) of this chapter (Rule 1–02(bb) of Regulation S–X), for each such entity or group of affiliated entities for each of the last three fiscal years (or the life of the entity or group of affiliated entities and any predecessors, if less).

* * * * *

Instruction 4 to Item 1114(b). * * *

a. If the summarized financial information required by paragraph (b)(1) of this section is presented on a basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, then present a reconciliation to U.S. GAAP and 17 CFR part 210 (Regulation S–X), pursuant to Item 17 of Form 20–F. If a reconciliation is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the summarized financial information from those accepted in the U.S.

* * * * *

■ 11. Amend § 229.1115 by revising paragraph (b)(1) to read as follows:

§ 229.1115 (Item 1115) Certain derivatives instruments.

* * * * *

(b) * * *

(1) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 10% or more, but less than 20%, provide summarized financial information, as defined by § 210.1–02(bb) of this chapter (Rule 1–02(bb) of Regulation S–X), for such entity or group of affiliated entities for each of the last three fiscal years (or the life of the entity or group of affiliated entities and any predecessors, if less).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 12. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

■ 13. Amend § 230.419 by revising (f)(1) to read as follows:

§ 230.419 Offering by blank check companies.

* * * * *

(f) * * *

(1) Furnish to security holders audited financial statements for the first full fiscal year of operations following consummation of an acquisition pursuant to paragraph (e) of this section, together with the information required by § 229.303(b) of this chapter (Item 303(b) of Regulation S–K), no later than 90 days after the end of such fiscal year; and

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 14. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78l, 78m, 78*o,* 78w, 80a-8, 80a-29, 80a-30, 80a-37 and 12 U.S.C. 241.

* * * * *

■ 15. Amend Form S–1 (referenced in § 239.11) by:

■ a. Removing and reserving Item 11(f) of Part I—Information Required in Prospectus;

■ b. Revising paragraphs (f) and (g) of Instruction 1 under ''Instructions as to Summary Prospectus''; and
■ c. Adding paragraph (h) of Instruction 1 under ''Instructions as to Summary Prospectus''.

The revisions and additions read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

1. * * *

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done and a brief statement of the nature and present status of any material pending legal proceedings;

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate; and

(h) Subject to appropriate variation to conform to the nature of the registrant's business, provide summarized financial information defined by Rule 1–02(bb)(1)(i) and (ii) of Regulation S–X (§ 210.1–02(bb) of this chapter) in comparative columnar form for the periods for which financial statements are required by Regulation S–X (17 CFR part 210).

* * * * *

■ 16. Amend Form S–20 (referenced in § 239.20) by revising Item 7 and paragraph (1) to Item 8 to read as follows:

Note: The text of Form S–20 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–20

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART II INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 7. Financial Statements.

Include financial statements meeting the requirements of Regulation S–X [17 CFR 210] and the supplementary financial information specified by Item 302 of Regulation S–K [17 CFR 229.302].

Item 8. Undertakings.

Furnish the following undertakings:

1. The undersigned registrant hereby undertakes to file a post-effective amendment, not later than 120 days after the end of each fiscal year subsequent to that covered by the financial statements presented herein, containing financial statements meeting the requirements of Regulation S–X [17 CFR part 210] and the supplementary financial information specified by Item 302 of Regulation S–K [17 CFR 229.302].

* * * * *

■ 17. Amend Form S–4 (referenced in § 239.25) by:

Note: The text of Form S–4 does not appear in the Code of Federal Regulations.

■ a. Removing and reserving paragraphs (d), (e), and (f) of Item 3 (''Risk Factors, Ratio of Earnings to Fixed Charges and Other Information'') and the related subparagraphs in their entirety and removing the Instruction to paragraph (e) and (f) under Part I, Section A (''Information About the Transaction'');
■ b. Removing and reserving paragraph (b)(3)(iii) of Item 12 (''Information with respect to S–3 Registrants'') under Part I, Section B (''Information About the Registrant'');
■ c. Removing and reserving paragraph (a)(3)(iii) of Item 13 (''Incorporation of Certain Information by Reference'') under Part I, Section B (''Information About the Registrant'');
■ d. Removing and reserving paragraph (f) of Item 14 (''Information with Respect to Registrants Other Than S–3 Registrants'' under Part I, Section B (''Information About the Registrant''); and
■ e. Removing and reserving paragraphs (b)(3) and (4) of Item 17 (''Information with Respect to Companies Other Than S–3 Companies'') under Part I, Section C (''Information About the Company Being Acquired'').

■ 18. Amend Form F–1 (referenced in § 239.31) by:
■ a. Revising the paragraph 1(c)(v) under ''Instructions as to Summary Prospectuses''; and
■ b. Adding paragraph 1(c)(vi).

The revision and addition read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

1. * * *

(c) * * *

(v) As to Item 4, a brief statement of the general character of the business done and intended to be done and a brief statement of the nature and present status of any material pending legal proceedings;

(vi) Subject to appropriate variation to conform to the nature of the registrant's business, provide summarized financial information defined by Rule 1–02(bb)(1)(i) and (ii) of Regulation S–X (§ 210.1–02(bb) of this chapter) in comparative columnar form for the periods for which financial statements are required by Item 8.A. of Form 20–F. If interim period financial statements are included, the summarized financial information should be updated for that interim period, which may be unaudited, provided that fact is stated. If summarized financial data for interim periods is provided, comparative data from the same period in the prior financial year shall also be provided, except that the requirement for comparative balance sheet data is satisfied by presenting the year-end balance sheet information.

* * * * *

■ 19. Amend Form F–4 (referenced in § 239.34) by:

Note: The text of Form F–4 does not appear in the Code of Federal Regulations.

■ a. Removing and reserving paragraphs (d), (e), and (f) of Item 3 (''Risk Factors, Ratio of Earnings to Fixed Charges and Other Information'') and the related subparagraphs in their entirety and removing the Instruction to paragraph (e) and (f) under Part I, Section A (''Information About the Transaction'');
■ b. Removing and reserving paragraph (b)(3)(v) of Item 12 (''Information With Respect to F–3 Registrants'') under Part I, Section B (''Information About the Registrant'');
■ c. Removing and reserving paragraph (f) of Item 14 (''Information With Respect to Foreign Registrants Other Than F–3 Registrants'') under Part I, Section B (''Information about the Registrant''); and
■ d. Removing and reserving paragraph (b)(3) of Item 17 (''Information With

Respect to Foreign Companies Other Than F–3 Companies'') under Part I, Section C (''Information About the Company Being Acquired'').

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 20. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*-10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n;

* * * * *

§ 240.14a–3 [Amended]

■ 21. Amend § 240.14a–3 by removing and reserving paragraph (b)(5)(i).

§ 240.14a–101 [Amended]

■ 22. Amend § 240.14a–101 under Item 14 by removing and reserving paragraphs (b)(8) through (10), the instructions to paragraphs (b)(8), (b)(9), and (b)(10), and paragraph (d)(6).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 23. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 24. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Removing and reserving General Instruction G(c);

■ b. Removing and reserving Item 3.A;

■ c. Removing Instructions to Item 3.A;

■ d. Revising Item 5;

■ e. In Instruction 3 of Instructions to Item 8.A.2, removing the final sentence; and

■ f. In Item 11(b), removing the reference ''small business issuers'' and adding in its place the term ''smaller reporting companies''.

The revision reads as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

Item 5. Operating and Financial Review and Prospects

The purpose of this standard is to provide management's explanation of factors that have materially affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are anticipated to have a material effect on the company's financial condition and results of operations in future periods. A discussion and analysis that meets these requirements is expected to better allow investors to view the registrant from management's perspective. Discuss the company's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required. The discussion must include a quantitative and qualitative description of the reasons underlying material changes, including where material changes within a line item offset one another, to the extent necessary for an understanding of the company's business as a whole. Information provided also must relate to all separate segments and/or other subdivisions (*e.g.,* geographic areas, product lines) of the company. The discussion must include other statistical data that the company believes will enhance a reader's understanding of the company's financial condition, cash flows and other changes in financial condition, and results of operations. The discussion and analysis must also focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the company's financial condition, changes in financial condition and results of operations.

A. Operating results. Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the company's income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the company's results of operations.

1. If the statement of comprehensive income presents material changes from period to period in net sales or revenue, if applicable, describe the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.

2. If the currency in which financial statements are presented is of a country that has experienced hyperinflation, disclose the existence of such inflation, a five year history of the annual rate of inflation and a discussion of the impact of hyperinflation on the company's business.

3. Provide information regarding the impact of foreign currency fluctuations on the company, if material, and the extent to which foreign currency net investments are hedged by currency borrowings and other hedging instruments.

4. Provide information regarding any governmental economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the company's operations or investments by host country shareholders.

B. Liquidity and capital resources. Analyze the registrant's ability to generate and obtain adequate amounts of cash to meet its requirements and its plans for cash in the short-term (*i.e.,* the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (*i.e.,* beyond the next 12 months). The discussion should analyze material cash requirements from known contractual and other obligations. Such disclosures must specify the type of obligation and the relevant time period for the related cash requirements. As part of this analysis, provide the following information:

1. Information regarding the company's liquidity including:

(a) A description of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement

by the company that, in its opinion, the working capital is sufficient for the company's present requirements, or, if not, how it proposes to provide the additional working capital needed.

(b) an evaluation of the sources and amounts of the company's cash flows, including the nature and extent of any legal or economic restrictions on the ability of subsidiaries to transfer funds to the company in the form of cash dividends, loans or advances and the impact such restrictions have had or are reasonably likely to have on the ability of the company to meet its cash obligations.

2. Information regarding the type of financial instruments used, the maturity profile of debt, currency and interest rate structure. The discussion also must include funding and treasury policies and objectives in terms of the manner in which treasury activities are controlled, the currencies in which cash and cash equivalents are held, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.

3. Information regarding the company's material cash requirements, including commitments for capital expenditures, as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such requirements and the anticipated sources of funds needed to satisfy such requirements.

C. Research and development, patents and licenses, etc. Provide a description of the company's research and development policies for the last three years.

D. Trend information. The company must identify material recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The company also must discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

E. Critical Accounting Estimates

A registrant that does not apply in its primary financial statements IFRS as issued by the IASB must discuss information about its critical accounting estimates. This disclosure should supplement, not duplicate, the description of accounting policies in the notes to the financial statements.

Critical accounting estimates. Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. Provide qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on the registrant's financial condition or results of operations to the extent the information is material and reasonably available. This information should include why each critical accounting estimate is subject to uncertainty and, to the extent the information is material and reasonably available, how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amounts to the material methods, assumptions and estimates underlying its calculation.

Instructions to Item 5:

1. Refer to the Commission's interpretive releases (No. 33–6835) dated May 18, 1989, (No. 33–8056) dated January 22, 2002, (No. 33–8350) dated December 19, 2003, (No. 33–9144) dated September 17, 2010, and (No. 33–10751) dated January 30, 2020 for guidance in preparing this discussion and analysis by management of the company's financial condition and results of operations.

2. The discussion must focus on the primary financial statements presented in the document. You should refer to the reconciliation to U.S. GAAP, if any, and discuss any aspects of the differences between foreign and U.S. GAAP, not otherwise discussed in the reconciliation, that you believe are necessary for an understanding of the financial statements as a whole.

3. We encourage you to supply forward-looking information, but that type of information is not required. Forward-looking information is covered expressly by the safe harbor provisions of Section 27A of the Securities Act and Section 21E of the Exchange Act. Forward-looking information is different than presently known data which will have an impact on future operating results, such as known future increases in costs of labor or materials. You are required to disclose this latter type of data if it is material.

4. To the extent the primary financial statements reflect the use of exceptions permitted or required by IFRS 1, the issuer must:

a. Provide detailed information as to the exceptions used, including:

i. An indication of the items or class of items to which the exception was applied; and

ii. A description of what accounting principle was used and how it was applied;

b. Include, where material, qualitative disclosure of the impact on financial condition, changes in financial condition and results of operations that the treatment specified by IFRS would have had absent the election to rely on the exception.

5. An issuer filing financial statements that comply with IFRS as issued by the IASB must, in providing information in response to paragraphs of this Item 5 that refer to pronouncements of the FASB, provide disclosure that satisfies the objective of the Item 5 disclosure requirements. In responding to this Item 5, an issuer need not repeat information contained in financial statements that comply with IFRS as issued by the IASB.

6. Generally, the discussion must cover the periods covered by the financial statements and the registrant may use any format that in the registrant's judgment enhances a reader's understanding. For registrants providing financial statements covering three years in a filing, a discussion of the earliest of the three years may be omitted if such discussion was already included in any other of the registrant's prior filings on EDGAR that required disclosure in compliance with Item 5 of Form 20–F, provided that registrants electing not to include a discussion of the earliest year must include a statement that identifies the location in the prior filing where the omitted discussion may be found.

7. Discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a

registrant's own equity, or not reflected in the statement of financial position.

8. For the Liquidity and Capital Resources disclosure, discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the registrant's balance sheet. Except where it is otherwise clear from the discussion, the registrant must indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition.

9. Provide the analysis in a format that facilitates easy understanding and that supplements, and does not duplicate, disclosure already provided in the filing.

Instruction to Item 5.A:

1. You must provide the information required by Item 5.A.2 with respect to hyperinflation if hyperinflation has occurred in any of the periods for which you are required to provide audited financial statements or unaudited interim financial statements in the document. See Rule 3–20(c) of Regulation S–X for a discussion of cumulative inflation rates that trigger this requirement.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8.A.2:

* * * * *

In initial registration statements, if the financial statements presented pursuant to Item 8.A.2 are prepared in accordance with U.S. generally accepted accounting principles, the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act of 1933 or the Securities Exchange Act of 1934.

* * * * *

Item 11. Quantitative and Qualitative Disclosures About Market Risk

* * * * *

(e) Smaller reporting companies. Smaller reporting companies, as defined in § 230.405 of this chapter and § 240.12b–2 of this chapter, need not provide the information required by this Item 11, whether or not they file on forms specially designated as smaller reporting company [or small business issuer] forms.

* * * * *

■ 25. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Revising General Instruction B.(11) and (12);

■ b. Removing and reserving General Instructions B.(13); and

■ c. Removing the Instructions following General Instruction B.(13).

The revision reads as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 40–F

* * * * *

B. Information To Be Filed on This Form

* * * * *

(11) Off-balance sheet arrangements. To the extent not discussed in management's discussion and analysis that is provided pursuant to General Instruction B.(3) of this form, discuss the commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources must be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity, or not reflected in the statement of financial position.

(12) To the extent not discussed in management's discussion and analysis that is provided pursuant to General Instruction B.(3) of this form, analyze material cash requirements from known contractual and other obligations. Such disclosures must specify the type of obligation and the relevant time period for the related cash requirements. Discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the registrant's balance sheet.

(13) [Reserved]

* * * * *

■ 26. Amend Form 8–K (referenced in § 249.308) by revising Item 2.03(c) and 2.03(d) to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

* * * * *

(c) For purposes of this Item 2.03, *direct financial obligation* means any of the following:

(1) a *long-term debt obligation* means a payment obligation under long-term borrowings referenced in FASB ASC paragraph 470–10–50–1 (Debt Topic) as may be modified or supplemented);

(2) a *finance lease obligation* means a payment obligation under a lease that would be classified as a finance lease pursuant to FASB ASC Topic 842, Leases, as may be modified or supplemented;

(3) an *operating lease obligation* means a payment obligation under a lease that would be classified as an operating lease pursuant to FASB ASC Topic 840, as may be modified or supplemented; or

(4) a short-term debt obligation that arises other than in the ordinary course of business.

(d) For purposes of this Item 2.03, *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(1) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC paragraph 460–10–15–4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460–10–15–7, 460–10–25–1, and 460–10–30–1.

(2) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(3) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is

both indexed to the registrant's own stock and classified in stockholders' equity in the registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, *Derivatives and Hedging,* pursuant to FASB ASC subparagraph 815–10–15–74(a), as may be modified or supplemented; or

(4) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

* * * * *

■ 27. Amend Form 10 (referenced in § 249.310) by revising Item 2 (''Financial Information'') to read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES

Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934

* * * * *

INFORMATION REQUIRED IN REGISTRATION STATEMENT

* * * * *

Item 2. Financial Information.

Furnish the information required by Items 303 and 305 of Regulation S–K (§§ 229.303 and 229.305 of this chapter).

* * * * *

■ 28. Amend Form 10–K (referenced in § 249.310) by:

■ a. Removing and reserving General Instruction J.(1)(g);

■ b. Revising General Instruction I.(2)(a); and

■ c. Removing and reserving Item 6 (''Selected Financial Data'') of Part II.

The revision reads as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15D OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

2. * * *

(a) Such registrants may omit the information called for by Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations provided that the registrant includes in the Form 10–K a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

* * * * *

PART 274— FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 29. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 30. Amend Form N–2 (referenced in referenced in §§ 239.14 and 274.11a–1) by revising paragraph 2 of Item 4 to read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM N–2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

Part A—INFORMATION REQUIRED IN A PROSPECTUS

* * * * *

Item 4. * * *

2. Business Development Companies. If the Registrant is regulated as a business development company under the Investment Company Act, furnish in a separate section the information required by Items 302 and 303 of Regulation S–K.

* * * * *

By the Commission.

Dated: November 19, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–26090 Filed 1–8–21; 8:45 am]

BILLING CODE 8011–01–P

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Part IV

Environmental Protection Agency

40 CFR Parts 87 and 1030

Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87 and 1030

[EPA–HQ–OAR–2018–0276; FRL–10018–45–OAR]

RIN 2060–AT26

Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adopting greenhouse gas (GHG) emission standards applicable to certain classes of engines used by certain civil subsonic jet airplanes with a maximum takeoff mass greater than 5,700 kilograms and by certain civil larger subsonic propeller-driven airplanes with turboprop engines having a maximum takeoff mass greater than 8,618 kilograms. These standards are equivalent to the airplane carbon dioxide (CO_2) standards adopted by the International Civil Aviation Organization (ICAO) in 2017 and apply to both new type design airplanes and in-production airplanes. The standards in this rule reflect U.S. efforts to secure the highest practicable degree of international uniformity in aviation regulations and standards. The standards also meet the EPA's obligation under section 231 of the Clean Air Act (CAA) to adopt GHG standards for certain classes of airplanes as a result of the 2016 ''Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare'' (hereinafter ''2016 Findings'')—for six well-mixed GHGs emitted by certain classes of airplane engines. Airplane engines emit only two of the six well-mixed GHGs, CO_2 and nitrous oxide (N_2O). Accordingly, EPA is adopting the fuel-efficiency-based metric established by ICAO, which will control both the GHGs emitted by airplane engines, CO_2 and N_2O.

DATES: This final rule is effective on January 11, 2021. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of January 11, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0276. All documents are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. Note that the EPA Docket Center and Reading Room were closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. The Docket Center staff will continue to provide remote customer service via email, phone, and webform. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. For further information on EPA Docket Center services and the current status, go to *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Bryan Manning, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4832; email address: *manning.bryan@epa.gov.*

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I. General Information

A. Does this action apply to me?

This action will affect companies that manufacture civil subsonic jet airplanes that have a maximum takeoff mass (MTOM) of greater than 5,700 kilograms and civil subsonic propeller driven airplanes (*e.g.,* turboprops) that have a MTOM greater than 8,618 kilograms, including the manufacturers of the engines used on these airplanes. Affected entities include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	336412	Manufacturers of new aircraft engines.

Category	NAICS code [a]	Examples of potentially affected entities
Industry	336411	Manufacturers of new aircraft.

[a] North American Industry Classification System (NAICS)

This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table might also be subject to these regulations. To determine whether your activities are regulated by this action, you should carefully examine the relevant applicability criteria in 40 CFR parts 87 and 1030. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

For consistency purposes across the United States Code of Federal Regulations (CFR), the terms ''airplane,'' ''aircraft,'' and ''civil aircraft'' have the meanings found in title 14 CFR 1.1 and are used as appropriate throughout the new regulation under 40 CFR part 1030.

B. Did EPA conduct a peer review before issuing this action?

This regulatory action is supported by influential scientific information. Therefore, the EPA conducted peer reviews consistent with the Office of Management and Budget's (OMB's) Final Information Quality Bulletin for Peer Review.[1] Two different reports used in support of this action underwent peer review; a report detailing the technologies likely to be used in compliance with the standards and their associated costs [2] and a report detailing the methodology and results of the emissions inventory modeling.[3] These reports were each peer-reviewed through external letter reviews by multiple independent subject matter experts (including experts from academia and other government agencies, as well as independent technical experts).[4] [5] The peer review reports and the Agency's response to the peer review comments are available in Docket ID No. EPA–HQ–OAR–2018–0276.

C. Basis for Immediate Effective Date

This rule is subject to the rulemaking procedures in section 307(d) of the Clean Air Act (CAA). See CAA section 307(d)(1)(F). Section 307(d)(1) of the CAA states that: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies.'' Thus, section 553(d) of the Administrative Procedure Act (APA), which requires publication of a substantive rule to be made ''not less than 30 days before its effective date'' subject to limited exceptions, does not apply to this action. In the alternative, the EPA concludes that it is consistent with APA section 553(d) to make this action effective January 11, 2021.

Section 553(d)(3) of the APA, 5 U.S.C. 553(d)(3), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause found and published with the rule.'' ''In determining whether good cause exists, an agency should 'balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996) (quoting *United States* v. *Gavrilovic,* 551 F.2d 1099, 1105 (8th Cir. 1977)). The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Id.; see also Gavrilovic,* 551 F.2d at 1104 (quoting legislative history).

As discussed in the notice of proposed rulemaking, and below, the standards adopted here are meant to be technology following standards that align with international standards that were previously adopted in 2017 by ICAO. This means the rule reflects the performance and technology achieved by existing airplanes. Moreover, the EPA is not aware of any manufacturers who would seek certification of any new type design airplanes in the near future, such that making the rule effective immediately upon publication could disrupt their certification plans. The EPA is determining that in light of the nature of this action, good cause exists to make this final rule effective immediately because the Agency seeks to provide regulatory certainty as soon as possible and no party will be harmed by an immediate effective date since there is no need to provide a delay of 30 days after publication for parties to adjust their behavior prior to the effective date. Accordingly, the EPA is making this rule effective immediately upon publication.

D. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 12, 2021. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460

E. Executive Summary

1. Purpose of This Regulatory Action

One of the core functions of the International Civil Aviation Organization (ICAO) is to adopt Standards and Recommended Practices on a wide range of aviation-related matters, including aircraft emissions. As

[1] OMB, 2004: Memorandum for Heads of Departments and Agencies, *Final Information Quality Bulletin for Peer Review.* Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2005/m05-03.pdf.*

[2] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[3] U.S. EPA, 2020: *Technical Report on Aircraft Emissions Inventory and Stringency Analysis,* July 2020, 52pp.

[4] RTI International and EnDyna, *Aircraft CO2 Cost and Technology Refresh and Aerospace Industry Characterization: Peer Review,* June 2018, 114pp.

[5] RTI International and EnDyna, *EPA Technical Report on Aircraft Emissions Inventory and Stringency Analysis: Peer Review,* July 2019, 157pp.

a member State of ICAO, the United States seeks to secure the highest practicable degree of international uniformity in aviation regulations and standards.[6] ICAO adopted airplane CO_2 standards in 2017. The adoption of these aviation standards into U.S. law will align with the ICAO standards. For reasons discussed herein, the EPA is adopting standards for GHG emissions from certain classes of engines used on covered airplanes (hereinafter ''covered airplanes'' or ''airplanes'') that are equivalent in scope, stringency and timing to the CO_2 standards adopted by ICAO.

These standards will ensure control of GHG emissions, maintain international uniformity of airplane standards, and allow U.S. manufacturers of covered airplanes to remain competitive in the global marketplace. In the absence of U.S. standards for implementing the ICAO Airplane CO_2 Emission Standards, U.S. civil airplane manufacturers could be forced to seek CO_2 emissions certification from an aviation certification authority of another country (not the Federal Aviation Administration (FAA)) in order to market and operate their airplanes internationally. We anticipate U.S. manufacturers would be at a significant disadvantage if the U.S. failed to adopt standards that are harmonized with the ICAO standards for CO_2 emissions. The ICAO Airplane CO_2 Emission Standards have been adopted by other ICAO member states that certify airplanes. The action to adopt in the U.S. GHG standards that match the ICAO Airplane CO_2 Emission Standards will help ensure international consistency and acceptance of U.S. manufactured airplanes worldwide.

In August 2016, the EPA issued two findings regarding GHG emissions from aircraft engines (the 2016 Findings).[7] First, the EPA found that elevated concentrations of GHGs in the atmosphere endanger the public health and welfare of current and future generations within the meaning of section 231(a)(2)(A) of the CAA. Second, EPA found that emissions of GHGs from certain classes of engines used in certain aircraft are contributing to the air pollution that endangers public health and welfare under CAA section 231(a)(2)(A). Additional details of the 2016 Findings are described in Section III. As a result of the 2016 Findings, CAA sections 231(a)(2)(A) and (3) obligate the EPA to propose and adopt, respectively, GHG standards for these covered aircraft engines.

2. Summary of the Major Provisions of This Regulatory Action

The EPA is regulating GHG emissions from covered airplanes through the adoption of domestic GHG regulations that match international standards to control CO_2 emissions. The GHG standards finalized in this action are equivalent to the CO_2 standards adopted by ICAO and will be implemented and enforced in the U.S. The standards apply to covered airplanes: Civil subsonic jet airplanes (those powered by turbojet or turbofan engines and with a MTOM greater than 5,700 kilograms), as well as larger civil subsonic propeller-driven airplanes (those powered by turboprop engines and with a MTOM greater than 8,618 kilograms). The timing and stringencies of the standards differ depending on whether the covered airplane is a new type design (*i.e.,* a design that has not previously been type certificated under title 14 CFR) or an in-production model (*i.e.,* an existing design that had been type certificated under title 14 CFR prior to the effective date of the GHG standards). The standards for new type designs apply to covered airplanes for which an application for certification is submitted to the FAA on or after January 11, 2021 (January 1, 2023, for new type designs that have a maximum takeoff mass (MTOM) of 60,000 kilograms MTOM or less and have 19 passenger seats or fewer). The in-production standards apply to covered airplanes beginning January 1, 2028. Additionally, consistent with ICAO standards, before the in-production standards otherwise apply in 2028, certain modifications made to airplanes (*i.e.,* changes that result in an increase in GHG emissions) will trigger a requirement to certify to the in-production regulation beginning January 1, 2023. Some minor technical corrections have been made to the proposed regulatory text in this action to further clarify that the standards do not apply to in-service airplanes or military airplanes.

The EPA is adopting the ICAO CO_2 metric, which measures fuel efficiency, for demonstrating compliance with the GHG emission standards. This metric is a mathematical function that incorporates the specific air range (SAR) of an airplane/engine combination (a traditional measure of airplane cruise performance in units of kilometer/kilogram of fuel) and the reference geometric factor (RGF), a measure of fuselage size. The metric is further discussed in Section IV.A.

To measure airplane fuel efficiency, the EPA is adopting the ICAO test procedures whereby the airplane/engine SAR value is measured at three specific operating test points, and a composite of those results is used in the metric to determine compliance with the GHG standards. The test procedures are discussed in Section IV.G.

The EPA proposed an annual reporting provision which would have required manufacturers of covered airplanes to submit to the EPA information on airplane characteristics, emissions characteristics and production volumes. Commenters raised several issues such as duplicative reporting burdens with FAA and ICAO, risks to confidential business information, and higher costs associated with the reporting requirement than EPA projections. The Agency is not adopting the proposed annual reporting provisions. Further information on those comments and the EPA's response can be found in the Response to Comments (RTC) document accompanying this action. Further information on all aspects of the GHG standards can be found in Section IV.

Finally, as proposed, the EPA is updating the existing incorporation by reference of the ICAO test procedures for hydrocarbons (HC), carbon monoxide (CO), oxides of nitrogen (NO_X) and smoke to reference the most recent edition of the ICAO procedures. This update will improve clarity in the existing test procedures and includes a minor change to the composition of the test fuel used for engine certification. Further details on this technical amendment can be found in Section VII.

3. Costs and Benefits

Given the significant international market pressures to continually improve the fuel efficiency of their airplanes, U.S. manufacturers have already developed or are developing technologies that will allow affected airplanes to comply with the ICAO standards, in advance of EPA's adoption of standards. Many airplanes manufactured by U.S. manufacturers already met the ICAO standards at the time of their adoption and thus already meet the standards contained in this action. Furthermore, based on the manufacturers' expectation that the ICAO standards will be implemented globally, the EPA anticipates nearly all affected airplanes to be compliant by the respective effective dates for new type designs and for in-production airplanes

[6] ICAO, 2006: Convention on International Civil Aviation, Ninth Edition, Document 7300/9, Article 37, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

[7] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

(see Section IV.I.2 for further information on affected airplanes). The EPA's business as usual baseline projects that even independent of the ICAO standards, nearly all airplanes produced by U.S. manufacturers will meet the ICAO in-production standards in 2028. This result is not surprising, given the significant market pressure on airplane manufacturers to continually improve the fuel efficiency of aircraft, the significant annual research and development expenditures from the aircraft industry (much of which is focused on fuel efficiency), and the more than 50 year track record of the industry in developing and selling aircraft which have shown continuous improvement in fuel efficiency. EPA's assessment includes the expectation that existing in-production airplanes that are non-compliant will either be modified and re-certificated as compliant, will likely go out of production before the production compliance date of January 1, 2028, or will seek exemptions from the GHG standard. For these reasons, the EPA is not projecting emission reductions associated with these GHG regulations. However, the EPA does note that consistency with the international standards will prevent backsliding by ensuring that all new type design and in-production airplanes are at least as efficient as today's airplanes. For further details on the benefits and costs associated with these GHG standards, see Sections V and VI, respectively.

II. Introduction: Overview and Context for this Action

This section provides a summary of the final rule. This section describes the EPA's statutory authority, the U.S. airplane engine regulations and the relationship with ICAO's international standards, and consideration of the whole airplane in addressing airplane engine GHG emissions.

A. Summary of Final Rule

In February 2016, ICAO's Committee on Aviation Environmental Protection (CAEP) agreed to international Airplane CO_2 Emission Standards, which ICAO approved in 2017. The EPA is adopting GHG standards that are equivalent to the international Airplane CO_2 Emission Standards promulgated by ICAO in Annex 16.[8]

As a result of the 2016 Findings,[9] [10] the EPA is obligated under section 231(a) of the CAA to issue emission standards applicable to GHG emissions from the classes of engines used by covered aircraft included in the 2016 Findings. As described later in further detail in Section III, we are regulating the air pollutant that is the aggregate of the six well-mixed GHGs. Only two of the six well-mixed GHGs—CO_2 and N_2O—have non-zero emissions for total civil subsonic airplanes and U.S. covered airplanes. CO_2 represents 99 percent of all GHGs emitted from both total U.S. civil airplanes and U.S. covered airplanes, and N_2O represents 1 percent of GHGs emitted from total airplanes and U.S. covered airplanes. Promulgation of the GHG emission standards for the certain classes of engines used by covered airplanes will fulfill EPA's obligations under the CAA and is the next step for the United States in implementing the ICAO standards promulgated in Annex 16 under the Chicago Convention. We are issuing a new rule that controls aircraft engine GHG emissions through the use of the ICAO regulatory metric that quantifies airplane fuel efficiency.

The rule will establish GHG standards applicable to U.S. airplane manufacturers that are no less stringent than the Airplane CO_2 Emission Standards adopted by ICAO.[11] This rule incorporates the same compliance schedule as the ICAO Airplane CO_2 Emission Standards. The standards will apply to both new type designs and in-production airplanes. The in-production standards have later applicability dates and different emission levels than do the standards for new type designs. The different emission levels for new type designs and in-production airplanes depend on the airplane size, weight, and availability of fuel efficiency technologies.

Apart from the GHG requirements, we are updating the engine emissions testing and measurement procedures applicable to HC, NO_X, CO, and smoke in current regulations. The updates will implement recent amendments to ICAO standards in Annex 16, Volume II, and these updates will be accomplished by incorporating provisions of the Annex by reference, as has historically been done in previous EPA rulemakings.[12]

B. EPA Statutory Authority and Responsibilities Under the Clean Air Act

Section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. (See 42 U.S.C. 7571(a)(2)(A)). Section 231(a)(2)(B) directs the EPA to consult with the Administrator of the FAA on such standards, and it prohibits the EPA from changing aircraft engine emission standards if such a change would significantly increase noise and adversely affect safety (see 42 U.S.C. 7571(a)(2)(B)(i)–(ii)). Section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' (see 42 U.S.C. 7571(a)(3)). The U.S. Court of Appeals for the D.C. Circuit has held that this provision confers an unusually broad degree of discretion on the EPA to adopt aircraft engine emission standards that the Agency determines are reasonable. *Nat'l Ass'n of Clean Air Agencies* v. *EPA,* 489 F.3d 1221, 1229–30 (D.C. Cir. 2007) (*NACAA*).

In addition, under CAA section 231(b) the EPA is required to ensure, in consultation with the U.S. Department of Transportation (DOT), that the effective date of any standard provides the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance

[8] ICAO, 2006: Convention on International Civil Aviation, Ninth Edition, Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

[9] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Final Rule,* 81 FR 54422 (August 15, 2016).

[10] Covered airplanes are those airplanes to which the international CO_2 standards and the GHG standards apply: subsonic jet airplanes with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven (*e.g.,* turboprop) airplanes with a MTOM greater than 8,618 kilograms. Section IV describes covered and non-covered airplanes in further detail.

ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed October 27, 2020). The ICAO CAEP/10 report is found on page 27 of the English Edition 2020 catalog and is copyright protected; Order No. 10069.

[11] ICAO's certification standards and test procedures for airplane CO_2 emissions are based on the consumption of fuel (or fuel burn) under prescribed conditions at optimum cruise altitude. ICAO uses the term, CO_2, for its standards and procedures, but ICAO is actually regulating or measuring the rate of an airplane's fuel burn (fuel efficiency). For jet fuel, the emissions index or emissions factor for CO_2 is 3.16 kilograms of CO_2 per kilogram of fuel burn (or 3,160 grams of CO_2 per kilogram of fuel burn). Thus, to convert an airplane's rate of fuel burn to a CO_2 emissions rate, this emission index needs to be applied.

[12] Previous EPA rulemakings for aircraft engine regulations are described later in section II.D.2.

(see 42 U.S.C. 7571(b)). Section 232 then directs the Secretary of Transportation to prescribe regulations to ensure compliance with the EPA's standards (see 42 U.S.C. 7572). Finally, section 233 of the CAA vests the authority to promulgate emission standards for aircraft engines only in the Federal Government. States are preempted from adopting or enforcing any standard respecting emissions from aircraft or aircraft engines unless such standard is identical to the EPA's standards (see 42 U.S.C. 7573).

C. Background Information Helpful to Understanding This Action

Civil airplanes and associated engines are international commodities that are manufactured and sold around the world. The member States of ICAO and the world's airplane and airplane engine manufacturers participated in the deliberations leading up to ICAO's adoption of the international Airplane CO_2 Emission Standards. However, ICAO's standards are not directly applicable to nor enforceable against member States' airplane and engine manufacturers. Instead, after adoption of the standards by ICAO, a member State is required (as described later in Section II.D.1) to adopt domestic standards at least as stringent as ICAO standards and apply them, as applicable, to subject airplane and airplane engine manufacturers in order to ensure recognition of their airworthiness and type certificate by other member State's civil aviation authorities. This rulemaking is a necessary step to meet this obligation for the United States.

D. U.S. Airplane Regulations and the International Community

The EPA and the FAA work within the standard-setting process of ICAO's CAEP to help establish international emission standards and related requirements, which individual member States adopt into domestic law and regulations. Historically, under this approach, international emission standards have first been adopted by ICAO, and subsequently the EPA has initiated rulemakings under CAA section 231 to establish domestic standards that are harmonized with ICAO's standards. After EPA promulgates aircraft engine emission standards, CAA section 232 requires the FAA to issue regulations to ensure compliance with the EPA aircraft engine emission standards when issuing airworthiness certificates pursuant to its authority under Title 49 of the United States Code. This rule continues this historical rulemaking approach.

1. International Regulations and U.S. Obligations

The EPA has worked with the FAA since 1973, and later with ICAO, to develop domestic and international standards and other recommended practices pertaining to aircraft engine emissions. The Convention on International Civil Aviation (commonly known as the 'Chicago Convention') was signed in 1944 at the Diplomatic Conference held in Chicago. The Chicago Convention establishes the legal framework for the development of international civil aviation. The primary objective is ''that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [13] In 1947, ICAO was established, and later in that same year ICAO became a specialized agency of the United Nations (UN). ICAO sets international standards for aviation safety, security, efficiency, capacity, and environmental protection and serves as the forum for cooperation in all fields of international civil aviation. ICAO works with the Chicago Convention's member States and global aviation organizations to develop international Standards and Recommended Practices (SARPs), which member States reference when developing their domestic civil aviation regulations. The United States is one of 193 currently participating ICAO member States.[14] [15]

In the interest of global harmonization and international air commerce, the Chicago Convention urges its member States to ''collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, . . . in all matters which such uniformity will facilitate and improve air navigation.'' The Chicago Convention also recognizes that member States may adopt national standards that are more or less stringent than those agreed upon by ICAO or standards that are different in character or that comply with the ICAO standards by other means. Any member State that finds it impracticable to comply in all respects with any international standard or procedure, or that determines it is necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, is required to give notification to ICAO of the differences between its own practice and that established by the international standard.[16]

ICAO's work on the environment focuses primarily on those problems that benefit most from a common and coordinated approach on a worldwide basis, namely aircraft noise and engine emissions. SARPs for the certification of aircraft noise and aircraft engine emissions are contained in Annex 16 to the Chicago Convention. To continue to address aviation environmental issues, in 2004, ICAO established three environmental goals: (1) Limit or reduce the number of people affected by significant aircraft noise; (2) limit or reduce the impact of aviation emissions on local air quality; and (3) limit or reduce the impact of aviation GHG emissions on the global climate.

The Chicago Convention has a number of other features that govern international commerce. First, member States that wish to use aircraft in international transportation must adopt emission standards that are at least as stringent as ICAO's standards if they want to ensure recognition of their airworthiness certificates. Member States may ban the use of any aircraft within their airspace that does not meet ICAO standards.[17] Second, the Chicago Convention indicates that member States are required to recognize the airworthiness certificates issued or rendered valid by the contracting State in which the aircraft is registered provided the requirements under which the certificates were issued are equal to or above ICAO's minimum standards.[18] Third, to ensure that international commerce is not unreasonably constrained, a member State that cannot meet or deems it necessary to adopt regulations differing from the international standard is obligated to notify ICAO of the differences between

[13] ICAO, 2006: *Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at: *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

[14] Members of ICAO's Assembly are generally termed member States or contracting States. These terms are used interchangeably throughout this preamble.

[15] There are currently 193 contracting states according to ICAO's website: *https://www.icao.int/MemberStates/Member%20States.English.pdf* (last accessed March 16, 2020).

[16] ICAO, 2006: *Doc 7300-Convention on International Civil Aviation, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

[17] ICAO, 2006: *Convention on International Civil Aviation, Article* 33, *Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf*(last accessed October 27, 2020).

[18] ICAO, 2006: *Convention on International Civil Aviation, Article 33, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

its domestic regulations and ICAO standards.[19]

ICAO's CAEP, which consists of members and observers from States, intergovernmental and non-governmental organizations representing the aviation industry and environmental interests, undertakes ICAO's technical work in the environmental field. The Committee is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impacts of international civil aviation. CAEP's terms of reference indicate that ''CAEP's assessments and proposals are pursued taking into account: Technical feasibility; environmental benefit; economic reasonableness; interdependencies of measures (for example, among others, measures taken to minimize noise and emissions); developments in other fields; and international and national programs.'' [20] The ICAO Council reviews and adopts the recommendations made by CAEP. It then reports to the ICAO Assembly, the highest body of the organization, where the main policies on aviation environmental protection are adopted and translated into Assembly Resolutions. If ICAO adopts a CAEP proposal for a new environmental standard, it then becomes part of ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[21] [22]

The FAA plays an active role in ICAO/CAEP, including serving as the representative (member) of the United States at annual ICAO/CAEP Steering Group meetings, as well as the ICAO/CAEP triennial meetings, and contributing technical expertise to CAEP's working groups. The EPA serves as an advisor to the U.S. member at the annual ICAO/CAEP Steering Group and triennial ICAO/CAEP meetings, while also contributing technical expertise to CAEP's working groups and assisting and advising the FAA on aviation emissions, technology, and environmental policy matters. In turn, the FAA assists and advises the EPA on aviation environmental issues, technology and airworthiness certification matters.

CAEP's predecessor at ICAO, the Committee on Aircraft Engine Emissions (CAEE), adopted the first international SARPs for aircraft engine emissions that were proposed in 1981.[23] These standards limited aircraft engine emissions of hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_X). The 1981 standards applied to newly manufactured engines, which are those engines built after the effective date of the regulations—also referred to as in-production engines. In 1993, ICAO adopted a CAEP/2 proposal to tighten the original NO_X standard by 20 percent and amend the test procedures.[24] These 1993 standards applied both to newly certificated turbofan engines (those engine models that received their initial type certificate after the effective date of the regulations, referred to as newly certificated engines or new type design engines) and to in-production engines; the standards had different effective dates for newly certificated engines and in-production engines. In 1995, CAEP/3 recommended a further tightening of the NO_X standards by 16 percent and additional test procedure amendments, but in 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At the CAEP/4 meeting in 1998, the Committee adopted a similar 16 percent NO_X reduction proposal, which ICAO approved in 1998. Unlike the CAEP/2 standards, the CAEP/4 standards applied only to new type design engines after December 31, 2003, and not to in-production engines, leaving the CAEP/2 standards applicable to in-production engines. In 2004, CAEP/6 recommended a 12 percent NO_X reduction, which ICAO approved in 2005.[25] [26] The CAEP/6 standards applied to new engine designs certificated after December 31, 2007, again leaving the CAEP/2 standards in place for in-production engines before January 1, 2013. In 2010, CAEP/8 recommended a further tightening of the NO_X standards by 15 percent for new engine designs certificated after December 31, 2013.[27] [28] The Committee also recommended that the CAEP/6 standards be applied to in-production engines on or after January 1, 2013, which cut off the production of CAEP/2 and CAEP/4 compliant engines with the exception of spare engines; ICAO adopted these as standards in 2011.[29]

[19] ICAO, 2006: *Convention on International Civil Aviation, Article 38, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed October 27, 2020).

[20] ICAO: CAEP Terms of Reference. Available at *http://www.icao.int/environmental-protection/Pages/Caep.aspx#ToR* (last accessed March 16, 2020).

[21] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, 174 pp. Available at *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition of the 2020 catalog, and it is copyright protected; Order No. AN16–2. Also see: ICAO, 2020: Supplement No.7, August 2020, *Annex 16 Environmental Protection—Volume II—Aircraft Engine Emissions, Amendment 10* (20/7/20).76pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup07_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume II, Amendment 10 is found on page 3 of Supplement No. 7—August 2020; English Edition, Order No. AN16–2/E/12.

[22] CAEP develops new emission standards based on an assessment of the technical feasibility, cost, and environmental benefit of potential requirements.

[23] ICAO, 2017: *Aircraft Engine Emissions: Foreword,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, 174pp. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. AN16–2. Also see: ICAO, 2020: Supplement No. 7, August 2020, Annex 16 Environmental Protection-Volume II-Aircraft Engine Emissions, Amendment 10 (20/7/20).76pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup07_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume II, Amendment 10 is found on page 3 of Supplement No. 7—August 2020; English Edition, Order No. AN16–2/E/12.

[24] CAEP conducts its work triennially. Each 3-year work cycle is numbered sequentially and that identifier is used to differentiate the results from one CAEP meeting to another by convention. The first technical meeting on aircraft emission standards was CAEP's predecessor, *i.e.,* CAEE. The first meeting of CAEP, therefore, is referred to as CAEP/2.

[25] CAEP/5 did not address new airplane engine emission standards.

[26] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16,Volume II, Fourth Edition, July 2017, 174pp. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition of the 2020 catalog, and it is copyright protected; Order No. AN16–2. Also see: ICAO, 2020: Supplement No. 7, August 2020, *Annex 16 Environmental Protection-Volume II-Aircraft Engine Emissions, Amendment 10* (20/7/20).76pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup07_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume II, Amendment 10 is found on page 3 of Supplement No. 7—August 2020; English Edition, Order No. AN16–2/E/12.

[27] CAEP/7 did not address new aircraft engine emission standards.

[28] ICAO, 2010: *Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,* CAEP/8–WP/80 Available in Docket EPA–HQ–OAR–2010–0687.

[29] ICAO, 2017: *Aircraft Engine Emissions,* International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Fourth Edition, July 2017, Amendment 9, 174 pp. CAEP/8 corresponds to Amendment 7 effective on July 18, 2011. Available at *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Annex 16 Volume II is found on page 16 of the ICAO Products & Services English Edition of the 2020 catalog, and it is copyright protected; Order No. AN16–2. Also see: ICAO, 2020: Supplement No. 7, August 2020, *Annex 16 Environmental Protection—Volume II—Aircraft Engine Emissions, Amendment 10* (20/7/20).76pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup07_en.pdf*

Continued

At the CAEP/10 meeting in 2016, the Committee agreed to the first airplane CO_2 emission standards, which ICAO approved in 2017. The CAEP/10 CO_2 standards apply to new type design airplanes for which the application for a type certificate will be submitted on or after January 1, 2020, some modified in-production airplanes on or after January 1, 2023, and all applicable in-production airplanes built on or after January 1, 2028.

2. EPA's Regulation of Aircraft Engine Emissions and the Relationship to International Aircraft Standards

As required by the CAA, the EPA has been engaged in reducing harmful air pollution from airplane engines for over 40 years, regulating gaseous exhaust emissions, smoke, and fuel venting from engines.[30] We have periodically revised these regulations. In a 1997 rulemaking, for example, we made our emission standards and test procedures more consistent with those of ICAO's CAEP for turbofan engines used in commercial aviation with rated thrusts greater than 26.7 kilonewtons.[31] These ICAO requirements are generally referred to as CAEP/2 standards.[32] The 1997 rulemaking included new NO_X emission standards for newly manufactured commercial turbofan engines [33] [34] and for newly certificated commercial turbofan engines.[35] [36] It also included a CO emission standard for in-production commercial turbofan engines.[37] In 2005, we promulgated more stringent NO_X emission standards for newly certificated commercial turbofan engines.[38] That final rule brought the U.S. standards closer to alignment with ICAO CAEP/4 requirements that became effective in 2004. In 2012, we issued more stringent two-tiered NO_X emission standards for newly certificated and in-production commercial and non-commercial turbofan engines, and these NO_X standards align with ICAO's CAEP/6 and CAEP/8 standards that became effective in 2013 and 2014, respectively.[39] [40] The EPA's actions to regulate certain pollutants emitted from aircraft engines come directly from the authority in section 231 of the CAA, and we have aligned the U.S. emissions requirements with those promulgated by ICAO. All of these previous ICAO emission standards, and the EPA's standards reflecting them, have generally been considered anti-backsliding standards (most aircraft engines meet the standards), which are technology following.

The EPA and the FAA worked from 2009 to 2016 within the ICAO/CAEP standard-setting process on the development of the international Airplane CO_2 Emission Standards. In this action, we are adopting GHG standards equivalent to the ICAO Airplane CO_2 Emission Standards. As stated earlier in this Section II, the standards established in the United States need to be at least as stringent as the ICAO Airplane CO_2 Emission Standards in order to ensure global acceptance of FAA airworthiness certification. Also, as a result of the 2016 Findings, as described later in Section IV, the EPA is obligated under section 231 of the CAA to propose and issue emission standards applicable to GHG emissions from the classes of engines used by covered aircraft included in the 2016 Findings.

When the EPA proposed the aircraft GHG findings in 2015, we included an aircraft GHG emission standards advance notice of proposed rulemaking (henceforth the ''2015 ANPR'') [41] that provided information on the international process for setting the ICAO Airplane CO_2 Emission Standards. Also, the 2015 ANPR described and sought input on the potential use of section 231 of the CAA to adopt and implement the corresponding international Airplane CO_2 Emission Standards domestically as a CAA section 231 GHG standard.

E. Consideration of Whole Airplane Characteristics

In addressing CO_2 emissions, ICAO adopted an approach that measures the fuel efficiency from the perspective of whole airplane design—an airframe and engine combination. Specifically, ICAO adopted CO_2 emissions test procedures based on measuring the performance of the whole airplane rather than the airplane engines alone.[42] The ICAO standards account for three factors: Aerodynamics, airplane weight, and engine propulsion technologies. These airplane performance characteristics determine the overall CO_2 emissions. Rather than measuring a single chemical compound, the ICAO CO_2 emissions test procedures measure fuel efficiency based on how far an airplane can fly on a single unit of fuel at the optimum cruise altitude and speed.

The three factors—and technology categories that improve these factors—are described as follows: [43]

- *Weight:* Reducing basic airplane weight [44] via structural changes to

(last accessed October 27, 2020). The ICAO Annex 16, Volume II, Amendment 10 is found on page 3 of Supplement No. 7—August 2020; English Edition, Order No. AN16–2/E/12.

[30] U.S. EPA, 1973: Emission Standards and Test Procedures for Aircraft; Final Rule, 38 FR 19088 (July 17, 1973).

[31] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 62 FR 25355 (May 8, 1997).

[32] The full CAEP membership meets every three years and each session is denoted by a numerical identifier. For example, the second meeting of CAEP is referred to as CAEP/2, and CAEP/2 occurred in 1994.

[33] This does not mean that in 1997 we promulgated requirements for the re-certification or retrofit of existing in-use engines.

[34] Those engines built after the effective date of the regulations that were already certificated to pre-existing standards are also referred to as in-production engines.

[35] In the existing EPA regulations, 40 CFR part 87, newly certificated aircraft engines are described as engines of a type or model of which the date of manufacture of the first individual production model was after the implementation date. Newly manufactured aircraft engines are characterized as engines of a type or model for which the date of manufacturer of the individual engine was after the implementation date.

[36] Those engine models that received their initial type certificate after the effective date of the regulations are also referred to as new engine designs.

[37] U.S. EPA, 1997: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 62 FR 25355 (May 8, 1997).

[38] U.S. EPA, 2005: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 70 FR 69664 (November 17, 2005).

[39] U.S. EPA, 2012: *Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule,* 77 FR 36342 (June 18, 2012).

[40] While ICAO's standards were not limited to ''commercial'' airplane engines, our 1997 standards were explicitly limited to commercial engines, as our finding that NO_X and carbon monoxide emissions from airplane engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare was so limited. See 62 FR 25358 (May 8, 1997). In the 2012 rulemaking, we expanded the scope of that finding and of our standards pursuant to CAA section 231(a)(2)(A) to include such emissions from both commercial and non-commercial airplane engines based on the physical and operational similarities between commercial and noncommercial civilian airplane and to bring our standards into full alignment with ICAO's.

[41] U.S. EPA, 2015: *Proposed Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking,* 80 FR 37758 (July 1, 2015).

[42] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, 432pp. Available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). ICAO Document 10069 is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog, and it is copyright protected; Order No. 10069. See Appendix C (starting on page 5C–1) of this report.

[43] ICAO, *Environmental Report 2010—Aviation and Climate Change,* 2010, which is located at *http://www.icao.int/environmental-protection/Pages/EnvReport10.aspx* (last accessed March 16, 2020).

[44] Although weight reducing technologies affect fuel burn, they do not affect the metric value for the GHG standard. The standard is a function of

increase the commercial payload or extend range for the same amount of thrust and fuel burn;

• *Propulsion (thermodynamic and propulsion efficiency):* Advancing the overall specific performance of the engine, to reduce the fuel burn per unit of delivered thrust; and

• *Aerodynamic:* Advancing the airplane aerodynamics to reduce drag and its associated impacts on thrust.

As examples of technologies that support addressing aircraft engine CO_2 emissions accounting for the airplane as a whole, manufacturers have already achieved significant weight reduction with the introduction of advanced alloys and composite materials and lighter weight control systems (*e.g.,* fly-by-wire)[45] and aerodynamic improvements with advanced wingtip devices such as winglets.

The EPA agrees with ICAO's approach to measure the fuel efficiency based on the performance of the whole airplane. Accordingly, under section 231 of the CAA, the EPA is adopting regulations that are consistent with this approach. We are also adopting GHG test procedures that are the same as the ICAO CO_2 test procedures. (See Section IV.G for details on the test procedures.)

As stated earlier in Section II, section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. For a standard promulgated under CAA section 231(a)(2)(A) to be ''applicable to'' emissions of air pollutants from aircraft engines, it could take many forms and include multiple elements in addition to a numeric permissible engine exhaust rate. For example, EPA rules adopted pursuant to CAA section 231 have addressed fuel venting to prevent the discharge of raw fuel from the engine and have adopted test procedures for exhaust emission standards. See 40 CFR part 87, subparts B and G.

Given both the absence of a statutory directive on what form a CAA section 231 standard must take (in contrast to, for example, CAA section 129(a)(4), which requires numerical emissions limitations for emissions of certain pollutants from solid waste incinerators) and the D.C. Circuit's 2007 *NACAA* ruling that section 231 of the CAA confers an unusually broad degree of discretion on the EPA in establishing airplane engine emission standards, the EPA is controlling GHG emissions in a manner identical to how ICAO's standards control CO_2 emissions—with a fuel efficiency standard based on the characteristics of the whole airplane. While this standard incorporates characteristics of airplane design as adopted by ICAO, the EPA is not asserting independent regulatory authority over airplane design.

III. Summary of the 2016 Findings

On August 15, 2016,[46] the EPA issued two findings regarding GHG emissions from aircraft engines. First, the EPA found that elevated concentrations of GHGs in the atmosphere endanger the public health and welfare of current and future generations within the meaning of section 231(a)(2)(A) of the CAA. The EPA made this finding specifically with respect to the same six well-mixed GHGs—CO_2, methane, N_2O, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—that together were defined as the air pollution in the 2009 Endangerment Finding[47] under section 202(a) of the CAA and that together were found to constitute the primary cause of climate change. Second, the EPA found that emissions of those six well-mixed GHGs from certain classes of engines used in certain aircraft[48] cause or contribute to the air pollution—the aggregate group of the same six GHGs—that endangers public health and welfare under CAA section 231(a)(2)(A).

The EPA identified U.S. covered aircraft as subsonic jet aircraft with a maximum takeoff mass (MTOM) greater than 5,700 kilograms and subsonic propeller-driven (*e.g.,* turboprop) aircraft with a MTOM greater than 8,618 kilograms. See Section IV of this final rulemaking for examples of airplanes that correspond to the U.S. covered aircraft identified in the 2016 Findings.[49] The EPA did not at that time make findings regarding whether other substances emitted from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The EPA also did not make a cause or contribute finding regarding GHG emissions from engines not used in U.S. covered aircraft (*i.e.,* those used in smaller turboprops, smaller jet aircraft, piston-engine aircraft, helicopters and military aircraft). Consequently, the 2016 Findings did not trigger the EPA's authority or duty under the CAA to regulate these other substances or aircraft types.

The EPA explained that the collective GHG emissions from the classes of engines used in U.S. covered aircraft contribute to the national GHG emission inventories[50] and estimated global GHG emissions.[51 52 53 54] The 2016 Findings

maximum takeoff mass (MTOM). Reductions in airplane empty weight (excluding usable fuel and the payload) can be canceled out or diminished by a corresponding increase in payload, fuel, or both—when MTOM is kept constant. Section IV and VI provide a further description of the metric value and the effects of weight reducing technologies.

[45] Fly-by-wire refers to a system which transmits signals from the cockpit to the airplane's control surfaces electronically rather than mechanically. *AirlineRatings.com,* Available at *https://www.airlineratings.com/did-you-know/what-does-the-term-fly-by-wire-mean/* (last accessed on March 16, 2020).

[46] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[47] U.S. EPA, 2009: *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule,* 74 FR 66496 (December 15, 2009).

[48] Certain aircraft in this context are referred to interchangeably as ''covered airplanes,'' ''US covered airplanes,'' or airplanes throughout this rulemaking.

[49] 81 FR 54423, August 15, 2016.

[50] In 2014, classes of engines used in U.S. covered airplanes contribute to domestic GHG inventories as follows: 10 percent of all U.S. transportation GHG emissions, representing 2.8 percent of total U.S. emissions.

U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[51] In 2010, classes of engines used in U.S. covered airplanes contribute to global GHG inventories as follows: 26 percent of total global airplane GHG emissions, representing 2.7 percent of total global transportation emissions and 0.4 percent of all global GHG emissions.

U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum,

Continued

accounted for the majority (89 percent) of total U.S. aircraft GHG emissions.[55] [56]

As explained in the 2016 Findings,[57] only two of the six well-mixed GHGs, CO_2 and N_2O, are emitted from covered aircraft. CO_2 represents 99 percent of all GHGs emitted from both total U.S. aircraft and U.S. covered aircraft, and N_2O represents 1 percent of GHGs emitted from total U.S. aircraft and U.S. covered aircraft.[58] Modern aircraft are overall consumers of methane.[59] Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are not products of aircraft engine fuel combustion. (Section IV.H discusses controlling two of the six well-mixed GHGs—CO_2 and N_2O— in the context of the details of this rule.)

IV. EPA's Final GHG Standards for Covered Airplanes

This section describes the fuel efficiency metric that will be used as a measure of airplane GHG emissions, the size and types of airplanes that will be affected, the emissions levels, and the applicable test procedures. As explained earlier in Section III and in the 2016 Findings,[60] only two of the six well-mixed GHGs—CO_2 and N_2O—are emitted from covered aircraft. Both CO_2 and N_2O emissions scale with fuel burn, thus allowing them to be controlled through fuel efficiency.

The GHG emission regulations for this rule are being specified in a new part in title 40 of the CFR—40 CFR part 1030. The existing aircraft engine regulations applicable to HC, NO_X, CO, and smoke remain in 40 CFR part 87.

In order to promote international harmonization of aviation standards and to avoid placing U.S. manufacturers at a competitive disadvantage that would result if EPA were to adopt standards different from the standards adopted by ICAO, the EPA is adopting standards for GHG emissions from certain classes of engines used on airplanes that match the scope, stringency, and timing of the CO_2 standards adopted by ICAO. The EPA and the FAA worked within ICAO to help establish the international CO_2 emission standards, which under the Chicago Convention individual member States then adopt into domestic law and regulations in order to implement and enforce them against subject manufacturers. A member State that adopts domestic regulations differing from the international standard—in either scope, stringency or timing—is obligated to notify ICAO of the differences between its domestic regulations and the ICAO standards.[61]

Under the longstanding EPA and FAA rulemaking approach to regulate airplane emissions (as described earlier in Section II.D), international emission standards have been adopted by ICAO, with significant involvement from the FAA and the EPA, and subsequently the EPA has undertaken rulemakings under CAA section 231 to establish domestic standards that are harmonized with ICAO's standards. Then, CAA section 232 requires the FAA to issue regulations to ensure compliance with the EPA standards. In 2015, EPA issued an advance notice of proposed rulemaking[62] which noted EPA and FAA's engagement in ICAO to establish an international CO_2 emissions standard and EPA's potential use of section 231 to adopt corresponding airplane GHG emissions standards domestically. This rulemaking continues this statutory paradigm.

The rule will facilitate the acceptance of U.S. manufactured airplanes and airplane engines by member States and airlines around the world. We anticipate that U.S. manufacturers would be at a significant competitive disadvantage if the U.S. failed to adopt standards that are aligned with the ICAO standards for CO_2 emissions. Member States may ban the use of any airplane within their airspace that does not meet ICAO standards.[63] If the EPA were to adopt no standards or standards that were not as stringent as ICAO's standards, U.S. civil airplane manufacturers could be forced to seek CO_2 emissions certification from an aviation certification authority of another country (other than the FAA) in order to market their airplanes for international operation.

Having invested significant effort and resources, working with FAA and the Department of State, to gain international consensus to adopt the first-ever CO_2 standards for airplanes, the EPA believes that meeting the United States' obligations under the Chicago Convention by aligning domestic standards with the ICAO standards, rather than adopting more stringent standards, will have substantial benefits for future

S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[52] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

[53] IPCC, 2014: *Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Edenhofer, O., R. Pichs-Madruga, Y. Sokona, E. Farahani, S. Kadner, K. Seyboth, A. Adler, I. Baum, S. Brunner, P. Eickemeier, B. Kriemann, J. Savolainen, S. Schlömer, C. von Stechow, T. Zwickel and J.C. Minx (eds.)]. Cambridge University Press, 1435 pp.

[54] The domestic inventory comparisons are for the year 2014, and global inventory comparisons are for the year 2010. The rationale for the different years is described in section IV.B.4 of the 2016 Findings, 81 FR 54422 (August 15, 2016).

[55] Covered U.S. aircraft GHG emissions in the 2016 Findings were from airplanes that operate in and from the U.S. and thus contribute to emissions in the U.S. This includes emissions from U.S. domestic flights, and emissions from U.S. international bunker flights (emissions from the combustion of fuel used by airplanes departing the U.S., regardless of whether they are a U.S. flagged carrier—also described as emissions from combustion of U.S. international bunker fuels). For example, a flight departing Los Angeles and arriving in Tokyo, regardless of whether it is a U.S. flagged carrier, is considered a U.S. international bunker flight. A flight from London to Hong Kong is not.

[56] U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks:* 1990–2014, 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

[57] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[58] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

U.S. EPA, 2016: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014,* 1,052 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–16–002, April 2016. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014* (last accessed March 16, 2020).

ERG, 2015: *U.S. Jet Fuel Use and CO_2 Emissions Inventory for Aircraft Below ICAO CO_2 Standard Thresholds,* Final Report, EPA Contract Number EP–D–11–006, 38 pp.

[59] Methane emissions are no longer considered to be emitted from aircraft gas turbine engines burning jet fuel A at higher power settings. Modern aircraft jet engines are typically net consumers of methane (Santoni et al. 2011). Methane is emitted at low power and idle operation, but at higher power modes aircraft engines consume methane. Over the range of engine operating modes, aircraft engines are net consumers of methane on average.

[60] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[61] ICAO, 2006: *Convention on International Civil Aviation, Article 38, Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

[62] U.S. EPA, 2015: *Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking; Proposed Rule,* 80 FR 37758 (July 1, 2015).

[63] ICAO, 2006: *Convention on International Civil Aviation, Article* 33, *Ninth Edition,* Document 7300/9, 114 pp. Available at *http://www.icao.int/publications/Documents/7300_9ed.pdf* (last accessed March 16, 2020).

international cooperation on airplane emission standards, and such cooperation is the key for achieving worldwide emission reductions. Nonetheless, the EPA also analyzed the impacts of two more stringent alternatives, and the results of our analyses are described in chapters 4, 5, and 6 of the Technical Support Document (TSD) which can be found in the docket for this rulemaking. The analyses show that one alternative would result in limited additional costs, but no additional costs or GHG emission reductions compared to the final standards. The other alternative would have further limited additional costs and some additional GHG emission reductions compared to the final standards, but the additional emission reductions are relatively small from this alternative and do not justify deviating from the international standards and disrupting international harmonization. ICAO intentionally established its standards at a level which is technology following to adhere to its definition of technical feasibility that is meant to consider the emissions performance of in-production and in-development airplanes, including types that would first enter into service by about 2020. Thus, the additional emission reductions associated with the more stringent alternatives are relatively small because all but one of the affected airplanes either meet the stringency levels or are expected to go out of production by the effective dates. In addition, requiring U.S. manufacturers to certify to a different standard than has been adopted internationally (even one more stringent) could have disruptive effects on manufacturers' ability to market planes for international operation. Consequently, the EPA did not choose to finalize either of these alternatives.

A. Airplane Fuel Efficiency Metric

For the international Airplane CO_2 Emission Standards, ICAO developed a metric system to allow the comparison of a wide range of subsonic airplane types, designs, technology, and uses. While ICAO calls this a CO_2 emissions metric, it is a measure of fuel efficiency, which is directly related to CO_2 emitted by aircraft engines. The ICAO metric system was designed to differentiate between fuel-efficiency technologies of airplanes and to equitably capture improvements in propulsive and aerodynamic technologies that contribute to a reduction in the airplane CO_2 emissions. In addition, the ICAO metric system accommodates a wide range of technologies and designs that manufacturers may choose to implement to reduce CO_2 emissions from their airplanes. However, because of an inability to define a standardized empty weight across manufacturers and types of airplanes, the ICAO CO_2 emissions metric is based on the MTOM of the airplane. This metric does not directly reward weight reduction technologies because the MTOM of an airplane will not be reduced when weight reduction technologies are applied so that cargo carrying capacity or range can be increased. Further, while weight reduction technologies can be used to improve airplane fuel efficiency, they may also be used to allow increases in payload,[64] equipment, and fuel load.[65] Thus, even though weight reducing technologies increase the airplane fuel efficiency, this improvement in efficiency may not be reflected in operation.

The ICAO metric system consists of a CO_2 emissions metric (Equation IV–1) and a correlating parameter.[66]

Equation IV-1: International CO_2 Emissions Metric for airplanes

$$ICAO\ CO_2\ \text{Emissions}\ Metric = \frac{\left(\frac{1}{SAR}\right)_{avg}}{RGF^{0.24}}$$

The ICAO CO_2 emissions metric uses an average of three Specific Air Range (SAR) test points that is normalized by a geometric factor representing the physical size of an airplane. SAR is a measure of airplane cruise performance, which measures the distance an airplane can travel on a unit of fuel. Here the inverse of SAR is used (1/SAR), which has the units of kilograms of fuel burned per kilometer of flight; therefore, a lower metric value represents a lower level of airplane CO_2 emissions (*i.e.,* better fuel efficiency). The SAR data are measured at three gross weight points used to represent a range of day-to-day airplane operations (at cruise).[67] For the ICAO CO_2 emissions metric, $(1/SAR)_{avg}$ [68] is calculated at 3 gross weight fractions of Maximum Takeoff Mass (MTOM):[69]

- *High gross mass:* 92% MTOM.
- *Mid gross mass:* Average of high gross mass and low gross mass.
- *Low gross mass:* (0.45 * MTOM) + (0.63 * (MTOM∧0.924)).

The Reference Geometric Factor (RGF) is a non-dimensional measure of the fuselage[70] size of an airplane

[64] Payload is the weight of passengers, baggage, and cargo. FAA Airplane Weight & Balance Handbook (Chapter 9, page 9–10, file page 82) *https://www.faa.gov/regulations_policies/handbooks_manuals/aviation/media/FAA-H-8083-1.pdf* (x)(last accessed on March 16, 2020).

[65] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[66] Annex 16 Volume III Part II Chapter 2 sec. 2.2. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition of the 2020 catalog, and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection-Volume III-Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN16–3/E/01.

[67] ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, AN/192, Available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Report of the Tenth Meeting report is found on page 27 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. 10069.

[68] Avg means average.

[69] Annex 16 Vol. III Part II Chapter 2 sec. 2.3. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition of the 2020 catalog, and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection-Volume III-Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN16–3/E/01.

[70] The fuselage is an aircraft's main body section. It holds crew, passengers, and cargo.

normalized by 1 square meter, generally considered to be the shadow area of the airplane's pressurized passenger compartment.[71]

When the ICAO CO_2 emissions metric is correlated against MTOM, it has a positive slope. The international Airplane CO_2 Emission Standards use the MTOM of the airplane as an already certificated reference point to compare airplanes. In this action, we are adopting MTOM as the correlating parameter as well.

We are adopting ICAO's airplane CO_2 emissions metric (shown in Equation IV–1) as the measure of airplane fuel efficiency as a surrogate for GHG emissions from covered airplanes (hereafter known as the ''fuel efficiency metric'' or ''fuel burn metric''). This is because the fuel efficiency metric controls emissions of both CO_2 and N_2O, the only two GHG emitted by airplane engines (see Section IV.H for further information). Consistent with ICAO, we are also adopting MTOM as the correlating parameter to be used when setting emissions limits.

B. Covered Airplane Types and Applicability

1. Maximum Takeoff Mass Thresholds

This GHG rule applies to civil subsonic jet airplanes (turbojet or turbofan airplanes) with certificated MTOM over 5,700 kg (12,566 lbs.) and propeller-driven civil airplanes (turboprop airplanes) over 8,618 kg (19,000 lbs.). These applicability criteria are the same as those in the ICAO Airplane CO_2 Emission Standards and correspond to the scope of the 2016 Findings. The applicability of this rule is limited to civil subsonic airplanes and does not extend to civil supersonic airplanes.[72] Through this action, as described earlier in Section II, the EPA is fully discharging its obligations under the CAA that were triggered by the 2016 Findings. Once the EPA and the FAA fully promulgate the airplane GHG emission standards and regulations for their implementation and enforcement domestically, the United States regulations will align with ICAO Annex 16 standards.

Examples of covered airplanes under this GHG rule include smaller civil jet airplanes such as the Cessna Citation CJ3+, up to and including the largest commercial jet airplanes—the Boeing 777 and the Boeing 747. Other examples of covered airplanes include larger civil turboprop airplanes, such as the ATR 72 and the Viking Q400.[73] [74] The GHG rule does not apply to smaller civil jet airplanes (*e.g.,* Cessna Citation M2), smaller civil turboprop airplanes (*e.g.,* Beechcraft King Air 350i), piston-engine airplanes, helicopters, and military airplanes.

2. Applicability

The rule applies to all covered airplanes, in-production, and new type designs produced after the respective effective dates of the standards except as provided in IV.B.3. There are different regulatory emissions levels and/or applicability dates depending on whether the covered airplane is in-production before the applicability date or is a new type design.

The in-production standards are only applicable to previously type certificated airplanes, newly-built on or after the applicability date (described in IV.D.1), and do not apply retroactively to airplanes that are already in-service. For example, converting a passenger airplane built prior to the 2028 in-production (and/or after 2023 if applicable) applicability date into a freight airplane would not trigger the change criteria described later in section IV.D.1.i (Changes for non-GHG Certificated Airplane Types), which apply only to newly produced airplanes (airplanes receiving their first airworthiness certificate) incorporating such modifications.

3. Exceptions

Consistent with the applicability of the ICAO standards, the EPA is adopting applicability language that excepts the following airplanes from the scope of the standards: Amphibious airplanes, airplanes initially designed or modified and used for specialized operational requirements, airplanes designed with an RGF of zero,[75] and those airplanes specifically designed or modified and used for fire-fighting purposes. Airplanes in these excepted categories are generally designed or modified in such a way that their designs are well outside of the design space of typical passenger or freight carrying airplanes. For example, amphibious airplanes are, by necessity, designed with fuselages that resemble boats as much as airplanes. As such, their aerodynamic efficiency characteristics fall well outside of the range of airplanes used in developing the ICAO Airplane CO_2 Emission Standards and our GHG rules.

Airplanes designed or modified for specialized operational requirements could include a wide range of activities, but many are outside the scope of the 2017 ICAO Airplane CO_2 standards. Airplanes that may be out of scope could include:

- Airplanes that require capacity to carry cargo that is not possible by using less specialized airplanes (*e.g.* civil variants of military transports);[76]
- Airplanes that require capacity for very short or vertical takeoffs and landings;
- Airplanes that require capacity to conduct scientific,[77] research, or humanitarian missions exclusive of commercial service; or
- Airplanes that require similar factors.

The EPA is finalizing the exceptions to the rule as proposed. Comments on this issue and our responses can be found in the RTC document included in the docket for this rulemaking.

4. New Airplane Types and In-Production Airplane Designations

The final rule recognizes differences between previously type certificated

[71] Annex 16 Vol. III Appendix 2. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition 2020 catalog, and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection-Volume III-Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN16–3/E/01.

[72] Currently, civilian supersonic airplanes are not in operation. The international standard did not consider the inclusion of supersonic airplanes in the standard. More recently, there has been renewed interest in the development of civilian supersonic airplanes. This has caused ICAO to begin considering how existing emission standards should be revised for new supersonic airplanes. The US is involved in these discussions and at this point plans to work with ICAO to develop emission standards on the international stage prior to adopting them domestically.

[73] This was previously owned by Bombardier and was sold to Viking in 2018, November 8, 2018 (Forbes).

[74] It should be noted that there are no US domestic manufacturers that produce turboprops that meet the MTOM thresholds. These airplanes are given as examples but will be expected to be certificated by their national aviation certification authority.

[75] RGF refers to the pressurized compartment of an airplane, generally meant for passengers and/or cargo. If an airplane is unpressurized, the calculated RGF of the airplane is zero (0). These airplanes are very rare, and the few that are in service are used for special missions. An example is Boeing's Dreamlifter.

[76] This is not expected to include freight versions of passenger airplanes such as the Boeing 767F, Boeing 747–8F, or Airbus A330F. Rather, this is intended to except airplanes such as the Lockheed L–100 which is a civilian variant of the military C–130.

[77] For example, the NASA SOFIA airborne astronomical observatory.

airplanes that are in production and new type designs presented for original certification.

• *In-production airplanes:* Those airplane types which have already received a type certificate [78] from the FAA, and for which manufacturers either have existing undelivered sales orders or would be willing and able to accept new sales orders. The term can also apply to the individual airplane manufactured according to the approved design type certificate, and for which an Airworthiness Certificate is required before the airplane is permitted to operate.[79] [80]

• *New type designs:* Airplane types for which original certification is applied for on or after the compliance date of a rule, and which have never been manufactured prior to the compliance date of a rule.

Certificated designs may subsequently undergo design changes such as new wings, engines, or other modifications that would require changes to the type certificated design. These modifications happen more frequently than applications for a new type design. For example, a number of airplanes have undergone significant design changes (including the Boeing 747–8, Boeing 737 Max, Airbus 320 Neo, Airbus A330 Neo, and Boeing 777–X). As with a previous series of redesigns from 1996–2006, which included the Boeing 777–200LR in 2004, Boeing 777–300ER in 2006, Airbus 319 in 1996, and Airbus 330–200 in 1998, incremental improvements are expected to continue to be more frequent than major design changes over the next decade—following these more recent major programs (or more recent significant design changes).[81] [82]

New type designs are infrequent, and it is not unusual for new type designs to take 8–10 years to develop, from preliminary design to entry into service.[83] The most recent new type designs introduced in service were the Airbus A350 in 2015,[84] the Airbus A220 (formerly known as the Bombardier C-Series) in 2016,[85] and the Boeing 787 in 2011.[86, 87] However, it is unlikely more than one new type design will be presented for certification in the next ten years.[88] New type designs (and some redesigns) typically yield large fuel burn reductions—10 percent to 20 percent—over the prior generation they replace (considered a step-change in fuel burn improvement). As one might expect, these significant fuel burn reductions do not happen frequently. Also, airplane development programs are expensive.[89]

At ICAO, the difference between in-production airplanes and new type designs has been used to differentiate two different pathways by which fuel efficiency technologies can be introduced into civil airplane designs.

When a new requirement is applied to an in-production airplane, there may be a real and immediate effect on the manufacturer's ability to continue to build and deliver it in its certificated design configuration and to make business decisions regarding future production of that design configuration. Manufacturers need sufficient notice to make design modifications that allow for compliance to the new standards and to have those modifications certificated by their certification authorities. In the United States, applying a new requirement to an in-production airplane means that a newly produced airplane subject to this rule that does not meet the GHG standards would likely be denied an airworthiness certificate after January 1, 2028. As noted above in IV.B.2, in-service airplanes are not subject to the ICAO CO_2 standards and likewise are not subject to these GHG standards.

For new type designs, this rule has no immediate effect on airplane production or certification for the manufacturer. The standards that a new type design must meet are those in effect when the manufacturer applies for type certification. The applicable design standards at the time of application remain frozen over the typical 5-year time frame provided by certification authorities for completing the type certification process. Because of the investments and resources necessary to develop a new type design, manufacturers have indicated that it is important to have knowledge of the level of future standards at least 8 years in advance of any new type design entering service.[90] Because standards are known early in the design and certification process, there is more flexibility in how and what technology can be incorporated into a new type design. (See Section VI describing the Technology Response for more information on this).

To set standards at levels that appropriately reflect the feasibility to incorporate technology and lead time, the level and timing of the standards are different for in-production airplanes and new type designs. This is discussed further in Sections IV.C and IV.D below, describing standards for new type designs and in-production airplanes,

[78] A type certificate is a design approval whereby the FAA ensures that the manufacturer's designs meet the minimum requirements for airplane safety and environmental regulations. According to ICAO Cir 337, a type certificate is ''[a] document issued by a Contracting State to define the design of an airplane type and to certify that this design meets the appropriate airworthiness requirements of that State.'' A type certificate is issued once for each new type design airplane and modified as an airplane design is changed over the course of its production life.

[79] ICAO, 2016: *Tenth Meeting Committee on Aviation Environmental Protection Report,* Doc 10069, CAEP/10, 432 pp, AN/192, Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The ICAO Report of the Tenth Meeting report is found on page 27 of the ICAO Products & Services English Edition 2020 catalog and is copyright protected; Order No. 10069.

[80] In existing U.S. aviation emissions regulations, in-production means newly-manufactured or built after the effective date of the regulations—and already certificated to pre-existing rules. This is similar to the current ICAO definition for in-production airplane types for purposes of the international CO_2 standard.

[81] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[82] Insofar as we are going through a wave of major redesign and service entry now, prospects for further step-function improvements will be low in the coming 10–15 years. (ICF International, *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.)

[83] ICF International, 2015: *CO2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[84] The Airbus A350 was announced in 2006 and received its type certification in 2014. The first model, the A350–900 entered service with Qatar Airways in 2015.

[85] The Bombardier C-series was announced in 2005 and received its type certification in 2015. The first model, the C100 entered service with Swiss Global Air Lines in 2016.

[86] Boeing, 2011: Boeing Unveils First 787 to Enter Service for Japan Airlines, December 14. Available at *http://boeing.mediaroom.com/2011-12-14-Boeing-Unveils-First-787-to-Enter-Service-for-Japan-Airlines* (last accessed March 16, 2020).

[87] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[88] Ibid.

[89] Analysts estimate a new single aisle airplane would have cost $10–12 billion to develop. The A380 and 787 are estimated to each have cost around $20 billion to develop; the A350 is estimated to have cost $15 billion, excluding engine development. Due to the large development cost of a totally new airplane design, manufacturers are opting to re-wing or re-engine their airplane. Boeing is said to have budgeted $5 billion for the re-wing of the 777, and Airbus and Boeing have budgeted $1–2 billion each for the re-engine of the A320 and the 737, respectively (excluding engine development costs). Embraer has publicly stated that it will need to spend $1–2 billion to re-wing the EMB–175 and variants. (ICF International, *CO_2 Analysis of CO_2-Reducing Technologies for Airplane,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.)

[90] ICAO policy is that the compliance date of an emissions standard must be at least 3 years after it has been agreed to by CAEP. Adding in the 5-year certification window, this means that the level of the standard can be known 8 years prior to entry into service date for a new type design. Manufacturers also have significant involvement in the standard development process at ICAO, which begins at least 3 years before any new standard is agreed to.

and Section VI, discussing the technology response.

C. GHG Standard for New Type Designs

1. Applicability Dates for New Type Designs

The EPA is adopting GHG standards that apply to civil airplanes within the scope of the international standards adopted by ICAO in 2017 that meet maximum takeoff weight thresholds, passenger capacity, and dates of applications for original type certificates. In this way, EPA's standards align with ICAO's in defining those airplanes that are now subject to the standards finalized in this action. Consequently, for subsonic jet airplanes over 5,700 kg MTOM and certificated with more than 19 passenger seats, and for turboprop airplanes over 8,618 kg MTOM, the regulations apply to all airplanes for which application for an original type certificate is made to the FAA as the first certificating authority on or after January 11, 2021. For subsonic jet airplanes over 5,700 kg MTOM and less than 60,000 kg MTOM and a type certificated maximum passenger seating capacity of 19 seats or fewer, the regulations apply to all airplanes for which an original type certification application was made to the FAA as the first certificating authority on or after January 1, 2023.

Consistency with international standards is important for manufacturers, as they noted in comments to our ANPR in 2015 and in their comments to this rulemaking. Airplane manufacturers and engine manufacturers would have been surprised if the EPA had adopted criteria to identify airplanes covered by our GHG standards that resulted in different coverage than that of ICAO's standards—either in terms of maximum takeoff mass, passenger capacity, or dates of applications for new original type certificates. Additionally, if the EPA diverged from ICAO's criteria for CO_2 standards applicability, it would have introduced unnecessary uncertainty into the airplane type certification process. Also, as described earlier for the 2016 Findings, covered airplanes accounted for the majority (89 percent) of total U.S. aircraft GHG emissions.

In order to harmonize with the ICAO standards to the maximum extent possible, the EPA proposed the same effective date as ICAO, January 1, 2020, for defining those type certification applications subject to the standards, noting in the NPRM that it was a date that had already passed. However, to avoid potential concerns raised by commenters and because it does not affect harmonization with ICAO standards, we are adopting standards that are effective upon the effective date of this rule January 11, 2021. No airplane manufacturer has in fact yet submitted an application for a new type design certification since January 1, 2020, no manufacturer will currently need to amend any already submitted application to address the GHG standards. Further, neither the EPA nor the FAA is aware of any anticipated original new type design application to be submitted before the EPA's standards are promulgated and effective. Thus, there is no practical impact of changing the effective date for the new type design standards from January 1, 2020, as proposed, to the effective date of this rule January 11, 2021.

The EPA recognizes that new regulatory requirements have differing impacts on items that are already in production and those yet to be built. Airplane designs that have yet to undergo original type certification can more easily be adapted for new regulatory requirements, compared with airplanes already being produced subject to older, existing design standards. The agency has experience adopting regulations that acknowledge these differences, such as in issuing emission standards for stationary sources of hazardous air pollutants (which often impose more stringent standards for new sources, defined based on dates that precede dates of final rule promulgation, than for existing sources). See, *e.g.,* 42 U.S.C. 7412(a)(4), defining ''new source'' to mean a stationary source the construction or reconstruction of which is commenced after the EPA proposes regulations establishing an emission standard.

2. Regulatory limit for New Type Designs

The EPA is adopting the GHG emissions limit for new type designs that is a function of the airplane certificated MTOM and consists of three levels described below in Equation IV–2, Equation IV–3, and Equation IV–4.[91]

Equation IV-2: New Type Designs with a MTOM less than or equal to 60 000 kg

$$\text{Maximum permitted value} = 10^{\left(-2.73780 + (0.681310 * \log_{10}(MTOM)) + \left(-0.0277861 * (\log_{10}(MTOM))^2\right)\right)}$$

Equation IV-3: New Type Designs with a MTOM greater than 60 000 kg, and less than or equal to 70 395 kg:

$$\text{Maximum permitted value} = 0.764$$

Equation IV-4: New Type Designs with a MTOM greater than 70 395 kg

$$\text{Maximum permitted value} = 10^{\left(-1.412742 + (-0.020517 * \log_{10}(MTOM)) + \left(0.0593831 * (\log_{10}(MTOM))^2\right)\right)}$$

[91] Annex 16 Vol. III Part II Chapter 2 sec. 2.4.2 (a), (b), and (c). ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition of the 2020 catalog and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No.6—July 2020, *Annex 16 Environmental Protection-Volume III-Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN16–3/E/01.

Figure IV–1 and Figure IV–2 show the numerical limits of the adopted new type design rules and how the airplane types analyzed in Sections V and VI relate to this limit. Figure IV–2 shows only the lower MTOM range of Figure IV–1 to better show the first two segments of the limit line. These plots below show the airplane fuel efficiency metric values as they were modeled. This includes all anticipated/modeled technology responses, improvements, and production assumptions in response to the market and this rule. (See Section V and VI for more information about this.) These final GHG emission limits are the same as the limits of the ICAO Airplane CO_2 Emission Standards.

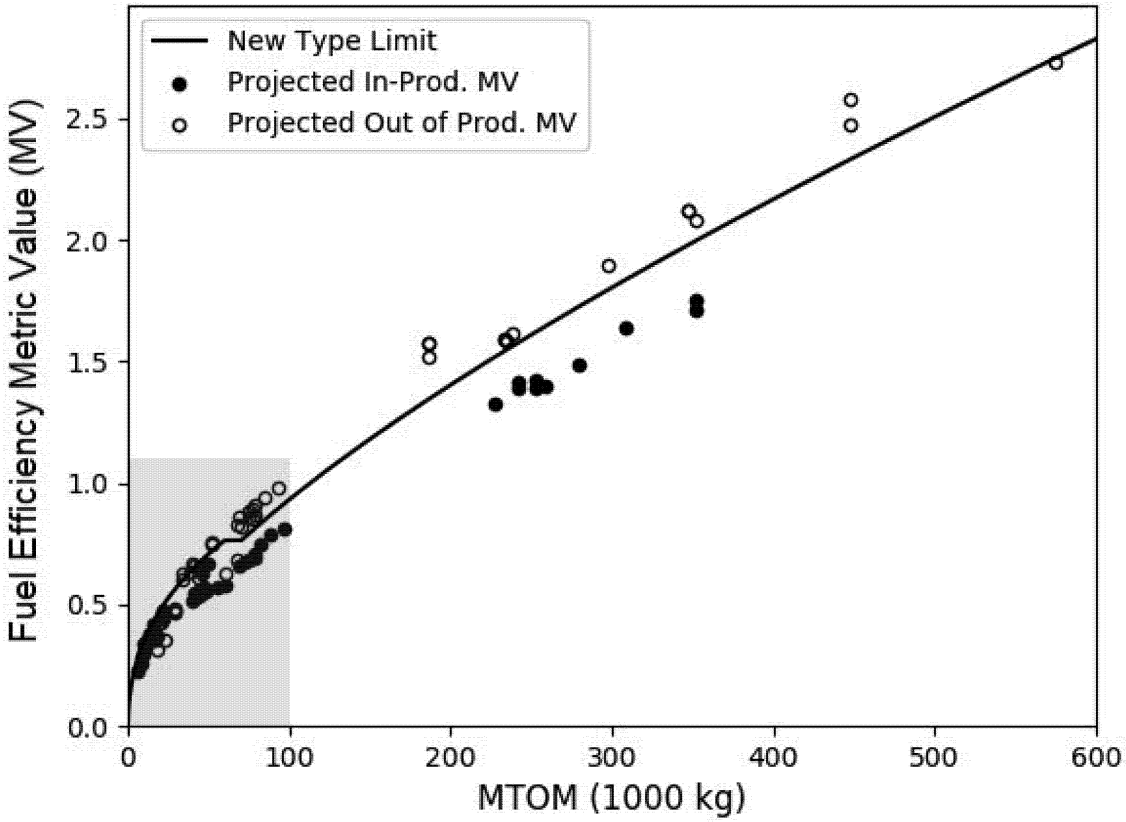

Figure IV-1 - Final New Type Design Rule

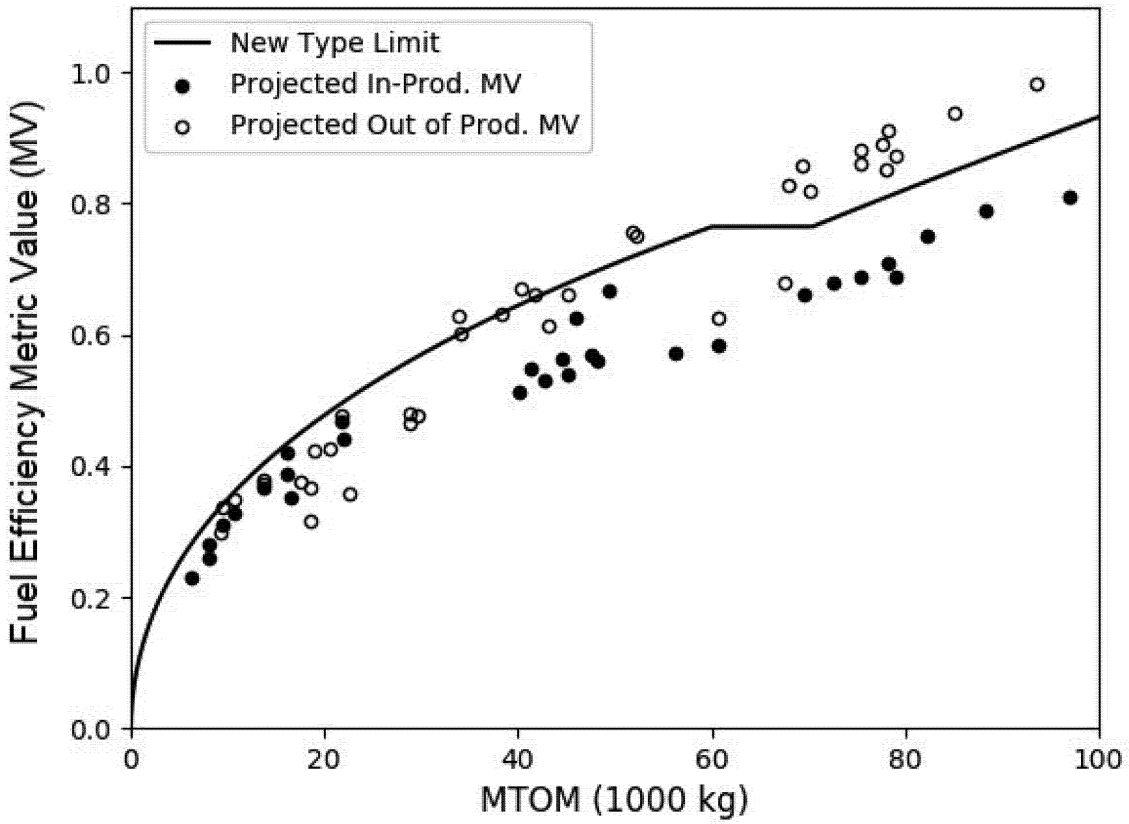

Figure IV-2 - Final New Type Design Rule - Zoomed in to highlights MTOM less than 100,000kg

After analyzing potential levels of the standard, ICAO determined, based on assessment of available data, that there were significant performance differences between large and small airplanes. Jet airplanes with an MTOM less than 60 tons [92] are either business jets or regional jets. The physical size of smaller airplanes presents scaling challenges that limit technology improvements that can readily be made on larger airplanes.[93] This leads to requiring higher capital costs to implement the technology relative to the sale price of the airplanes.[94] Business jets (generally less than 60 tons MTOM) tend to operate at higher altitudes and faster speeds than larger commercial traffic.

Based on these considerations, when developing potential levels for the international standards, ICAO further realized that curve shapes of the data differed for large and small airplanes (on MTOM versus metric value plots). Looking at the dataset, there was originally a gap in the data at 60 tons.[95] This natural gap allowed a ''kink'' point (*i.e.,* change in the slope of the standard) to be established between larger commercial airplanes and smaller business jets and regional jets. The identification of this kink point provided flexibility at ICAO to consider standards at appropriate levels for airplanes above and below 60 tons.

The level adopted for new type designs was set to reflect the performance for the latest generation of airplanes. The CO_2 emission standards agreed to at ICAO, and the GHG standards adopted here, are meant to be technology following standards. This means the rule reflects the performance and technology achieved by existing airplanes (in-production and in-development airplanes [96]).[97]

Airplanes of less than 60 tons with 19 or fewer passenger seats have additional economic challenges to technology development compared with similarly sized commercial airplanes. ICAO sought to reduce the burden on manufacturers of airplanes with 19 or fewer seats, and thus ICAO agreed to delay the applicability of the new type designs for 3 years. In maintaining consistency with the international decision, the applicability dates adopted in this rule reflect this difference determined by ICAO (see Section VI for further information).

As described earlier in Section II, consistency with the international standards will facilitate the acceptance of U.S. airplanes by member States and airlines around the world, and it will help to ensure that U.S. manufacturers

[92] In this rulemaking, 60 tons means 60 metric tons (or tonnes), which is equal to 60,000 kilograms (kg). 1 ton means 1 metric ton (or tonne), which is equal to 1,000 kg.

[93] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization*, Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[94] U.S., *United States Position on the ICAO Aeroplane CO_2 Emissions Standard,* Montréal, Canada, CAEP10 Meeting, February 1–12, 2016, Presented by United States, CAEP/10–WP/59. Available in the docket for this rulemaking, Docket EPA–HQ–OAR–2018–0276.

[95] Initial data that were reviewed at ICAO did not include data on the Bombardier C-Series (now the Airbus A220) airplane. Once data were provided for this airplane, it was determined by ICAO that while the airplane did cross the 60 tons kink point, this did not pose a problem for analyzing stringency options, because the airplane passes all options considered.

[96] In-development airplanes are airplanes that were in-development when setting the standard at ICAO but will be in production by the applicability dates. These could be new type designs (*e.g.* Airbus A350) or redesigned airplanes (*e.g.* Boeing 737Max).

[97] Note: Figure IV–1 and Figure IV–2 show the metric values used in the EPA modeling for this action. These values differ from those used at ICAO. The rationale for this difference is discussed below in section VI of this rule, and in chapter 2 of the TSD.

will not be at a competitive disadvantage compared with their international competitors. Consistency with the international standards will also prevent backsliding by ensuring that all new type design airplanes are at least as efficient as today's airplanes.

D. GHG Standard for In-Production Airplane Types

1. Applicability Dates for In-Production Airplane Types

The EPA is adopting the same compliance dates for the GHG rule as those adopted by ICAO for its CO_2 emission standards. Section IV.D.2 below describes the rationale for these dates and the time provided to in-production types.

All airplanes type certificated prior to January 11, 2021, and receiving its first certificate of airworthiness after January 1, 2028, will be required to comply with the in-production standards. This GHG regulation will function as a production cutoff for airplanes that do not meet the fuel efficiency levels described below.

i. Changes for Non-GHG Certificated Airplane Types

After January 1, 2023, and until January 1, 2028, an applicant that submits a modification to the type design of a non-GHG certificated airplane that increases the Metric Value of the airplane type by greater than 1.5% [98] will be required to demonstrate that newly produced airplanes comply with the in-production standard. This earlier applicability date for in-production airplanes, January 1, 2023, is the same as that adopted by ICAO and is similarly designed to capture modifications to the type design of non-GHG certificated airplanes newly manufactured (initial airworthiness certificate) prior to the January 1, 2028, production cut-off date. The January 1, 2028 production cut-off date was introduced by ICAO as an anti-backsliding measure that gives notice to manufacturers that non-compliant airplanes will not receive airworthiness certification after this date.

An application for certification of a modified airplane type on or after January 1, 2023, will trigger compliance with the in-production GHG emissions limit provided that the airplane's GHG emissions metric value for the modified version to be produced thereafter increases by more than 1.5 percent from the prior version of the airplane type. As with changes to GHG certificated airplane types, introduction of a modification that does not adversely affect the airplane fuel efficiency Metric Value will not require demonstration of compliance with the in-production GHG standards at the time of that change. Manufacturers may seek to certificate any airplane type to this standard, even if the criteria do not require compliance.

As an example, if a manufacturer chooses to shorten the fuselage of a type certificated airplane, such action will not automatically trigger the requirement to certify to the in-production GHG rule. The fuselage shortening of a certificated type design would not be expected to adversely affect the metric value, nor would it be expected to increase the certificated MTOM. Manufacturers noted that ICAO included criteria that would require manufactures to recertify if they made ''significant'' changes to their airplane. ICAO did not define a ''significant change'' to a type design. The EPA did not include this requirement because ''significant change'' is not a defined term in the certification process. However, it is expected that manufacturers will likely volunteer to certify to the in-production rule when applying to the FAA for these types of changes, in order to maximize efficiencies in overall airworthiness certification processes (*i.e.,* avoid the need for iterative rounds of certification). This earlier effective date for in-production airplane types is expected to help encourage some earlier compliance for new airplanes.

2. Regulatory Limit for In-Production Type Designs

The EPA is adopting an emissions limit for in-production airplanes that is a function of airplane certificated MTOM and consists of three MTOM ranges as described below in Equation IV–5, Equation IV–6, and Equation IV–7.[99]

Equation IV-5: In-production airplanes with a MTOM less than or equal to 60 000 kg:

$$Maximum\ permitted\ value = 10^{-2.57535 + \left(0.609766 * log10(MTOM)\right) + \left(-0.0191302 * \left(log10(MTOM)\right)^2\right)}$$

Equation IV-6: In-production airplanes with a MTOM greater than 60 000 kg, and less than or equal to 70 107 kg

$$Maximum\ permitted\ value = 0.797$$

Equation IV-7: In-production airplanes with a MTOM greater than 70 107 kg

$$Maximum\ permitted\ value = 10^{-1.39353 + \left(-0.020517 * log10(MTOM)\right) + \left(0.0593831 * \left(log10(MTOM)\right)^2\right)}$$

[98] Note that IV.D.1.i, Changes for non-GHG certified Airplane Types, is different than the No GHG Change Threshold described in IV.F.1 below. IV.F.1 applies only to airplanes that *have previously been* certificated to a GHG rule. IV.D.1.i only applies only to airplane types that *have not been* certificated for GHG.

[99] Annex 16 Vol. III Part II Chapter 2 sec. 2.4.2(d), (e), and (f). ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition of the 2020 catalog, and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection-Volume III-Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22 pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_Sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN16–3/E/01.

Figure IV–3 and Figure IV–4 show the numerical limits of the adopted in-production rules and the relationship of the airplane types analyzed in Sections V and VI to this limit. Figure IV–4 shows only the lower MTOM range of Figure IV–3 to better show the first two segments of the limit line. These plots below show the airplane CO_2 metric values as they were modeled. This includes all anticipated/modeled technology responses, improvements, and production assumptions in response to the market and the final rule. (See Sections V and VI for more information about this.) These GHG emission limits are the same as the limits of the ICAO Airplane CO_2 Emission Standards.

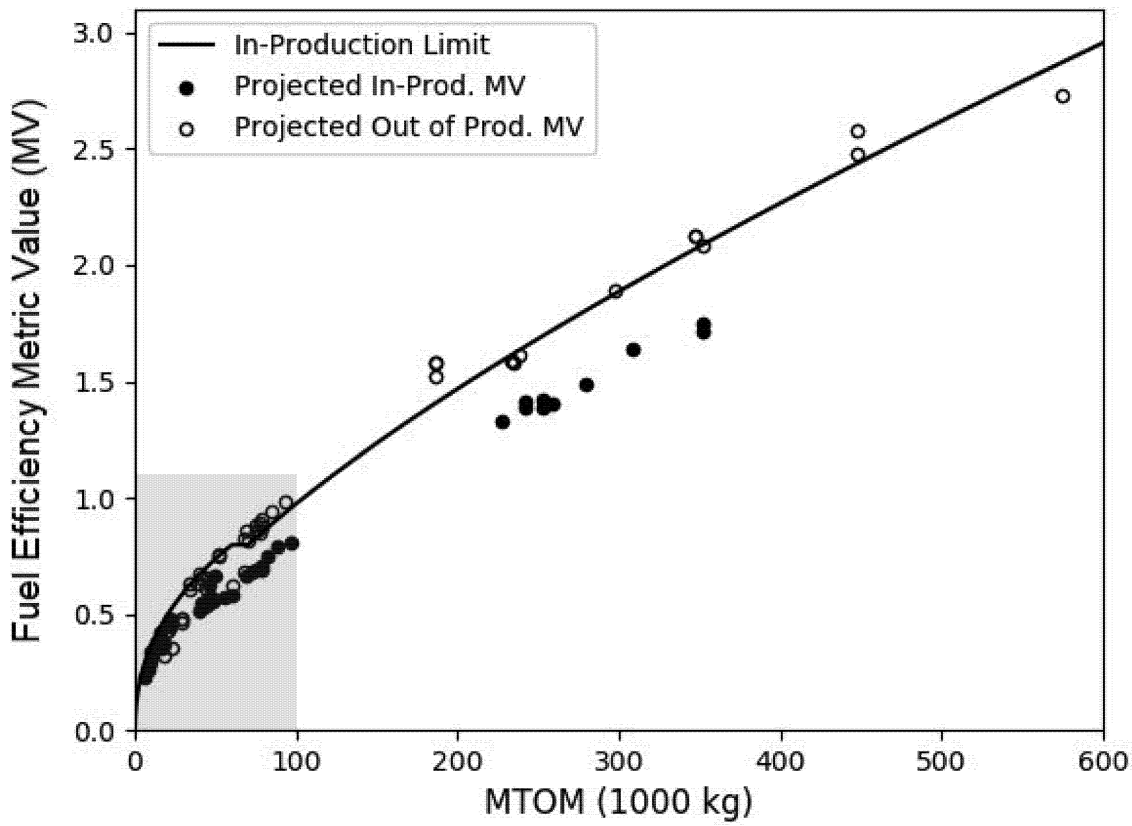

Figure IV-3 - Final In-Production Standard

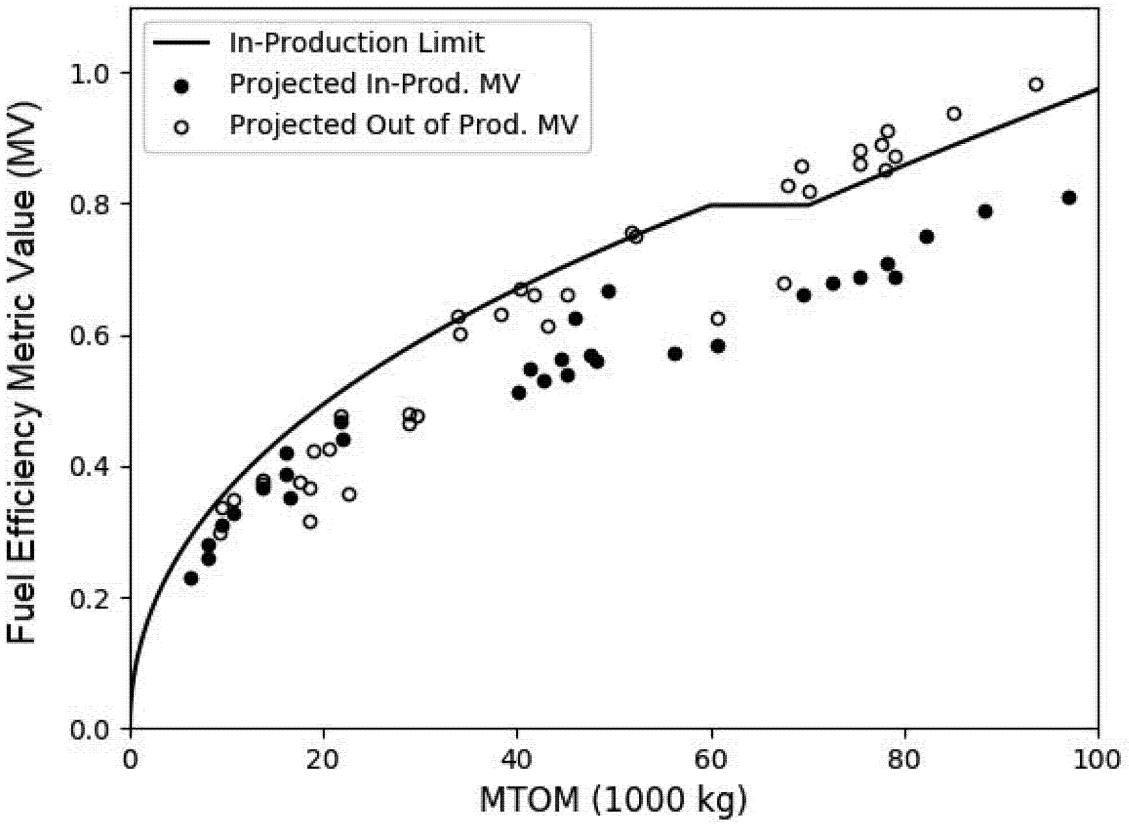

Figure IV-4 - Final In-Production Standard - zoomed in to highlights MTOM less than 100,000kg

As discussed in Section IV.C above, the kink point was included in the ICAO Aircraft CO_2 standards at 60 tons to account for a change in slope that is observed between large and small airplanes. The flat section starting at 60 tons is used as a transition to connect the curves for larger and smaller airplanes.

While the same technology is considered for both new type design and in-production airplanes, there will be a practical difference in compliance for in-production airplanes. Manufacturers will need to test and certify each type design to the GHG standard prior to January 1, 2028, or else newly produced airplanes will likely be denied an airworthiness certificate. In contrast, new type design airplanes have yet to go into production, but these airplanes will need to be designed to comply with the standards for new type designs (for an application for a new type design certificate on or after January 11, 2021). This poses a challenge for setting the level of the in-production standard because sufficient time needs to be provided to allow for the GHG certification process and the engineering and airworthiness certifications needed for improvements. The more stringent the in-production standard is, the more time that is necessary to provide manufacturers to modify production of their airplanes. ICAO determined that while the technology to meet the in-production level is available in 2020 (the ICAO standards new type design applicability date), additional time beyond the new type design applicability date was necessary to provide sufficient time for manufacturers to certify all of their products. The EPA agrees that additional time for in-production airplanes beyond the new type design applicability date is necessary to allow sufficient time to certify airplanes to the GHG standards.

Section VI describes the analysis that the EPA conducted to determine the cost and benefits of adopting this standard. Consistent with the ICAO standard, this rule applies to all in-production airplanes built on or after January 1, 2028, and to all in-production airplanes that have any modification that trigger the change criteria after January 1, 2023.

The levels of the in-production GHG standards are the same as ICAO's CO_2 standards, and they reflect the emission performance of current in-production and in-development airplanes. As discussed in Section IV.B.4 above and in Section VI, the regulations reflect differences in economic feasibility for introducing modifications to in-production airplanes and new type designs. The standards adopted by ICAO, and here, for in-production airplanes were developed to reflect these differences.

E. Exemptions From the GHG Standards

On occasion, manufacturers may need additional time to comply with a standard. The reasons for needing a temporary exemption from regulatory requirements vary and may include circumstances beyond the control of the manufacturer. The FAA is familiar with these actions, as it has handled the similar engine emission standards under its CAA authority to enforce the standards adopted by the EPA. The FAA has considerable authority under its authorizing legislation and its regulations to deal with these events.[100]

Since requests for exemptions are requests for relief from the enforcement

[100] Title 49 of the United States Code, sec. 44701(f), vests power in the FAA Administrator to issue exemptions as long as the public interest condition is met, and, pursuant to sec. 232(a) of the CAA, the Administrator may use that power ''in the execution of all powers and duties vested in him under this section'' ''to insure compliance'' with emission standards.

of these standards (as opposed to a request to comply with a different standard than set by the EPA), this rule will continue the relationship between the agencies by directing any request for exemption be filed with the FAA under its established regulatory paradigm. The instructions for submitting a petition for exemption to the FAA can be found in 14 CFR part 11, specifically § 11.63. Section 11.87 lists the information that must be filed in a petition, including a reason ''why granting your petition is in the public interest.'' Any request for exemption will need to cite the regulation that the FAA will adopt to carry out its duty of enforcing the standard set by the EPA. A list of requests for exemption received by the FAA is routinely published in the **Federal Register**.

The primary criterion for any exemption filed with the FAA is whether a grant of exemption will be in the public interest. The FAA will continue to consult with the EPA on all petitions for exemption that the FAA receives regarding the enforcement of aircraft engine and emission standards adopted under the CAA.

F. Application of Rules for New Version of an Existing GHG-Certificated Airplane

Under the international Airplane CO_2 Emission Standards, a new version of an existing CO_2-certificated airplane is one that incorporates modifications to the type design that increase the MTOM or increase its CO_2 Metric Value more than the No-CO_2-Change Threshold (described in IV.F.1 below). ICAO's standards provide that once an airplane is CO_2 certificated, all subsequent changes to that airplane must meet at least the CO_2 emissions regulatory level (or CO_2 emissions standard) of the parent airplane. For example, if the parent airplane is certificated to the in-production CO_2 emissions level, then all subsequent versions must also meet the in-production CO_2 emissions level. This would also apply to voluntary certifications under ICAO's standards. If a manufacturer seeks to certificate an in-production airplane type to the level applicable to a new type design, then future versions of that airplane must also meet the new type regulatory level. Once certificated, subsequent versions of the airplane may not fall back to a less stringent regulatory CO_2 level.

To comport with ICAO's approach, if the FAA finds that a new original type certificate is required for any reason, the airplane will need to comply with the regulatory level applicable to a new type design.

In this action, the EPA is adopting provisions for new versions of existing GHG-certificated airplanes that are the same as the ICAO requirements for the international Airplane CO_2 Emission Standards. These provisions will reduce the certification burden on manufacturers by clearly defining when a new GHG metric value must be established for the airplane.

1. No Fuel Efficiency Change Threshold for GHG-Certificated Airplanes

There are many types of modifications that could be introduced on an airplane design that could cause slight changes in GHG emissions (*e.g.* changing the fairing on a light,[101] adding or changing an external antenna, changing the emergency exit door configuration, etc.). To reduce burden on both certification authorities and manufacturers, a set of no CO_2 emissions change thresholds was developed for the ICAO Airplane CO_2 Emission Standards as to when new metric values will need to be certificated for changes. The EPA is adopting these same thresholds in its GHG rules.

Under this rule, an airplane is considered a modified version of an existing GHG certificated airplane, and therefore must recertify, if it incorporates a change in the type design that either (a) increases its maximum takeoff mass, or (b) increases its GHG emissions evaluation metric value by more than the no-fuel efficiency change threshold percentages described below and in Figure IV–5:[102]

- For airplanes with a MTOM greater than or equal to 5,700 kg, the threshold value decreases linearly from 1.35 to 0.75 percent for an airplane with a MTOM of 60,000 kg.
- For airplanes with a MTOM greater than or equal to 60,000 kg, the threshold value decreases linearly from 0.75 to 0.70 percent for airplanes with a MTOM of 600,000 kg.
- For airplanes with a MTOM greater than or equal to 600,000 kg, the threshold value is 0.70 percent.

[101] A fairing is ''*a structure on the exterior of an aircraft or boat, for reducing drag.*'' *https://www.dictionary.com/browse/fairing* (last accessed November 30, 2020).

[102] Annex 16, Volume III, Part 1, Chapter 1. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of the English Edition of the 2020 catalog, and it is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020. Supplement No. 6—July 2020, *Annex 16 Environmental Protection—Volume III—Aeroplane CO_2 Emissions, Amendment 1* (20/7/20). 22 pp. Available at *https://www.icao.int/publications/catalogue/CAT_2020_Sup06_en.pdf* (last accessed October 28, 2020). The ICAO Annex 16, Volume III, Amendment 1 is found on page 2 of Supplement No. 6—July 2020; English Edition, Order No. AN 16–3/E/01.

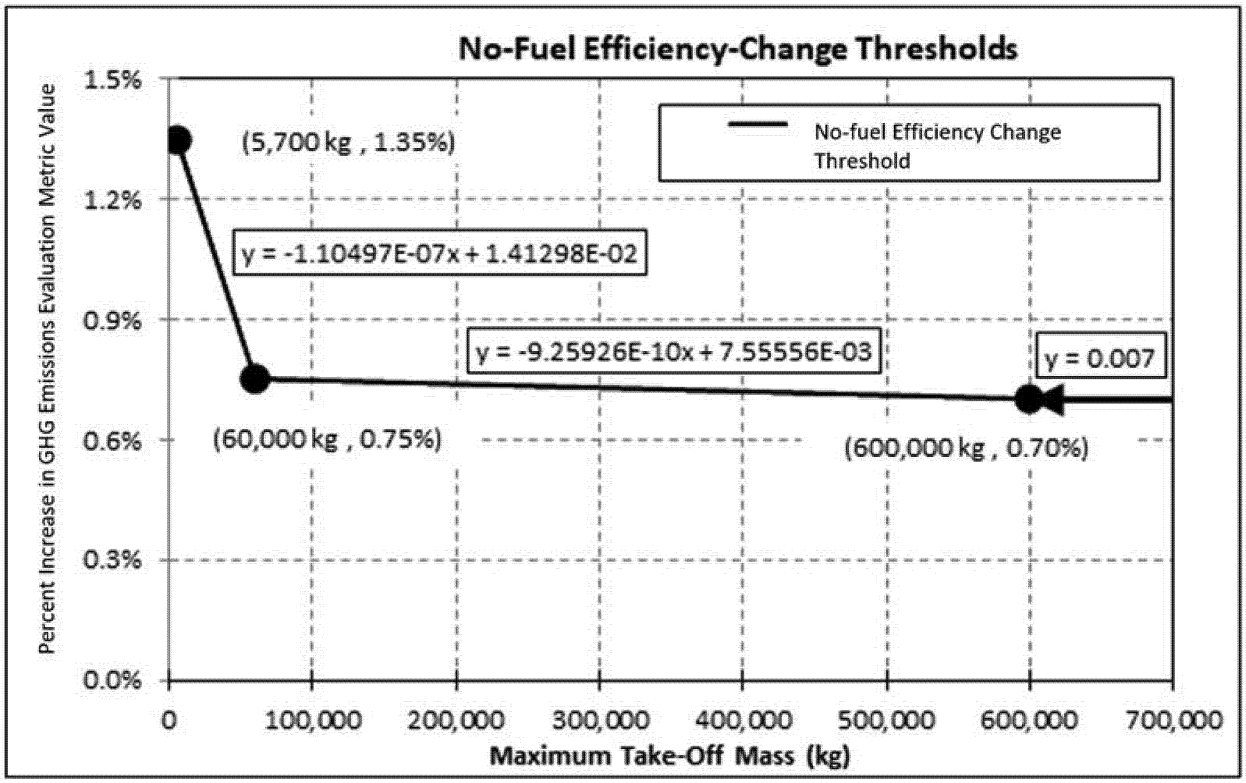

Figure IV-5: No Fuel Efficiency Change Thresholds for GHG Certificated Airplanes (ICAO Adopted No CO_2 Emissions Change Thresholds)

The threshold is dependent on airplane size because the potential fuel efficiency changes to an airplane are not constant across all airplanes. For example, a change to the fairing surrounding a wing light, or the addition of an antenna to a small business jet, may have greater impacts on the airplane's metric value than a similar change would on a large twin aisle airplane.

These GHG changes will be assessed on a before-change and after-change basis. If there is a flight test as part of the certification, the metric value (MV) change will be assessed based on the change in calculated metric value of flights with and without the change.

A modified version of an existing GHG certificated airplane will be subject to the same regulatory level as the airplane from which it was modified. A manufacturer may also choose to voluntarily comply with a later or more stringent standard.[103]

Under this rule, when a change is made to an airplane type that does not exceed the no-change threshold, the fuel efficiency metric value will not change. There will be no method to track these changes to airplane types over time. If an airplane type has, for example, a 10 percent compliance margin under the rule, then a small adverse change less than the threshold may not require the re-evaluation of the airplane metric value. However, if the compliance margin for a type design is less than the No Fuel Efficiency Change threshold and the proposed modification results in a change to the metric value that is less than the no fuel efficiency change threshold, then the airplane retains its original metric value, and the compliance margin to the regulatory limit remains the same. The proposal stated that if the margin to the standard was less than the No Fuel Efficiency Change Threshold that the plane would still be required to demonstrate compliance with the standard. Some commenters pointed out that this language was different than the description adopted by ICAO. To be consistent with ICAO, this language has been corrected.

Under this rule, a manufacturer that introduces modifications that reduce GHG emissions can request voluntary recertification from the FAA. There will be no required tracking or accounting of GHG emissions reductions made to an airplane unless it is voluntarily re-certificated.

The EPA is adopting, as part of the GHG rules, the no-change thresholds for modifications to airplanes discussed above, which are the same as the provisions in the international standard. We believe that these thresholds will maintain the effectiveness of the rule while limiting the burden on manufacturers to comply. The regulations reference specific test and other criteria that were adopted internationally in the ICAO standards setting process.

G. Test and Measurement Procedures

The international certification test procedures have been developed based upon industry's current best practices for establishing the cruise performance of their airplanes and on input from

[103] ETM Vol. III sec. 2.2.3. ICAO, 2018: *Environmental Technical Manual Volume III—Procedures for the CO_2 Emissions Certification of Aeroplanes, First Edition, Doc 9501,* 64 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Environmental Technical Manual Volume III is found on page 77 of the English Edition of the 2020 catalog, and it is copyright protected; Order No. 9501–3. Also see: ICAO, 2020: Doc 9501—*Environmental Technical Manual Volume III—Procedures for the CO_2 Emissions Certification of Aeroplanes, 2nd Edition, 2020.* 90 pp. Available at *https://www.icao.int/publications/catalogue/cat_2020_sup06_en.pdf* (last accessed October 28, 2020). The ICAO Environmental Technical Manual Volume III, 2nd Edition is found on page 3 of Supplement No. 6—July 2020, English Edition, Order No. 9501–3.

certification authorities. These procedures include specifications for airplane conformity, weighing, fuel specifications, test condition stability criteria, required confidence intervals, measurement instrumentation required, and corrections to reference conditions. In this action, we are incorporating by reference the test procedures for the ICAO Airplane CO_2 Emission Standards. Adoption of these test procedures will maintain consistency among all ICAO member States.

Airplane flight tests, or FAA approved performance models, will be used to determine SAR values that form the basis of the GHG metric value. Under the adopted rule, flight testing to determine SAR values shall be conducted within the approved normal operating envelope of the airplane, when the airplane is steady, straight, level, and trim, at manufacturer-selected speed and altitude.[104] The rule will provide that flight testing must be conducted at the ICAO-defined reference conditions where possible,[105] and that when testing does not align with the reference conditions, corrections for the differences between test and reference conditions shall be applied.[106]

We are incorporating by reference, in 40 CFR 1030.23(d), certain procedures found in ICAO Annex 16, Volume III.

H. Controlling Two of the Six Well-Mixed GHGs

As described earlier in Section IV.A and IV.G, we are adopting the ICAO test procedures and fuel efficiency metric.[107] The ICAO test procedures for the international Airplane CO_2 *Emission Standards measure fuel efficiency (or fuel burn), and ICAO uses fuel efficiency in the metric (or equation) for determining compliance.* As explained earlier in Section III and in the 2016 Findings,[108] only two of the six well-mixed GHGs—CO_2 and N_2O—are emitted from covered aircraft. Although there is not a standardized test procedure for directly measuring airplane CO_2 or N_2O emissions, the test procedure for fuel efficiency scales with the limiting of both CO_2 and N_2O emissions, as they both can be indexed on a per-unit-of-fuel-burn basis. Therefore, both CO_2 and N_2O emissions are controlled as airplane fuel burn is limited.[109] Since limiting fuel burn is the only means by which airplanes control their GHG emissions, the fuel-burn-based metric (or fuel-efficiency-based metric) reasonably serves as a means for controlling both CO_2 and N_2O.

Since CO_2 emissions represent nearly all GHG emissions from airplanes and ICAO's CO_2 test procedures measure fuel efficiency by using a fuel-efficiency-based metric, we are adopting rules that harmonize with the ICAO CO_2 standard—by adopting an aircraft engine GHG[110] standard that employs a fuel efficiency metric that will also scale with both CO_2 and N_2O emissions. The aircraft engine GHG standard will control both CO_2 and N_2O emissions, without the need for adoption of engine exhaust emissions rates for either CO_2 or N_2O. However, the air pollutant regulated by these standards will remain the aggregate of the six well-mixed GHGs.[111]

I. Response to Key Comments

The EPA received numerous comments on the proposed rulemaking which are presented in the Response to Comments document along with the EPA's responses to those comments. Below is a brief discussion of some of the key comments received.

1. Stringency of the Standards

Several commenters stated that the proposed rulemaking satisfies the requirements in the CAA, is consistent with the precedent for setting airplane emission standards in coordination with ICAO, and is supported by the administrative record for this rulemaking. The establishment of aircraft engine GHG standards that match the ICAO airplane CO_2 standards into U.S. law is consistent with the authority given to the EPA under section 231 of the CAA, and it clearly meets the criteria for adoption of aircraft engine standards specified in section 231. In addition, the proposed GHG standards align with the following CAEP terms of reference (described earlier in section II.D.1) that were assessed for the international airplane CO_2 standards: Technical feasibility, environmental benefit, economic reasonableness, and interdependencies of measures (*i.e.,* measures taken to minimize noise and emissions). These CAEP terms of reference are consistent with the criteria the EPA must adhere to under section 231(b) of the CAA that requires the EPA to allow enough lead time ''to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period''—when adopting aircraft engine emission standards.

In addition, these commenters expressed that the EPA adopting

[104] It is expected that manufacturers will choose conditions that result in the highest SAR value for a given certification mass. Manufacturers may choose other than optimum conditions to determine SAR; however, doing so will be at their detriment.

[105] Annex 16, Vol. III, sec. 2.5. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection—Volume III—Aeroplane CO_2 Emissions, Amendment 1* (20/7/20) 22 pp. Available at *http://www.icao.int/publications/catalogue/cat_2020_sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1, is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN 16–3/E/01.

[106] Annex 16, Vol. III, Appendix 1. ICAO, 2017: *Annex 16 Volume III—Environmental Protection—Aeroplane CO_2 Emissions, First Edition,* 40 pp. Available at: *http://www.icao.int/publications/Pages/catalogue.aspx* (last accessed July 15, 2020). The ICAO Annex 16 Volume III is found on page 16 of English Edition 2020 catalog and is copyright protected; Order No. AN 16–3. Also see: ICAO, 2020, Supplement No. 6—July 2020, *Annex 16 Environmental Protection—Volume III—Aeroplane CO_2 Emissions, Amendment 1* (20/7/20) 22 pp. Available at *http://www.icao.int/publications/catalogue/cat_2020_sup06_en.pdf* (last accessed October 27, 2020). The ICAO Annex 16, Volume III, Amendment 1, is found on page 2 of Supplement No. 6—July 2020, English Edition, Order No. AN 16–3/E/01.

[107] ICAO's certification standards and procedures for airplane CO_2 emissions are based on the consumption of fuel (or fuel burn). ICAO uses the term CO_2 for its standards and procedures, but ICAO is actually regulating or measuring the rate of an airplane's fuel burn (or fuel efficiency). As described earlier, to convert an airplane's rate of fuel burn (for jet fuel) to a CO_2 emissions rate, a 3.16 kilograms of CO_2 per kilogram of fuel burn emission index needs to be applied.

[108] U.S. EPA, 2016: *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute To Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare; Final Rule,* 81 FR 54422 (August 15, 2016).

[109] For jet fuel, the emissions index or emissions factor for CO_2 is 3.16 kilograms of CO_2 per kilogram of fuel burn (or 3,160 grams of CO_2 per kilogram of fuel burn). For jet fuel, the emissions index for nitrous oxide is 0.1 grams of nitrous oxide per kilogram of fuel burn (which is significantly less than the emissions index for CO_2). Since CO_2 and nitrous oxide emissions are indexed to fuel burn, they are both directly tied to fuel burn. Controlling CO_2 emissions means controlling fuel burn, and in turn this leads to limiting nitrous oxide emissions. Thus, controlling CO_2 emissions scales with limiting nitrous oxide emissions.

SAE, 2009, *Procedure for the Calculation of Airplane Emissions,* Aerospace Information Report, AIR5715, 2009–07 (pages 45–46). The nitrous oxide emissions index is from this report.

ICAO, 2016: *ICAO Environmental Report 2016, Aviation and Climate Change,* 250 pp. The CO_2 emissions index is from this report. Available at *https://www.icao.int/environmental-protection/Documents/ICAO%20Environmental%20Report%202016.pdf* (last accessed March 16, 2020).

[110] See section II.E (*Consideration of Whole Airplane Characteristics*) of this rule for a discussion on regulating emissions from the whole airplane.

[111] Although compliance with the final GHG standard will be measured in terms of fuel efficiency, the EPA considers the six well-mixed GHGs to be the regulated pollutant for the purposes of the final standard.

standards that match ICAO standards is vital to competitiveness of the U.S. industry and certainty in the regulatory landscape. This approach provides international harmonization regulatory uniformity throughout the world. Adopting ICAO standards will protect U.S. jobs and strengthen the American aviation industry by ensuring the worldwide acceptance of U.S. manufactured airplanes. Adopting more stringent standards would place U.S. airplane manufacturers at a competitive disadvantage compared to their international competitors. Reciprocity and consistency are essential, specifically the worldwide mutual recognition of the sufficiency of ICAO's standards and the avoidance of any unnecessary difference from those standards in each Member State's law. Aviation is a global industry, and airplanes are assets that can fly anywhere in the world and cross international borders. Within this context, alignment of domestic and international standards levels the playing field for the aviation industry, and it makes sure that financial resources can be focused on improvement for the benefit of the environment (including investments creating CO_2 emissions reductions via carrying out the non-airplane-technology elements of ICAO's basket of measures). In addition, reciprocity and consistency of international standards decrease administrative complexity for airplane manufacturers and air carriers. Some commenters stated that aligning with ICAO standards ensures that U.S. manufacturers' airplanes are available to U.S. air carriers, while encouraging global competition and enabling U.S. air carriers to obtain airplanes and airplane engines at competitive prices.

In contrast, several commenters stated that the EPA's lack of consideration of feasible standards that result in GHG emission reductions is unlawful and arbitrary, and that the EPA should adopt more stringent standards. Under the authority that the EPA is provided in Clean Air Act section 231, the EPA is obligated to account for the danger to public health and welfare of the pollutant and the technological feasibility to control the pollutant. All in-production and new type design airplanes will meet the standards because existing non-compliant airplanes are anticipated to end production by 2028, the applicability date for in-production airplanes. More stringent standards are feasible for in-production and new type design airplanes, and the EPA should adopt technology-forcing instead of technology following standards to make sure the rulemaking will result in needed reductions in GHG emissions.

In response to these comments, we refer to Section II.B and the introductory paragraphs of Section IV which present our reasons for finalizing GHG standards that are aligned with the international CO_2 standards. Section 231(a)(2)(A) of the CAA directs the Administrator of the EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in the Administrator's judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. Section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' Section 231(b) requires that any emission standards ''take effect after such period as the Administrator finds necessary . . . to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance during such period.'' The U.S. Court of Appeals for the D.C. Circuit has held that these provisions confer an unusually broad degree of discretion on the EPA to adopt aircraft engine emission standards as the Agency determines are reasonable. *Nat'l Ass'n of Clean Air Agencies* v. *EPA,* 489 F.3d 1221, 1229–30 (D.C. Cir. 2007) (*NACAA*). As described in the 2005 EPA rule on aircraft engine NO_x standards,[112] while the statutory language of section 231 is not identical to other provisions in title II of the CAA that direct the EPA to establish technology-based standards for various types of engines, the EPA interprets its authority under section 231 to be somewhat similar to those provisions that require us to identify a reasonable balance of specified emissions reduction, cost, safety, noise, and other factors. *See, e.g., Husqvarna AB* v. *EPA,* 254 F.3d 195 (D.C. Cir. 2001) (upholding the EPA's promulgation of technology-based standards for small non-road engines under section 213(a)(3) of the CAA). However, we are not compelled under section 231 to obtain the ''greatest degree of emission reduction achievable'' as per sections 213 and 202(a)(3)(A) of the CAA, and so the EPA does not interpret the Act as requiring the agency to give subordinate status to factors such as cost, safety, and noise in determining what standards are reasonable for aircraft engines. Rather, the EPA has greater flexibility under section 231 in determining what standard is most reasonable for aircraft engines, and the EPA is not required to achieve a technology-forcing result. Moreover, in light of the United States' ratification of the Chicago Convention, EPA has historically given significant weight to uniformity with international requirements as a factor in setting aircraft engine standards. The fact that most airplanes already meet the standards does not in itself mean that the standards are inappropriate, provided the agency has a reasonable basis after considering all the relevant factors for setting the standards at a level that results in no actual emission reductions. By the same token, the EPA believes a technology-forcing standard would not be precluded by section 231, in light of section 231(b)'s forward-looking language. However, the EPA would, after consultation with the Secretary of Transportation, need to provide manufacturers sufficient lead time to develop and implement requisite technology. Also, there is an added emphasis on the consideration of safety in section 231 (*see, e.g.,* sections 231(a)(2)(B)(ii) (''The Administrator shall not change the aircraft engine emission standards if such change would [* * *] adversely affect safety''), 42 U.S.C. 7571(a)(2)(B)(ii), and 231(c) (''Any regulations in effect under this section [* * *] shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety''), 42 U.S.C. 7571(c). Thus, it is reasonable for the EPA to give greater weight to considerations of safety in this context than it might in balancing emissions reduction, cost, and energy factors under other title II provisions.

In order to promote international cooperation on GHG emissions regulation and international harmonization of aviation standards and to avoid placing U.S. manufacturers at a competitive disadvantage that likely would result if the EPA were to adopt standards different from the standards adopted by ICAO, as discussed further above, the EPA is adopting standards for GHG emissions from certain classes of engines used on airplanes that match the stringency of the CO_2 standards adopted by ICAO. This rule will facilitate the acceptance of U.S. manufactured airplanes and airplane

[112] U.S. EPA, 2005: Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures; Final Rule, 70 FR 69664 (November 17, 2005). See page 69676 of this **Federal Register** notice.

engines by member States and airlines around the world. In addition, requiring U.S. manufacturers to certify to different or more stringent standards than have been adopted internationally could have disruptive effects on manufacturers' ability to market planes for international operation. Having invested significant effort and resources, working with the FAA and the Department of State, to gain international consensus within ICAO to adopt the first-ever international CO_2 standards for airplanes, the EPA believes that meeting the United States' obligations under the Chicago Convention by aligning domestic standards with the ICAO standards, rather than adopting more stringent standards, will have substantial benefits for future international cooperation on airplane emission standards, and such cooperation is the key for achieving worldwide emission reductions. This EPA rule to promulgate airplane GHG standards equivalent to international standards is consistent with U.S. obligations under ICAO. By issuing standards that meet or exceed the minimum stringency levels of ICAO standards, we satisfy these obligations.

Also, these final standards are the first-ever airplane GHG standards and test procedures for U.S. manufacturers, and international regulatory uniformity and certainty are key elements for these manufacturers as they become familiar with adhering to these standards and test procedures. Consistency with the international standards will prevent backsliding by ensuring that all new type design and in-production airplanes are at least as efficient as today's airplanes. CAEP meets triennially, and in the future, we anticipate ICAO/CAEP considering more stringent airplane CO_2 standards. The U.S. Interagency Group on International Aviation (IGIA) facilitates coordinated recommendations to the Secretary of State on issues pertaining to international aviation (and ICAO/CAEP), and the FAA is the chair of IGIA. Representatives of domestic states, NGOs, and industry can participate in IGIA to provide input into future standards for ICAO/CAEP. U.S. manufacturers will be prepared for any future standard change due to their experience with the first-ever standards. Moreover, the manufacturers anticipation of future ICAO standards will be another factor for them to consider in continually improving the fuel efficiency of their airplanes in addition to the business-as-usual market forces (*i.e.,* in addition to business-as-usual continually improving fuel efficiency for airplanes), as described later in section V.

2. Timing of the Standard—Extension of In Production Applicability Date for Some Freight Airplanes

Some commenters requested that the EPA deviate from the ICAO standards (and the EPA proposed implementation dates) and delay the 2028 in-production applicability date for a class of widebody purpose-built (or dedicated) freighters such as the Boeing 767F and Airbus A330–220F. These commenters requested that the in-production applicability date for purpose-built freight airplanes with MTOMs between 180,000 kg and 240,000 kg be extended by 10 years, from January 1, 2028 to January 1, 2038.

Boeing argued that significant unexpected economic factors arising after the ICAO CO_2 standard was established, including the COVID–19 pandemic, have affected and continue to severely affect Boeing, its supply chain, and its customers, and warrant additional time for Boeing to upgrade or replace the 767F in a practicable and economically feasible manner, consistent with the ICAO terms of reference and the mandatory factors in CAA section 231(b). Additional details on these comments can be found in the Response to Comments document under section 6.2.1.

The EPA recognizes the significant financial hardships the aviation industry is experiencing as a result of the COVID–19 pandemic. The challenges the industry now faces were not anticipated when the standards were agreed by ICAO in 2017. However, ICAO recognized that unexpected hardships may arise in the future and included language to allow certification authorities to grant exemptions when it may be appropriate to provide relief from the standards.

Consistent with ICAO, the EPA proposed to include exemption provisions (40 CFR 1030.10 of the regulations) by pointing to the FAA's existing exemption process to provide relief when unforeseen circumstances or hardships result in the need for additional time to comply with the GHG standards. These provisions are similar to those exemption provisions that have been in 40 CFR part 87 of the regulations for decades. Manufacturers will be able to apply to the FAA for exemptions in accordance with the regulations of 14 CFR part 11, and the FAA will consult with the EPA on each exemption application prior to granting relief from certification to the GHG standards.

Boeing provided a list of historical examples where they say the EPA delayed aircraft engine emission standards, adopted standards after ICAO implementation dates, or granted exemptions.[113] Boeing characterizes the examples of exemptions as the most relevant to their current situation with the 767F. However, neither Boeing nor other commenters provided any information or rationale to justify why the exemption provisions proposed in part 1030.10, which point to the FAA's existing exemption process, would be insufficient to resolve their concerns. Thus, there is not a sufficient basis for the EPA to conclude that the exemption provisions would not resolve this issue for the commenters.

As we noted at the beginning of Section IV and above in IV.J.1, there are significant benefits to industry and future international cooperation to adopting standards that to the highest practicable degree match ICAO standards, in terms of scope, timing, stringency, etc. If less stringent or delayed standards were adopted, it would have a disruptive impact on the manufacturers' ability to market their airplanes internationally. Boeing recognized this disruption in their proposed addition to the regulatory text, 1030.1(a)(8)(ii), where they stated the airworthiness certificate would be limited to U.S. domestic operation. Commenters did not provide any rationale, or make any statements, about this suggested revision to limit the operation of these freighters to the U.S., nor did they state why such an operational requirement would be in EPA's purview. To include limits as this on an airworthiness certificate would seem to impose operational restrictions on air carriers. Imposing a restriction such as that suggested by Boeing would be unprecedented for the EPA, and it is not clear how it could be accomplished. Further, such a significant change was not proposed for comment by interested parties. Operational restrictions would typically be the purview of the FAA under its enabling legislation.

Finally, although Boeing's request purported to also cover an Airbus airplane of the same weight class, the EPA received no comments from Airbus seconding the request, and therefore it does not appear that the problem identified by Boeing is universal to all airplanes of the same class that may be put into freighter service.

[113] Boeing stated that the EPA granted exemptions, but the FAA granted the exemptions after consultation with the EPA, as EPA is not authorized under the CAA to grant exemptions.

Given that no information was provided to show why the proposed exemptions would be insufficient, that the would-be affected airplane manufacturers do not seem to be universally in favor of or need a 10-year compliance extension, and that significant challenges and adverse impacts would arise if timely harmonization with international standards did not occur, the EPA is finalizing the standards and timing proposed in the NPRM. The EPA, in consultation with the FAA, believes that the exemption process should provide an appropriate avenue for manufacturers to seek relief.

V. Aggregate GHG and Fuel Burn Methods and Results

This section describes the EPA's emission impacts analysis for the final standards. This section also describes the assumptions and data sources used to develop the baseline GHG emissions inventories and the potential consequences of the final standards on aviation emissions. Consistent with Executive Order 12866, we analyzed the impacts of alternatives (using similar methodologies), and the results for these alternatives are described in chapters 4 and 5 of the Technical Support Document (TSD).

As described earlier in Section II, the manufacturers of affected airplanes and engines have already developed or are developing technologies that meet the 2017 ICAO Airplane CO_2 Emission Standards. The EPA expects that the manufacturers will comply with the ICAO Airplane CO_2 Emission Standards even in advance of member States' adoption into domestic regulations. Therefore, the EPA expects that the final GHG standards will not impose an additional burden on manufacturers. In keeping with the ICAO/CAEP need to consider technical feasibility in standard setting, the ICAO Airplane CO_2 Emission Standards reflect demonstrated technology that will be available in 2020.

As described below, the analysis for the final GHG standards considered individual airplane types and market forces. We have assessed GHG emission reductions needed for airplane types (or airplane models) to meet the final GHG standards compared to the improvements that are driven by market competition and are expected to occur in the absence of any standard (business as usual improvements). A summary of these results is described later in this section. Additional details can be found in chapter 5 of the accompanying TSD for the final standards.

A. What methodologies did the EPA use for the emissions inventory assessment?

The EPA participated in ICAO/CAEP's standard-setting process for the international Airplane CO_2 Emission Standards. CAEP provided a summary of the results from this analysis in the report of its tenth meeting,[114] which occurred in February 2016. However, due to the commercial sensitivity of the data used in the analysis, much of the underlying information is not available to the public. For the U.S. domestic GHG standards, however, we are making our analysis, data sources, and model assumptions transparent to the public so all stakeholders affected by the final standards can understand how the agency derives its decisions. Thus, the EPA has conducted an independent impact analysis based solely on publicly available information and data sources. An EPA report detailing the methodology and results of the emissions inventory analysis[115] was peer-reviewed by multiple independent subject matter experts, including experts from academia and other government agencies, as well as independent technical experts.[116]

The methodologies the EPA uses to assess the impacts of the final GHG standards are summarized in a flow chart shown in Figure V–1. This section describes the impacts of the final GHG standards. Essentially, the approach is to compare the GHG emissions of the business as usual baseline in the absence of standards with those emissions under the final GHG standards.

[114] ICAO, 2016: *Doc 10069—Report of the Tenth Meeting, Montreal,1–12 February 2016, Committee on Aviation Environmental Protection, CAEP 10,* 432 pp., pages 271 to 308, is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog and is copyright protected. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report.

[115] U.S. EPA, 2020: Technical Report on Aircraft Emissions Inventory and Stringency Analysis, July 2020, 52 pp.

[116] RTI International and EnDyna, *EPA Technical Report on Aircraft Emissions Inventory and Stringency Analysis: Peer Review,* July 2019, 157 pp.

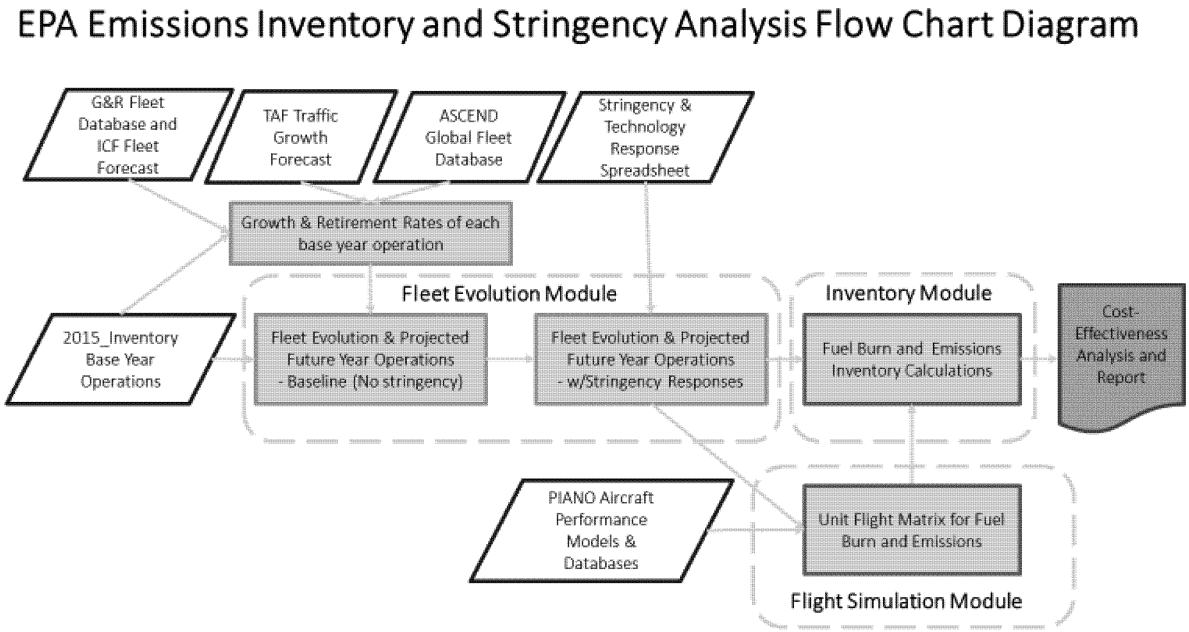

Figure V-1 EPA Regulatory Analysis Flow Chart

The first step of the EPA analysis is to create a baseline, which is constructed from the unique airport origin-destination (OD) pairs and airplane combinations in the 2015 base year. As described further in the next section, these base year operations are then evolved to future year operations, 2016–2040, by emulating the market driven fleet renewal process to define the baseline (without the final GHG regulatory requirements). The same method then is applied to define the fleet evolution under the final GHG standards, except that different potential technology responses are defined for the airplanes impacted by the final GHG standards. Specifically, they are either modified to meet the standards or removed from production. Once the flight activities for all analysis scenarios are defined by the fleet evolution module, then fuel burn and GHG [117] emissions are modelled for all the scenarios with a physics-based airplane performance model known as PIANO.[118] A brief account of the methods, assumptions, and data sources used is given below, and more details can be found in chapter 4 of the TSD.

1. Fleet Evolution Module

To develop the baseline, the EPA used FAA 2015 operations data as the basis from which to project future fleet operations out to 2040. The year-to-year activity growth rate was determined by the FAA 2015–2040 Terminal Area Forecast [119] (TAF) based on airport OD-pairs, route groups (domestic or international), and airplane types. The retirement rate of a specific airplane is determined by the age of the airplane and the retirement curve of its associated airplane type. Retirement curves of major airplane types are derived statistically based on data from the FlightGlobal Fleets Analyzer database [120] (also known as ASCEND Online Fleets Database—hereinafter ''ASCEND'').

The EPA then linked the 2015 FAA operations data to the TAF and ASCEND-based growth and retirement rates by matching the airport and airplane parameters. Where the OD-pair and airplane match between the operations data and the TAF, then the exact TAF year-on-year growth rates were applied to grow 2015 base year activities to future years. For cases without exact matches, growth rates from progressively more aggregated levels were used to grow the future year activities.[121]

The retirement rate was based on the exact age of the airplane from ASCEND for airplanes with a known tail number. When the airplane tail number was not known, the aggregated retirement rate of the next level matching fleet (*e.g.,* airplane type or category as defined by

[117] To convert fuel burn to CO_2 emissions, we used the conversion factor of 3.16 kg/kg fuel for CO_2 emissions, and to convert to the six well-mixed GHG emissions, we used 3.19 kg/kg fuel for CO_2 equivalent emissions. Our method for calculating CO_2 equivalent emissions is based on SAE AIR 5715, 2009: Procedures for the Calculation of Aircraft Emissions and the EPA publication: Emissions Factors for Greenhouse Gas Inventories, EPA, last modified 4, April 2014, *https://www.epa.gov/sites/production/files/2015-07/documents/emission-factors_2014.pdf* (last accessed March 16, 2020).

[118] PIANO is the Aircraft Design and Analysis Software by Dr. Dimitri Simos, Lissys Limited, UK, 1990–present; Available at *www.piano.aero* (last accessed March 16, 2020). PIANO is a commercially available airplane design and performance software suite used across the industry and academia.

[119] FAA 2015–2040 Terminal Area Forecast, the Terminal Area Forecast (TAF) is the official FAA forecast of aviation activity for U.S. airports. It contains active airports in the National Plan of Integrated Airport Systems (NPIAS) including FAA-towered airports, Federal contract-towered airports, non-Federal towered airports, and non-towered airports. Forecasts are prepared for major users of the National Airspace System including air carrier, air taxi/commuter, general aviation, and military. The forecasts are prepared to meet the budget and planning needs of the FAA and provide information for use by state and local authorities, the aviation industry, and the public.

[120] FlightGlobal Fleets Analyzer is a subscription based online data platform providing comprehensive and authoritative source of global airplane fleet data (also known as ASCEND database) for manufacturers, suppliers and Maintenance, Repair, Overhaul (MRO) providers. *https://signin.cirium.com* (last accessed December 16, 2019).

[121] For example, in the absence of exact airplane match, the aggregated growth rate of airplane category is used; in case of no exact OD-pair match, the growth rate of route group is used. Outside the U.S. the non-US flights were modelled with global average growth rates from ICAO for passenger and freighter operations and from the Bombardier forecast for business jets. See chapter 5 of the TSD for details.

ASCEND) was used to calculate the retirement rates for future years.

Combining the growth and retirement rates together, we calculate the future year growth and replacement (G&R) market demands. These future year G&R market demands are aligned to each base year flight, and the future year flights are allocated with available G&R airplanes [122] using an equal-product market-share selection process.[123] The market demand allocation is made based on ASK (Available Seat Kilometer) for passenger operations, ATK (Available Tonne Kilometer) for freighter operations, and number of operations for business jets.

For the 2015 base-year analysis, the baseline (no regulation) modelling includes continuous (2016–2040) annual fuel efficiency improvements. The modelling tracks the year airplanes enter the fleet and applies the type-specific fuel efficiency improvement [124] via an annual adjustment factor based on the makeup of the fleet in a particular year. Since there is uncertainty associated with the fuel-efficiency improvement assumption, the analysis also includes a sensitivity scenario without this assumption in the baseline. This sensitivity scenario applied the ICAO Constant Technology Assumption to the baseline, which meant that no technology improvements were projected beyond what was known in 2016. Specifically, current airplane types were assumed to have the same metric value in 2040 as they did in 2016. ICAO used this simplifying assumption because they conducted their stringency analysis on comparative basis and did not attempt to include future emission trends in their stringency analysis. ICAO stated that its analysis was ''. . .not suitable for application to any other purpose of any kind, and any attempt at such application would be in error.'' [125] In contrast to how ICAO used the Constant Technology Assumption, as a simplification, the EPA is using this as a worst case scenario in our sensitivity studies to provide an estimate of the range of uncertainty to our main analysis in extreme cases.

The EPA fleet evolution model focuses on U.S. aviation, including both domestic and international flights (with U.S. international flights defined as flights departing from the U.S. but landing outside the U.S.). This is the same scope of operations used for the EPA *Inventory of U.S. Greenhouse Gas Emissions and Sinks.*[126] However, because aviation is an international industry and manufacturers of covered airplanes sell their products globally, the analysis also covers the global fleet evolution and emissions inventories for reference (but at a much less detailed level for traffic growth and fleet evolution outside of the U.S.).

The fleet evolution modelling for the final regulatory scenarios defines available G&R airplanes for various market segments based on the technology responses identified by ICF, a contractor for the EPA, as described later in Section VI.[127]

2. Full Flight Simulation Module

PIANO version 5.4 was used for all the emissions modelling. PIANO v5.4 (2017 build) has 591 airplane models (including many project airplanes still under development, *e.g.,* the B777–9X) and 56 engine types in its airplane and engine databases. PIANO is a physics-based airplane performance model used widely by industry, research institutes, non-governmental organizations and government agencies to model airplane performance metrics such as fuel consumption and emissions characteristics based on specific airplane and engine types. We use it to model airplane performance for all phases of flight from gate to gate including taxi-out, takeoff, climb, cruise, descent, approach, landing, and taxi-in in this analysis.

To simplify the computation, we made the following modeling assumptions: (1) Assume airplanes fly great circle distance (which is the shortest distance along the surface of the earth between two airports) for each origin-destination (OD) pair. (2) Assume still air flights and ignore weather or jet stream effects. (3) Assume no delays in takeoff, landing, en route, and other flight-related operations. (4) Assume a load factor of 75 percent maximum payload capacity for all flights except for business jet where 50 percent is assumed. (5) Use the PIANO default reserve fuel rule [128] for a given airplane type. (6) Assume a one-to-one relationship between metric value improvement and fuel burn improvement for airplanes with better fuel-efficiency technology insertions (or technology responses).

Given the flight activities defined by the fleet evolution module in the previous section, we generated a unit flight matrix to summarize all the PIANO outputs of fuel burn, flight distance, flight time, emissions, etc. for all flights uniquely defined by a combination of departure and arrival airports (OD-pairs), airplane types, and engine types. This matrix includes millions of flights and forms the basis for our analysis (including the sensitivity studies).

3. Emissions Module

The GHG emissions calculation involves summing the outputs from the first two modules for every flight in the database. This is done globally, and then the U.S. portion is segregated from the global dataset. The same calculation is done for the baseline and the final GHG standard. When a surrogate airplane is used to model an airplane that is not in the PIANO database, or when a technology response is required for an airplane to pass a standard level, an adjustment factor is also applied to model the expected performance of the intended airplane and technology responses.

The differences between the final GHG standards and the baseline provide quantitative measures to assess the emissions impacts of the final GHG standards. A brief summary of these results is described in the next two sections. More details can be found in chapter 5 of the TSD.

[122] The airplane G&R database contains all the EPA-known in-production and in-development airplanes that are projected to grow and replace the global base-year fleet over the 2015–2040 analysis period. This airplane G&R database, the annual continuous improvements, and the technology responses are available in the 2018 ICF Report.

[123] The EPA uses equal product market share (for all airplane present in the G&R database), but attention has been paid to make sure that competing manufacturers have reasonable representative products in the G&R database.

[124] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[125] ICAO, 2016: *Doc 10069—Report of the Tenth Meeting, Montreal,1–12 February 2016, Committee on Aviation Environmental Protection, CAEP 10,* 432 pp., pages 271 to 308, is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog and is copyright protected. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report. In particular, see paragraph 2.3 for the caveats, limitations and context of the ICAO analysis.

[126] U.S. EPA, 2018: Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016, 1,184 pp., U.S. EPA Office of Air and Radiation, EPA 430–R–18–003, April 2018. Available at: *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2016* (last accessed March 16, 2020).

[127] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[128] For typical medium/long-haul airplanes, the default reserve settings are 200 NM diversion, 30 minutes hold, plus 5% contingency on mission fuel. Depending on airplane types, other reserve rules such as U.S. short-haul, European short-haul, National Business Aviation Association—Instrument Flight Rules (NBAA–IFR) or Douglas rules are used as well.

B. What are the baseline GHG emissions?

The commercial aviation marketplace is continually changing, with new origin-destination markets and new, more fuel-efficient airplanes growing in number and replacing existing airplanes in air carrier (or airline) fleets. This behavior introduces uncertainty to the future implications of this rulemaking. Since there is uncertainty, multiple baseline/scenarios may be analyzed to explore a possible range of implications of the rule.

For the analysis in this rulemaking and consistent with our regulatory impact analyses for many other mobile source sectors,[129,130] the EPA is analyzing additional baseline/scenarios that reflect a business-as-usual continually improving baseline with respect to fleet fuel efficiency. We also evaluated a baseline scenario that is fixed to reflect 2016 technology levels (*i.e.,* no continual improvement in fuel-efficient technology), and this baseline scenario is consistent with the approach used by ICAO.[131]

For the EPA analysis, the baseline GHG emissions are assessed for 2015, 2020, 2023, 2025, 2028, 2030, 2035, and 2040. The projected baseline GHG emissions for all U.S. flights (domestic and international) are shown in Figure V–2 and Figure V–3, both with and without the continuous (2016–2040) fuel-efficiency improvement assumption. More detailed breakdowns for the passenger, freighter, and business market segments can be found in chapter 5 of the TSD. It is worth noting that the U.S. domestic market is relatively mature, with a lower growth rate than those for most international markets. The forecasted growth rate for the U.S. domestic market combined with the Continuous Improvement Assumption results in a low GHG emissions growth rate in 2040 for the U.S. domestic market. However, it should be noted that this is one set of assumptions combined with a market forecast. Actual air traffic and emissions growth may vary as a result of a variety of factors.

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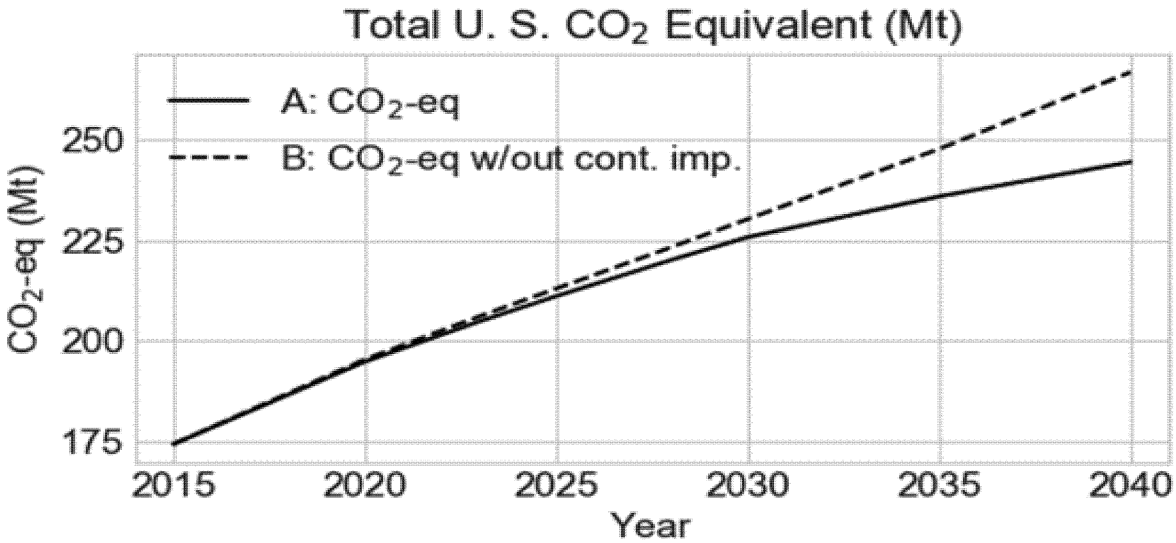


	2015	2020	2023	2025	2028	2030	2035	2040
A	174.16	194.74	204.83	211.1	220.13	225.83	236.0	244.6
B	174.16	195.3	206.08	213.0	223.31	230.33	247.86	267.02

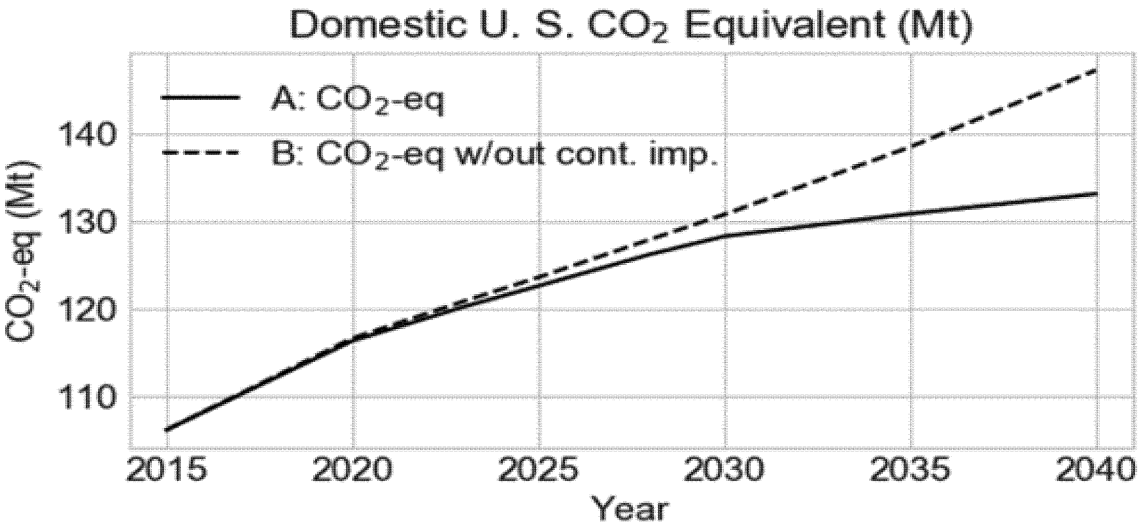
Figure V-2 - Main Analysis Baselines With and Without an Adjustment for Projected Continuous Improvement for the U.S. Total Aviation CO_2-eq Emissions in Megatonne (Mt)[132]

[129] U.S. EPA, 2016: *Regulatory Impact Analysis: Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,* EPA–420–R–16–900, August 2016.

[130] U.S. EPA, 2009: *Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines,* EPA–420–R–09–019, December 2009.

[131] A comparison of the EPA and ICAO modeling approaches and results is available in chapter 5 and 6 of the TSD.

[132] To convert fuel burn to CO_2 emissions, we used the conversion factor of 3.16 kg/kg fuel for CO_2 emissions, and to convert to the six well-mixed GHG emissions, we used 3.19 kg/kg fuel for CO_2 equivalent emissions. Our method for calculating CO_2 equivalent emissions is based on SAE AIR 5715, 2009: Procedures for the Calculation of Aircraft Emissions and the EPA publication: Emissions Factors for Greenhouse Gas Inventories, EPA, last modified 4, April 2014. *https://www.epa.gov/sites/production/files/2015-07/documents/emission-factors_2014.pdf* (last accessed March 16, 2020).



	2015	2020	2023	2025	2028	2030	2035	2040
A	106.15	116.35	120.25	122.62	126.24	128.31	130.9	133.17
B	106.15	116.64	120.88	123.6	127.94	130.79	138.52	147.31

Figure V-3 Main Analysis Baselines With and Without an Adjustment for Projected Continuous Improvement for the U.S. Domestic Aviation CO_2-eq Emissions in Megatonne (Mt)

Conceptually, the difference between the EPA and ICAO analysis baselines is illustrated in Figure V–4. The solid line represents the historical growth of emissions from the dawn of the jet age in 1960s to the present (2016). In this time, air traffic and operations have increased and offset the technology improvements. The long-dashed line (__ __) and dot-dash-dot (__ . __) lines represent different assumptions used by the EPA and ICAO to create baseline future inventories to compare the benefits of potential standards. The two baselines start in 2016, but their different assumptions lead to very different long-term forecasts. The EPA method (long dash) uses the input from an independent analysis conducted by ICF [133] to develop a Projected Continuous Improvement baseline to model future improvements similar to historical trends. The ICAO method creates a baseline using a Constant Technology Assumption that freezes the airplane technology going forward. This means that the in-production airplanes after that date will be built with no changes indefinitely into the future, *i.e.* the baseline assumes airplanes will have the same metric value in 2040 as they did in 2016. The dot-dot-dash (__ . __) line compares this Constant Technology Assumption to the solid historical emissions growth. ICAO used this simplifying assumption because they conducted their stringency analysis on comparative basis and did not attempt to include future emission trends in their stringency analysis. Comparative basis means ICAO looked at the difference in emission reductions between stringency options in isolation and did not attempt to factor in future business as usual improvements or fleet changes. The projected benefits of any standards will be different depending upon the baseline that is assumed. Note that ICAO stated that its analysis was ''. . . not suitable for application to any other purpose of any kind, and any attempt at such application would be in error.'' [134] To understand the true meaning of the analysis and make well-informed policy decisions, one must consider the underlying assumptions carefully. For example, if the EPA were to use the ICAO Constant Technology Assumption in our main analysis, the impact of the rulemaking would be overestimated, *i.e.,* these results would not be able to differentiate the effect of the standards from the expected business as usual improvements.

[133] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[134] ICAO, 2016: *Doc 10069—Report of the Tenth Meeting, Montreal,1–12 February 2016, Committee on Aviation Environmental Protection, CAEP 10,* 432pp., pages 271 to 308, is found on page 27 of the ICAO Products & Services English Edition 2020 Catalog and is copyright protected. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report. In particular, see paragraph 2.3 for the caveats, limitations and context of the ICAO analysis.

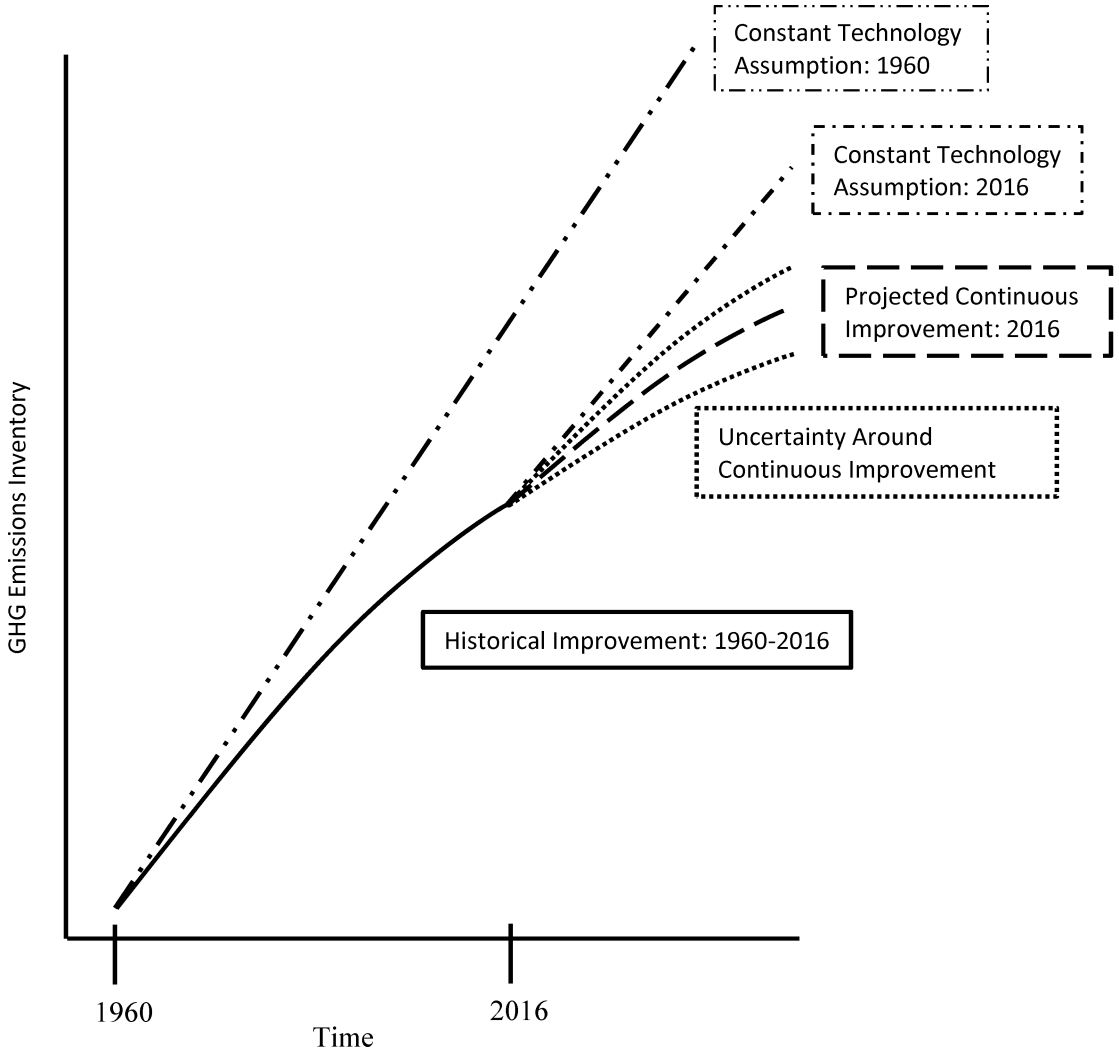


Figure V-4 Illustration of different baselines relative to historical GHG emissions inventory

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C. What are the projected effects in fuel burn and GHG emissions?

EPA's analysis projects that the final GHG standards will not result in reductions in fuel burn and GHG emissions beyond the baseline. This result makes sense because all of the airplanes in the G&R fleet either will meet the standard level associated with the final GHG standards or are expected to be out of production by the time the standards take effect, according to our technology responses.[135] In other words, the existing or expected fuel efficiency technologies from airplane and engine manufacturers that were the basis of the ICAO standards, which match the final standards, demonstrate technological feasibility. Thus, we do not project a cost or benefit for the final GHG standards (further discussion on the rationale for no expected reductions and no costs is provided later in this section and Section VI).

The EPA projected reduction in GHG emissions is different from the results of the ICAO analysis mentioned in V.A, which bounds the range of analysis exploration given the uncertainties involved with predicting the implications of this rule. The agency has conducted sensitivity studies around our main analysis to understand the differences[136] between our analysis and ICAO's (further detail on the differences in the analyses and the sensitivity studies is provided in the TSD). These sensitivity studies show that the no cost-no benefit conclusion is quite robust. For example, even if we assume no continuous improvement, the projected GHG emissions reductions for the final standards will still be zero since all the non-compliant airplanes (A380[137] and 767 freighters) are

[135] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[136] The differences in the analyses include different assumptions. Our analysis assumes continuous improvement and ICAO's analysis does not. Also, we make different projections about the end of production of the A380 and 767 compared to ICAO.

[137] On February 14, 2019, Airbus made an announcement to end A380 production by 2021 after Emirates airlines reduced its A380 order by 39 and replaced them with A330 and A350. (The Airbus press release is available at: *https://www.airbus.com/newsroom/press-releases/en/2019/02/airbus-and-emirates-reach-agreement-on-a380-fleet-sign-new-widebody-orders.html,* last accessed on February 10, 2020). EPA's analysis was conducted prior to Airbus's announcement, so the analysis does not consider the impact of the A380

projected to be out of production by 2028 (according to ICF analysis), the final standard effective year. We note that in their public comments on the proposal Boeing, along with Fedex, GE, and the Cargo Airline Association, expressed that there would continue to be a low volume demand for the B767 freighter beyond January 1, 2028. These commenters did not indicate the number of 767F's that would be produced after 2028. The EPA did not change the analysis to adjust the baseline to include continued production of the 767F beyond 2028 because insufficient information to characterize this scenario was provided.

Furthermore, we analyzed a sensitivity case where A380 and 767 freighters comply with the standards in 2028 and continue production until 2030 and not make any improvement between 2015 and 2027, the GHG emissions reductions will still be an order of magnitude lower than the ICAO results since all emissions reductions will come from just 3 years' worth of production (2028 to 2030) of A380 and 767 freighters. Considering that both airplanes are close to the end of their production life cycle by 2028 and low market demands for them, these limited emissions reductions may not be realized if the manufacturers are granted exemptions. Thus, the agency analysis results in a no cost-no benefit conclusion that is reasonable for the final GHG standards.

In summary, the ICAO Airplane CO_2 Emission Standards, which match the final EPA GHG standards, were predicated on technologies that manufacturers of affected airplanes and engines had already demonstrated to be safe and airworthy to the advanced technology readiness level 8 [138] when they were adopted in 2017. The EPA expects that the manufacturers will comply with the ICAO Airplane CO_2 Emission Standards even before member States' adoption into domestic regulations. Therefore, the EPA expects that the final airplane GHG standards will not impose an additional burden on manufacturers.

ending production in 2021. The early exit of A380, compared to the modeled scenarios, fits the general trend of reduced demands for large quad engine airplanes projected by the ICF technology responses and is consistent with our conclusion of no cost and no benefit for this rule.

[138] As described later in section VI.B for Technology Readiness Level 8 (TRL8), this refers to having been proven to be ''actual system completed and 'flight qualified' through test and demonstration.''

VI. Technological Feasibility and Economic Impacts

This section describes the technological feasibility and costs of the airplane GHG rule. This section describes the agency's methodologies for assessing technological feasibility and estimated costs of the final standards. Consistent with Executive Order 12866, we analyzed the technological feasibility and costs of alternatives (using similar methodologies), and the results for these alternatives are described in chapter 6 of the TSD.

The EPA and the FAA participated in the ICAO analysis that informed the adoption of the international Airplane CO_2 Emission Standards. A summary of that analysis was published in the report of ICAO/CAEP's tenth meeting,[139] which occurred in February 2016. However, due to the commercial sensitivity of much of the underlying data used in the ICAO analysis, the ICAO-published report (which is publicly available) provides only limited supporting data for the ICAO analysis. The EPA TSD for this rulemaking compares the ICAO analysis to the EPA analysis.

For the purposes of evaluating the final GHG regulations based on publicly available and independent data, the EPA had an analysis conducted of the technological feasibility and costs of the international Airplane CO_2 Emission Standards through a contractor (ICF) study.[140] [141] The results, developed by the contractor, include estimates of technology responses and non-recurring costs for the domestic GHG standards, which are equivalent to the international Airplane CO_2 Emission Standards. Technologies and costs needed for airplane types to meet the final GHG regulations were analyzed and compared to the improvements that are anticipated to occur in the absence of regulation. The methods used in and the results from the analysis are described in the following paragraphs—and in further detail in chapter 2 of the TSD for this rulemaking.

[139] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP/10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected; Order No. 10069. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The summary of technological feasibility and cost information is located in Appendix C (starting on page 5C–1) of this report.

[140] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[141] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

A. Market Considerations

Prior to describing our technological feasibility and cost analysis, potential market impacts of the final GHG regulations are discussed in this section. As described earlier, airplanes and airplane engines are sold around the world, and international airplane emission standards help ensure the worldwide acceptability of these products. Airplane and airplane engine manufacturers make business decisions and respond to the international market by designing and building products that conform to ICAO's international standards. However, ICAO's standards need to be implemented domestically for products to prove such conformity. Domestic action through EPA rulemaking and subsequent FAA rulemaking enables U.S. manufacturers to obtain internationally recognized FAA certification, which for the adopted GHG standards will ensure type certification consistent with the requirements of the international Airplane CO_2 Emission Standards. This is important, as compliance with the international standards (via FAA type certification) is a critical consideration in airlines' purchasing decisions. By implementing the requirements that conform to ICAO requirements in the United States, we will remove any question regarding the compliance of airplanes certificated in the United States. The rule will facilitate the acceptance of U.S. airplanes and airplane engines by member States and airlines around the world. Conversely, U.S. manufacturers will be at a competitive disadvantage compared with their international competitors without this domestic action.

In considering the aviation market, it is important to understand that the international Airplane CO_2 Emission Standards were predicated on demonstrating technological feasibility; *i.e.,* that manufacturers have already developed or are developing improved technology that meets the 2017 ICAO CO_2 standards, and that the new technology will be integrated in airplanes throughout the fleet in the time frame provided before the implementation of the standards' effective date. Therefore, as described in Section V.C, the EPA projects that these final standards will impose no additional burden on manufacturers.

While recognizing that the international agreement was predicated on demonstrated technological feasibility, without access to the

underlying ICAO/CAEP data it is informative to evaluate individual airplane models relative to the equivalent U.S. regulations. Therefore, the technologies and costs needed for airplane types to meet the rule were compared to the improvements that are expected to occur in the absence of standards (business as usual improvements). A summary of these results is described later in this section.

B. Conceptual Framework for Technology

As described in the 2015 ANPR, the EPA contracted with ICF to develop estimates of technology improvements and responses needed to modify in-production airplanes to comply with the international Airplane CO_2 Emission Standards. ICF conducted a detailed literature search, performed a number of interviews with industry leaders, and did its own modeling to estimate the cost of making modifications to in-production airplanes.[142] Subsequently, for this rulemaking, the EPA contracted with ICF to update its analysis (herein referred to as the ''2018 ICF updated analysis'').[143] It had been three years since the initial 2015 ICF analysis was completed, and the EPA had ICF update the assessment to ensure that the analysis included in this rulemaking reflects the current status of airplane GHG technology improvements. Therefore, ICF's assessment of technology improvements was updated since the 2015 ANPR was issued.[144]

The long-established ICAO/CAEP terms of reference were taken into account when deciding the international Airplane CO_2 Emission Standards, principal among these being technical feasibility. For the ICAO CO_2 certification standard setting, technical feasibility refers to any technology expected to be demonstrated to be safe and airworthy proven to Technology Readiness Level[145] (TRL) 8 by 2016 or shortly thereafter (per CAEP member guidance; approximately 2017), and expected to be available for application in the short term (approximately 2020) over a sufficient range of newly certificated airplanes.[146] This means that the analysis that informed the international standard considered the emissions performance of in-production and on-order or in-development[147] airplanes, including types that first enter into service by about 2020. (ICAO/CAEP's analysis was completed in 2015 for the February 2016 ICAO/CAEP meeting.)

In assessing the airplane GHG rule, the 2018 ICF updated analysis, which was completed a few years after the ICAO analysis, was able to use a different approach for technology responses. ICF based these responses on technology available at TRL8 by 2017 and projected continuous improvement of CO_2 metric values for in-production and in-development (or on-order) airplanes from 2010 to 2040 based on the incorporation of these technologies onto these airplanes over this same timeframe. Also, ICF considered the end of production of airplanes based on the expected business-as-usual status of airplanes (with the continuous improvement assumptions). This approach is described in further detail later in Section VI.C. The ICF approach differed from ICAO's analysis for years 2016 to 2020 and diverged even more for years 2021 and after. Since ICF was able to use the final effective dates in their analysis of the final airplane GHG standard (for new type design airplanes 2020, or 2023 for airplanes with less than 19 seats, and for in-production airplanes 2028), ICF was able to differentiate between airplane GHG technology improvements that would occur in the absence of the final standard (business as usual improvements) compared against technology improvements/responses needed to comply with the final standard. ICF's approach is appropriate for the EPA-final GHG standard because it is based on more up-to-date inputs and assumptions.

C. Technological Feasibility

1. Technology Principles and Application

i. Short- and Mid-Term Methodology

ICF analyzed the feasible technological improvements to new in-production airplanes and the potential GHG emission reductions they could generate. For this analysis, ICF created a methodological framework to assess the potential impact of technology introduction on airplane GHG emissions for the years 2015–2029 (upcoming short and mid-term). This framework included five steps to estimate annual metric value (baseline metric values were generated using PIANO data[148]) improvements for technologies that are being or will be applied to in-production airplanes. First, ICF identified the technologies that could reduce GHG emissions of new in-production airplanes. Second, ICF evaluated each technology for the amount of potential GHG reduction and the mechanisms by which this reduction could be achieved. These first two steps were analyzed by airplane category. Third and fourth, the technologies were passed through technical success probability and commercial success probability screenings, respectively. Finally, individual airplane differences were assessed within each airplane category to generate GHG emission reduction projections by technology by airplane model—at the airplane family level (*e.g.,* 737 family). ICF refers to their methodological framework for projection of the metric value improvement or reduction as the expected value methodology. The expected value methodology is a projection of the annual fuel efficiency metric value improvement[149] from

[142] ICF International, 2015: *CO_2 Analysis of CO_2-Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, March 17, 2015.

[143] ICF, 2018: *Aircraft CO_2 Cost and Technology Refresh and Industry Characterization,* Final Report, EPA Contract Number EP–C–16–020, September 30, 2018.

[144] As described earlier in section IV, the ICAO test procedures for the international airplane CO_2 standards measure fuel efficiency (or fuel burn). Only two of the six well-mixed GHGs—CO_2 and N_2O are emitted from airplanes. The test procedures for fuel efficiency scale with the limiting of both CO_2 and N_2O emissions, as they both can be indexed on a per-unit-of-fuel-burn basis. Therefore, both CO_2 and N_2O emissions can be controlled as airplane fuel burn is limited. Since limiting fuel burn is the only means by which airplanes control their GHG emissions, the fuel burn (or fuel efficiency) reasonably serves as a surrogate for controlling both CO_2 and N_2O.

[145] TRL is a measure of Technology Readiness Level. CAEP has defined TRL8 as the ''actual system completed and 'flight qualified' through test and demonstration.'' TRL is a scale from 1 to 9, TRL1 is the conceptual principle, and TRL9 is the ''actual system 'flight proven' on operational flight.'' The TRL scale was originally developed by NASA. ICF International, *CO_2 Analysis of CO_2-Reducing Technologies for Aircraft,* Final Report, EPA Contract Number EP–C–12–011, see page 40, March 17, 2015.

[146] ICAO, 2016: *Report of the Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected: Order No. 10069. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020). The statement on technological feasibility is located in Appendix C (page 5C–15, paragraph 6.2.1) of this report.

[147] Aircraft that are currently in-development but were anticipated to be in production by about 2020.

[148] To generate metric values, the 2015 ICF analysis and 2018 ICF updated analysis used PIANO (Project Interactive Analysis and Optimization) data so that their analyses results can be shared publicly. Metric values developed utilizing PIANO data are similar to ICAO metric values. PIANO is the Aircraft Design and Analysis Software by Dr. Dimitri Simos, Lissys Limited, UK, 1990-present; Available at *www.piano.aero* (last accessed March 16, 2020). PIANO is a commercially available aircraft design and performance software suite used across the industry and academia.

[149] Also referred to as the constant annual improvement in CO_2 metric value.

2015–2029 for all the technologies that would be applied to each airplane (or business as usual improvement in the absence of a standard).

As a modification to the 2015 ICF analysis, the 2018 ICF updated analysis extended the metric value improvements at the airplane family level (*e.g.,* 737 family) to the more specific airplane variant level (*e.g.,* 737–700, 737–800, etc.). Thus, to estimate whether each airplane variant complied with the final GHG standard, ICF projected airplane family metric value reductions to a baseline (or base year) metric value of each airplane variant. ICF used this approach to estimate metric values for 125 airplane models allowing for a comparison of the estimated metric value for each airplane model to the level of the final GHG standard at the time the standard goes into effect.

In addition, ICF projected which airplane models will end their production runs (or production cycle) prior to the effective date of the final GHG standard. These estimates of production status, at the time the standard will go into effect, further informed the projected response of airplane models to the final standard. Further details of the short- and mid-term methodology are provided in chapter 2 of the TSD.

ii. Long-Term Methodology

To project metric value improvements for the long-term, years 2030–2040, ICF generated a different methodology compared with the short- and mid-term methodology. The short- and mid-term methodology is based on forecasting metric value improvements contributed by specific existing technologies that are implemented, and ICF projects that about the 2030 timeframe a new round of technology implementation will begin that leads to developing a different method for predicting metric value improvements for the long term. For 2030 or later, ICF used a parametric approach to project annual metric value improvements. This approach included three steps. First, for each airplane type, technical factors were identified that drive fuel burn and metric value improvements in the long-term (*i.e.,* propulsive efficiency, friction drag reduction), and the fuel burn reduction prospect index [150] was estimated on a scale of 1 to 5 for each technical factor (chapter 2 of the TSD describes these technical factors in detail). Second, a long-term market prospect index was generated on a scale of 1 to 5 based on estimates of the amount of potential research and development (R&D) put into various technologies for each airplane type. Third, the long-term market prospect index for each airplane type was combined with its respective fuel burn reduction prospect index to generate an overall index score for its metric value improvements. A low overall index score indicates that the airplane type will have a reduced annual metric value reduction (the metric value decreases yearly at a slower rate relative to an extrapolated short- and mid-term annual metric value improvement), and a high overall index score indicates an accelerated annual metric value improvement (the metric value decreases yearly at a quicker rate relative to an extrapolated short- and mid-term annual metric value improvement). Further details of the long-term methodology are provided in chapter 2 of the TSD.

2. What technologies did the EPA consider to reduce GHG emissions?

ICF identified and analyzed seventy different aerodynamic, weight, and engine (or propulsion) technologies for fuel burn reductions. Although weight-reducing technologies affect fuel burn, they do not affect the metric value for the GHG rule.[151] Thus, ICF's assessment of weight-reducing technologies was not included in this rule, which excluded about one-third of the technologies evaluated by ICF for fuel burn reductions. In addition, based on the methodology described earlier in Section VI.C, ICF utilized a subset of the about fifty aerodynamic and engine technologies they evaluated to account for the improvements to the metric value for the final standard (for in-production and in-development airplanes [152]).

A short list of the aerodynamic and engine technologies that were considered to improve the metric value of the rule is provided below. Chapter 2 of the TSD provides a more detailed description of these technologies.

- *Aerodynamic technologies:* The airframe technologies that accounted for the improvements to the metric values from airplanes included aerodynamic technologies that reduce drag. These technologies included advance wingtip devices, adaptive trailing edge, laminar flow control, and riblet coatings.
- *Engine technologies:* The engine technologies that accounted for reductions to the metric values from airplanes included architecture and cooling technologies. Architecture technologies included ultra-high bypass engines and the fan drive gear, and cooling technologies included compressor airfoil coating and turbine air cooling.

3. Technology Response and Implications of the Final Standard

The EPA does not project that the GHG rule will cause manufacturers to make technical improvements to their airplanes that would not have occurred in the absence of the rule. The EPA projects that the manufacturers will meet the standards independent of the EPA standards, for the following reasons (as was described earlier in Section VI.A):

- Manufacturers have already developed or are developing improved technology in response to the ICAO standards that match the final GHG regulations;
- ICAO decided on the international Airplane CO_2 Emission Standards, which are equivalent to the final GHG standards, based on proven technology by 2016/2017 that was expected to be available over a sufficient range of in-production and on-order airplanes by approximately 2020. Thus, most or nearly all in-production and on-order airplanes already meet the levels of the final standards;
- Those few in-production airplane models that do not meet the levels of the final GHG standards are at the end of their production life and are expected to go out of production in the near term or

[150] The fuel burn reduction prospect index is a projected ranking of the feasibility and readiness of technologies (for reducing fuel burn) to be implemented for 2030 and later. There are three main steps to determine the fuel burn reduction prospect index. First, the technology factors that mainly contribute to fuel burn were identified. These factors included the following engine and airframe technologies as described below: (Engine) sealing, propulsive efficiency, thermal efficiency, reduced cooling, and reduced power extraction and (Airframe) induced drag reduction and friction drag reduction. Second, each of the technology factors were scored on the following three scoring dimensions that will drive the overall fuel burn reduction effectiveness in the outbound forecast years: Effectiveness of technology in reducing fuel burn, likelihood of technology implementation, and level of research effort required. Third, the scoring of each of the technical factors on the three dimensions were averaged to derive an overall fuel burn reduction prospect index.

[151] The metric value does not directly reward weight reduction technologies because such technologies are also used to allow for increases in payload, equipage and fuel load. Thus, reductions in empty weight can be canceled out or diminished by increases in payload, fuel, or both; and, this varies by operation. Empty weight refers to operating empty weight. It is the basic weight of an airplane including the crew, all fluids necessary for operation such as engine oil, engine coolant, water, unusable fuel and all operator items and equipment required for flight, but excluding usable fuel and the payload.

[152] Airplanes that are currently in-development but will be in production by the applicability dates. These could be new type designs or redesigned airplanes.

seek an exemption from the final standards; and

• These few in-production airplane models anticipated to go out of production are being replaced or are expected to be replaced by in-development airplane models (airplane models that have recently entered service or will in the next few years) in the near term—and these in-development models have much improved metric values compared to the in-production airplane model they are replacing.

Based on the approach described above in Sections VI.C.1 and VI.C.2, ICF assessed the need for manufacturers to develop technology responses for in-production and in-development airplane models to meet the final GHG standards (for airplane models that were projected to be in production by the effective dates of the final standards and would be modified to meet these standards, instead of going out of production). After analyzing the results of the approach/methodology, ICF estimated that all airplane models (in-production and in-development airplane models) will meet the levels of the final standard or be out of production by the time the standard became effective. Thus, a technology response is not necessary for airplane models to meet the final rule. This result confirms that the international Airplane CO_2 Emission Standards are technology following standards, and that the EPA's final GHG standards as they will apply to in-production and in-development airplane models will also be technology following.[153]

For the same reasons, a technology response is not necessary for new type design airplanes to meet the GHG rule. The EPA is currently not aware of a specific model of a new type design airplane that is expected to enter service after 2020. Additionally, any new type design airplanes introduced in the future will have an economic incentive to improve their fuel burn or metric value at the level of or less than the rule.

D. Costs Associated With the Program

This section provides the elements of the cost analysis for technology improvements, including certification costs, and recurring costs. As described, above, the EPA does not anticipate new technology costs due to the GHG rule. While recognizing that the GHG rule does not have non-recurring costs (NRC), certification costs, or recurring costs, it is informative to describe the elements of these costs.

1. Non-Recurring Costs

Non-recurring cost (NRC) consists of the cost of engineering and integration,[154] testing (flight and ground testing) and tooling, capital equipment, and infrastructure. As described earlier for the technology improvements and responses, ICF conducted a detailed literature search, conducted a number of interviews with industry leaders, and did its own modeling to estimate the NRC of making modifications to in-production airplanes. The EPA used the information gathered by ICF for assessing the cost of individual technologies, which were used to build up NRC for incremental improvements (a bottom-up approach). These improvements are for 0 to 10 percent improvements in the airplane CO_2 metric value, and this magnitude of improvements is typical for in-production airplanes (the focus of our analysis). In the initial 2015 ICF analysis, ICF developed NRC estimates for technology improvements to in-production airplanes, and in the 2018 ICF updated analysis these estimates have been brought up to date. The technologies available to make improvements to airplanes are briefly listed earlier in Section VI.C.2.

The methodology for the development of the NRC for in-production airplanes consisted of six steps. First, technologies were categorized either as minor performance improvement packages (PIPs) with 0 to 2 percent (or less than 2 percent) fuel burn improvements or as larger incremental updates with 2 to 10 percent improvements. Second, the elements of non-recurring cost were identified (*e.g.,* engineering and integration costs), as described earlier. Third, these elements of non-recurring cost are apportioned by incremental technology category for single-aisle airplanes (*e.g.,* for the category of an airframe minor PIP, 85 percent of NRC is for engineering of integration costs, 10 percent is for testing, and 5 percent is for tooling, capital equipment, and infrastructure).[155] Fourth, the NRC elements were scaled to the other airplane size categories (from the baseline single-aisle airplane category). Fifth, we estimated the NRC costs for single-aisle airplane and applied the scaled costs to the other airplane size categories.[156] Sixth, we compiled technology supply curves by airplane model, which enabled us to rank incremental technologies from most cost effective to the least cost effective. For determining technical responses by these supply curves, it was assumed that the manufacturer invests in and incorporates the most cost-effective technologies first and go on to the next most cost-effective technology to attain the metric value improvements needed to meet the standard. Chapter 2 of the TSD provides a more detailed description of this NRC methodology for technology improvements and results.

2. Certification Costs

Following this final rulemaking for the GHG standards, the FAA will issue a rulemaking to enforce compliance to these standards, and any potential certification costs for the GHG standards will be estimated by FAA and attributed to the FAA rulemaking. However, it is informative to discuss certification costs.

As described earlier, manufacturers have already developed or are developing technologies to respond to ICAO standards that are equivalent to the final standards, and they will comply with the ICAO standards in the absence of U.S. regulations. Also, this rulemaking will potentially provide for a cost savings to U.S. manufacturers since it will enable them to domestically certify their airplane (via subsequent FAA rulemaking) instead of having to certify with foreign certification authorities (which will occur without this EPA rulemaking). If the final GHG standards, which match the ICAO standards, are not adopted in the U.S., the U.S. civil airplane manufacturers will have to certify to the ICAO standards at higher costs because they will have to move their entire certification program(s) to a non-U.S. certification authority.[157] Thus, there are no new certification costs for the rule. However, it is informative to

[153] As described earlier, this result is different from the ICAO analysis, which did not use continuous improvement CO_2 metric values nor production end dates for products.

[154] Engineering and Integration includes the engineering and Research & Development (R&D) needed to progress a technology from its current level to a level where it can be integrated onto a production airframe. It also includes all airframe and technology integration costs.

[155] For the incremental technology category of an engine minor PIP, 35 percent of NRC is for engineering of integration costs, 50 percent is for testing, and 15 percent is for tooling, capital equipment, and infrastructure. For the category of a large incremental upgrade, 55 percent of NRC is for engineering of integration costs, 40 percent is for testing, and 5 percent is for tooling, capital equipment, and infrastructure.

[156] Engineering and integration costs and tooling, capital equipment, and infrastructure costs were scaled by airplane realized sale price from the single-aisle airplane category to the other airplane categories. Testing costs were scaled by average airplane operating costs.

[157] In addition, European authorities charge fees to airplane manufacturers for the certification of their airplanes, but FAA does not charge fees for certification.

describe the elements of the certification cost, which include obtaining an airplane, preparing an airplane, performing the flight tests, and processing the data to generate a certification test report (*i.e.,* test instrumentation, infrastructure, and program management).

The ICAO certification test procedures to demonstrate compliance with the international Airplane CO_2 Emission Standards—incorporated by reference in this rulemaking—were based on the existing practices of airplane manufacturers to measure airplane fuel burn (and to measure high-speed cruise performance).[158] Therefore, some manufacturers already have or will have airplane test data (or data from high-speed cruise performance modelling) to certify their airplane to the standard, and they will not need to conduct flight testing for certification to the standard. Also, these data will already be part of the manufacturers' fuel burn or high-speed performance models, which they can use to demonstrate compliance with the international Airplane CO_2 Emission Standards. In the absence of the standard, the relevant CO_2 or fuel burn data will be gathered during the typical or usual airplane testing that the manufacturer regularly conducts for non-GHG standard purposes (*e.g.,* for the overall development of the airplane and to demonstrate its airworthiness). In addition, such data for new type design airplanes (where data has not been collected yet) will be gathered in the absence of a standard. Also, the EPA is not making any attempt to quantify the costs associated with certification by the FAA.

3. Recurring Operating Costs

For the same reasons there are no NRC and certification costs for the rule as discussed earlier, there will be no recurring costs (recurring operating and maintenance costs) for the rule; however, it is informative to describe elements of recurring costs. The elements of recurring costs for incorporating fuel saving technologies will include additional maintenance, material, labor, and tooling costs. Our analysis shows that airplane fuel efficiency improvements typically result in net cost savings through the reduction in the amount of fuel consumed. If technologies add significant recurring costs to an airplane, operators (*e.g.,* airlines) will likely reject these technologies.

E. Summary of Benefits and Costs

ICAO intentionally established its standards, which match the final standards, at a level which is technology following to adhere to its definition of technical feasibility that is meant to consider the emissions performance of in-production and in-development airplanes, including types that would first enter into service by about 2020. Independent of the ICAO standards nearly all airplanes produced by U.S. manufacturers will meet the ICAO in-production standards in 2028 due to business-as-usual market forces on continually improving fuel efficiency. The cumulative fuel efficiency improvement of the global airplane fleet was 54 percent between 1990 and 2019, and over 21 percent from 2009 to 2019, which was an average annual rate of 2 percent.[159] Business-as-usual improvements are expected to continue in the future. The manufacturers anticipation of future ICAO standards will be another factor for them to consider in continually improving the fuel efficiency of their airplanes. Thus, all airplanes either meet the stringency levels, are expected to go out of production by the effective dates or will seek exemptions from the GHG standard. Therefore, there will be no costs and no additional benefits from complying with these final standards—beyond the benefits from maintaining consistency or harmonizing with the international standards and preventing backsliding by ensuring that all new type design and in-production airplanes are at least as fuel efficient as today's airplanes.

VII. Aircraft Engine Technical Amendments

The EPA, through the incorporation by reference of ICAO Annex 16, Volume II, Third Edition (July 2008), requires the same test and measurement procedures as ICAO for emissions from aircraft engines. See our regulations at 40 CFR 87.8(b)(1). At the CAEP/10 meeting in February 2016, several minor technical updates and corrections to the test and measurement procedures were approved and ultimately included in a Fourth Edition of ICAO Annex 16, Volume II (July 2017). Further technical updates and corrections were approved at the CAEP/11 meeting in February 2019 and included in Amendment 10 (July 20, 2020). The EPA played an active role in the CAEP process during the development of these revisions and concurred with their adoption. Thus, we are updating the incorporation by reference in § 87.8(b) of our regulations to refer to the new Fourth Edition of ICAO Annex 16, Volume II (July 2017), Amendment 10 (July 20, 2020), replacing the older Third Edition.

Most of these ICAO Annex 16 updates and corrections to the test and measurement procedures were editorial in nature and merely served to clarify the procedures rather than change them in any substantive manner. Additionally, some updates served to correct typographical errors and incorrect formula formatting. However, there is one change contained in these ICAO Annex 16 updates that warrants additional discussion here: a change to the certification test fuel specifications.

Fuel specification bodies establish limits on jet fuels properties for commercial use so that aircraft are safe and environmentally acceptable in operation. For engine emissions certification testing, the ICAO fuel specification prior to CAEP10 was a minimum 1 percent volume of naphthalene content and a maximum content of 3.5 percent (1.0–3.5%). However, the ASTM International specification is 0.0–3.0 percent naphthalene, and an investigation found that it is challenging to source fuels for engine emissions certification testing that meet the minimum 1% naphthalene level. In many cases, engine manufacturers were forced to have fuels custom blended for certification testing purposes at a cost premium well above that of commercial jet fuel. Additionally, such custom blended fuels needed to be ordered well in advance and shipped by rail or truck to the testing facility. In order to potentially alleviate the cost and logistical burden that the naphthalene specification of certification fuel presented, CAEP undertook an effort to analyze and consider whether it would be appropriate to align the ICAO Annex 16 naphthalene specification for certification fuel with that of in-use commercial fuel.

Prior to the CAEP10 meeting, technical experts (including the EPA) reviewed potential consequences of a test fuel specification change and concluded that there would be no effect on gaseous emissions levels and a negligible effect on the 'Smoke Number' (SN) level as long as the aromatic and

[158] ICAO, 2016: *Report of Tenth Meeting, Montreal, 1–12 February 2016, Committee on Aviation Environmental Protection,* Document 10069, CAEP/10, 432pp, is found on page 27 of the English Edition of the ICAO Products & Services 2020 Catalog and is copyright protected; Order No. 10069. See Appendix C of this report. For purchase available at: *https://www.icao.int/publications/Pages/catalogue.aspx* (last accessed March 16, 2020).

[159] ATAG, 2020: *Tracking Aviation Efficiency, How is the aviation sector performing in its drive to improve fuel efficiency, in line with its short-term goal?* Fact Sheet #3, January 2020. Available at *https://aviationbenefits.org/downloads/fact-sheet-3-tracking-aviation-efficiency/* .

hydrogen content remains within the current emissions test fuel specification limits. ICAO subsequently adopted the ASTM International specification of 0.0–3.0 percent naphthalene for the engine emissions test fuel specification and no change to the aromatic and hydrogen limits, which was incorporated into the Fourth Edition of ICAO Annex 16, Volume II, (July 2017).

The EPA is adopting, through the incorporation of the Annex revisions in 40 CFR 87.8(b), the new naphthalene specification for certification testing into U.S. regulations. This change will have the benefit of more closely aligning the certification fuel specification for naphthalene with actual in-use commercial fuel properties while reducing the cost and logistical burden associated with certification fuel procurement for engine manufacturers. As previously mentioned, all the other changes associated with updating the incorporation by reference of ICAO Annex 16, Volume II, are editorial or typographical in nature and merely intended to clarify the requirements or correct mistakes and typographical errors in the Annex.

VIII. Statutory Authority and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. The OMB has determined that this action raises ''. . . novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' This action addresses novel policy issues due to it being the first ever GHG standards promulgated for airplanes and airplane engines. Accordingly, the EPA submitted this action to the OMB for review under E.O. 12866 and E.O. 13563. Any changes made in response to OMB recommendations have been documented in the docket. Sections I.C.3 and VI.E of this preamble summarize the cost and benefits of this action. The supporting information is available in the docket.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Sections I.C.3. and VI.E. of this preamble summarize the cost and benefits of this action. The supporting information is available in the Final Technical Support Document and the docket.

C. Paperwork Reduction Act (PRA)

The EPA proposed a reporting requirement, along with an associated Information Collection Request (ICR), in the NPRM. However, the EPA is not adopting the proposed reporting requirement, and therefore not submitting a final ICR to OMB for approval. Thus, this action does not impose any new information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. Among the potentially affected entities (manufacturers of covered airplanes and engines for those airplanes), there is one small business potentially affected by this action. This one small business is a manufacturer of aircraft engines. However, we did not project any costs associated with this action. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action regulates the manufacturers of airplanes and aircraft engines and will not 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. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by OIRA as a significant energy action. These airplane GHG regulations are not expected to result in any changes to airplane fuel consumption beyond what would have otherwise occurred in the absence of this rule, as discussed in Section V.C.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. This action involves technical standards.

In accordance with the requirements of 1 CFR 51.5, we are incorporating by reference the use of test procedures contained in ICAO's International Standards and Recommended Practices Environmental Protection, Annex 16, Volumes II and III, along with the modifications contained in this rulemaking. This includes the following standards and test methods:

Standard or test method	Regulation	Summary
ICAO 2017, *Aircraft Engine Emissions,* Annex 16, Volume II, Fourth Edition, July 2017, as amended by Amendment 10, July 20, 2020.	40 CFR 87.1, 40 CFR 87.42(c), and 40 CFR 87.60(a) and (b).	Test method describes how to measure gaseous and smoke emissions from airplane engines.
ICAO 2017, *Aeroplane* CO_2 Emissions, Annex 16, Volume III, First Edition, July 2017, as amended by Amendment 1, July 20, 2020.	40 CFR 1030.23(d), 40 CFR 1030.25(d), 40 CFR 1030.90(d), and 40 CFR 1030.105.	Test method describes how to measure the fuel efficiency of airplanes.

The material from the ICAO Annex 16, Volume II is an updated version of the document that is already incorporated by reference in 40 CFR 87.1, 40 CFR 87.42(c), and 40 CFR 87.60(a) and (b).

The referenced standards and test methods may be obtained through the International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, (514) 954–8022, *www.icao.int,* or *sales@icao.int.*

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). It provides similar levels of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

L. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 87

Environmental protection, Air pollution control, Aircraft, Incorporation by reference.

40 CFR Part 1030

Environmental protection, Air pollution control, Aircraft, Greenhouse gases, Incorporation by reference.

Andrew Wheeler,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR chapter I as follows:

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

■ 1. The authority citation for part 87 continues to read as follows:

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

■ 2. Section 87.8 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 87.8 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. EPA, Air and Radiation Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) * * *

(1) Annex 16 to the Convention on International Civil Aviation, Environmental Protection, as follows:

(i) Volume II—Aircraft Engine Emissions, Fourth Edition, July 2017. IBR approved for §§ 87.1, 87.42(c), and 87.60(a) and (b).

(ii) Amendment 10 to Annex 16, Volume II, to the Convention on International Civil Aviation, effective July 20, 2020 (ICAO Annex 16, Volume II). IBR approved for §§ 87.1, 87.42(c), and 87.60(a) and (b).

* * * * *

■ 3. Add part 1030 to read as follows:

PART 1030—CONTROL OF GREENHOUSE GAS EMISSIONS FROM ENGINES INSTALLED ON AIRPLANES

Scope and Applicability

1030.1 Applicability.
1030.5 State standards and controls.
1030.10 Exemptions.

Subsonic Airplane Emission Standards and Measurement Procedures

1030.20 Fuel efficiency metric.
1030.23 Specific air range (SAR).
1030.25 Reference geometric factor (RGF).
1030.30 GHG emission standards.
1030.35 Change criteria.
1030.98 Confidential business information.

Reference Information

1030.100 Abbreviations.
1030.105 Definitions.
1030.110 Incorporation by reference.

Authority: 42 U.S.C. 7401–7671q.

Scope and Applicability

§ 1030.1 Applicability.

(a) Except as provided in paragraph (c) of this section, when an aircraft engine subject to 40 CFR part 87 is installed on an airplane that is described in this section and subject to title 14 of the Code of Federal Regulations, the airplane may not exceed the Greenhouse Gas (GHG) standards of this part when original civil certification under title 14 is sought.

(1) A subsonic jet airplane that has—

(i) A type certificated maximum passenger seating capacity of 20 seats or more;

(ii) A maximum takeoff mass (MTOM) greater than 5,700 kg; and

(iii) An application for original type certification that is submitted on or after January 11, 2021.

(2) A subsonic jet airplane that has—

(i) A type certificated maximum passenger seating capacity of 19 seats or fewer;

(ii) A MTOM greater than 5,700 kg, but not greater than 60,000 kg; and

(iii) An application for original type certification that is submitted on or after January 1, 2023.

(3) A propeller-driven airplane that has—

(i) A MTOM greater than 8,618 kg; and

(ii) An application for original type certification that is submitted on or after January 1, 2020.

(4) A subsonic jet airplane—

(i) That is a modified version of an airplane whose original type certificated version was not required to have GHG emissions certification under this part;

(ii) That has a MTOM greater than 5,700 kg;

(iii) For which an application for the modification in type design is submitted on or after January 1, 2023; and

(iv) For which the first certificate of airworthiness is issued for an airplane built with the modified design.

(5) A propeller-driven airplane—

(i) That is a modified version of an airplane whose original type certificated version was not required to have GHG emissions certification under this part;

(ii) That has a MTOM greater than 8,618 kg;

(iii) For which an application for certification that is submitted on or after January 1, 2023; and

(iv) For which the first certificate of airworthiness is issued for an airplane built with the modified design.

(6) A subsonic jet airplane that has—

(i) A MTOM greater than 5,700 kg; and

(ii) Its first certificate of airworthiness issued on or after January 1, 2028.

(7) A propeller-driven airplane that has—

(i) A MTOM greater than 8,618 kg; and

(ii) Its first certificate of airworthiness issued on or after January 1, 2028.

(b) An airplane that incorporates modifications that change the fuel efficiency metric value of a prior version of airplane may not exceed the GHG standards of this part when certification under 14 CFR is sought. The criteria for modified airplanes are described in § 1030.35. A modified airplane may not exceed the metric value limit of the prior version under § 1030.30.

(c) The requirements of this part do not apply to:

(1) Subsonic jet airplanes having a MTOM at or below 5,700 kg.

(2) Propeller-driven airplanes having a MTOM at or below 8,618 kg.

(3) Amphibious airplanes.

(4) Airplanes initially designed, or modified and used, for specialized operations. These airplane designs may include characteristics or configurations necessary to conduct specialized operations that the EPA and the FAA have determined may cause a significant increase in the fuel efficiency metric value.

(5) Airplanes designed with a reference geometric factor of zero.

(6) Airplanes designed for, or modified and used for, firefighting.

(7) Airplanes powered by piston engines

§ 1030.5 State standards and controls.

No State or political subdivision of a State may adopt or attempt to enforce any airplane or aircraft engine standard with respect to emissions unless the standard is identical to a standard that applies to airplanes under this part.

§ 1030.10 Exemptions.

Each person seeking relief from compliance with this part at the time of certification must submit an application for exemption to the FAA in accordance with the regulations of 14 CFR parts 11 and 38. The FAA will consult with the EPA on each exemption application request before the FAA takes action.

Subsonic Airplane Emission Standards and Measurement Procedures

§ 1030.20 Fuel efficiency metric.

For each airplane subject to this part, including an airplane subject to the change criteria of § 1030.35, a fuel efficiency metric value must be calculated in units of kilograms of fuel consumed per kilometer using the following equation, rounded to three decimal places:

$$Fuel\ Efficiency\ metric\ value = \frac{\left(\frac{1}{SAR}\right)_{avg}}{RGF^{0.24}}$$

Where:

SAR = specific air range, determined in accordance with § 1030.23.

RGF = reference geometric factor, determined in accordance with § 1030.25.

§ 1030.23 Specific air range (SAR).

(a) For each airplane subject to this part the SAR of an airplane must be determined by either:

(1) Direct flight test measurements; or

(2) Using a performance model that is:

(i) Validated by actual SAR flight test data; and

(ii) Approved by the FAA before any SAR calculations are made.

(b) For each airplane model, establish a 1/SAR value at each of the following reference airplane masses:

(1) High gross mass: 92 percent maximum takeoff mass (MTOM).

(2) Low gross mass: (0.45 * MTOM) + (0.63 * (MTOM − 0.924)).

(3) Mid gross mass: Simple arithmetic average of high gross mass and low gross mass.

(c) Calculate the average of the three 1/SAR values described in paragraph (b) of this section to calculate the fuel efficiency metric value in § 1030.20. Do not include auxiliary power units in any 1/SAR calculation.

(d) All determinations under this section must be made according to the procedures applicable to SAR in Paragraphs 2.5 and 2.6 of ICAO Annex 16, Volume III and Appendix 1 of ICAO Annex 16, Volume III (incorporated by reference in § 1030.110).

§ 1030.25 Reference geometric factor (RGF).

For each airplane subject to this part, determine the airplane's nondimensional reference geometric factor (RGF) for the fuselage size of each airplane model, calculated as follows:

(a) For an airplane with a single deck, determine the area of a surface (expressed in m∧2) bounded by the maximum width of the fuselage outer mold line projected to a flat plane parallel with the main deck floor and the forward and aft pressure bulkheads except for the crew cockpit zone.

(b) For an airplane with more than one deck, determine the sum of the areas (expressed in m∧2) as follows:

(1) The maximum width of the fuselage outer mold line, projected to a flat plane parallel with the main deck

floor by the forward and aft pressure bulkheads except for any crew cockpit zone.

(2) The maximum width of the fuselage outer mold line at or above each other deck floor, projected to a flat plane parallel with the additional deck floor by the forward and aft pressure bulkheads except for any crew cockpit zone.

(c) Determine the non-dimensional RGF by dividing the area defined in paragraph (a) or (b) of this section by 1 m∧2.

(d) All measurements and calculations used to determine the RGF of an airplane must be made according to the procedures for determining RGF in Appendix 2 of ICAO Annex 16, Volume III (incorporated by reference in § 1030.110).

§ 1030.30 GHG emission standards.

(a) The greenhouse gas emission standards in this section are expressed as maximum permitted values fuel efficiency metric values, as calculated under § 1030.20.

(b) The fuel efficiency metric value may not exceed the following, rounded to three decimal places:

For airplanes defined in . . .	with MTOM . . .	the standard is . . .
(1) Section 1030.1(a)(1) and (2)	5,700 < MTOM < 60,000 kg	$10^{(-2.73780 + (0.681310 * \log10(MTOM)) + (-0.0277861 * (\log10(MTOM))\wedge 2))}$
(2) Section 1030.1(a)(3)	8,618 < MTOM < 60,000 kg	$10^{(-2.73780 + (0.681310 * \log10(MTOM)) + (-0.0277861 * (\log10(MTOM))\wedge 2))}$
(3) Section 1030.1(a)(1) and (3)	60,000 < MTOM < 70,395 kg	0.764
(4) Section 1030.1(a)(1) and (3)	MTOM > 70,395 kg	$10^{(-1.412742 + (-0.020517 * \log10(MTOM)) + (0.0593831 * (\log10(MTOM))\wedge 2))}$
(5) Section 1030.1(a)(4) and (6)	5,700 < MTOM < 60,000 kg	$10^{(-2.57535 + (0.609766 * \log10(MTOM)) + (-0.0191302 * (\log10(MTOM))\wedge 2))}$
(6) Section 1030.1(a)(5) and (7)	8,618 < MTOM < 60,000 kg	$10^{(-2.57535 + (0.609766 * \log10(MTOM)) + (-0.0191302 * (\log10(MTOM))\wedge 2))}$
(7) Section 1030.1(a)(4) through (7)	60,000 < MTOM < 70,107 kg	0.797
(8) Section 1030.1(a)(4) through (7)	MTOM > 70,107 kg	$10^{(-1.39353 + (-0.020517 * \log10(MTOM)) + (0.0593831 * (\log10(MTOM))\wedge 2))}$

§ 1030.35 Change criteria.

(a) For an airplane that has demonstrated compliance with § 1030.30, any subsequent version of that airplane must demonstrate compliance with § 1030.30 if the subsequent version incorporates a modification that either increases—

(1) The maximum takeoff mass; or

(2) The fuel efficiency metric value by more than:

(i) For airplanes with a MTOM greater than or equal to 5,700 kg, the value decreases linearly from 1.35 to 0.75 percent for an airplane with a MTOM of 60,000 kg.

(ii) For airplanes with a MTOM greater than or equal to 60,000 kg, the value decreases linearly from 0.75 to 0.70 percent for airplanes with a MTOM of 600,000 kg.

(iii) For airplanes with a MTOM greater than or equal to 600,000 kg, the value is 0.70 percent.

(b) For an airplane that has demonstrated compliance with § 1030.30, any subsequent version of that airplane that incorporates modifications that do not increase the MTOM or the fuel efficiency metric value in excess of the levels shown in paragraph (a) of this section, the fuel efficiency metric value of the modified airplane may be reported to be the same as the value of the prior version.

(c) For an airplane that meets the criteria of § 1030.1(a)(4) or (5), after January 1, 2023 and until January 1, 2028, the airplane must demonstrate compliance with § 1030.30 if it incorporates any modification that increases the fuel efficiency metric value by more than 1.5 per cent from the prior version of the airplane.

§ 1030.98 Confidential business information.

The provisions of 40 CFR 1068.10 apply for information you consider confidential.

Reference Information

§ 1030.100 Abbreviations.

The abbreviations used in this part have the following meanings:

TABLE 1 TO § 1030.100

EPA	U.S. Environmental Protection Agency.
FAA	U.S. Federal Aviation Administration.
GHG	greenhouse gas.
IBR	incorporation by reference.
ICAO	International Civil Aviation Organization.
MTOM	maximum takeoff mass.
RGF	reference geometric factor.
SAR	specific air range.

§ 1030.105 Definitions.

The following definitions in this section apply to this part. Any terms not defined in this section have the meaning given in the Clean Air Act. The definitions follow:

Aircraft has the meaning given in 14 CFR 1.1, a device that is used or intended to be used for flight in the air.

Aircraft engine means a propulsion engine that is installed on or that is manufactured for installation on an airplane for which certification under 14 CFR is sought.

Airplane has the meaning given in 14 CFR 1.1, an engine-driven fixed-wing aircraft heavier than air, that is supported in flight by the dynamic reaction of the air against its wings.

Exempt means to allow, through a formal case-by-case process, an airplane to be certificated and operated that does not meet the applicable standards of this part.

Greenhouse Gas (GHG) means an air pollutant that is the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

ICAO Annex 16, Volume III means Volume III of Annex 16 to the Convention on International Civil Aviation (see § 1030.110).

Maximum takeoff mass (MTOM) is the maximum allowable takeoff mass as stated in the approved certification basis for an airplane type design. Maximum takeoff mass is expressed in kilograms.

Performance model is an analytical tool (or a method) validated using corrected flight test data that can be used to determine the specific air range values for calculating the fuel efficiency metric value.

Reference geometric factor is a non-dimensional number derived from a two-dimensional projection of the fuselage.

Round has the meaning given in 40 CFR 1065.1001.

Specific air range is the distance an airplane travels per unit of fuel consumed. Specific air range is

expressed in kilometers per kilogram of fuel.

Subsonic means an airplane that has not been certificated under 14 CFR to exceed Mach 1 in normal operation.

Type certificated maximum passenger seating capacity means the maximum number of passenger seats that may be installed on an airplane as listed on its type certificate data sheet, regardless of the actual number of seats installed on an individual airplane.

§ 1030.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744, and is available from the sources listed in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, (514) 954–8022, *www.icao.int,* or *sales@icao.int.*

(1) ICAO Annex 16, Volume III, Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume III—Aeroplane CO_2 Emissions, as follows:

(i) First Edition, July 2017. IBR approved for §§ 1030.23(d) and 1030.25(d).

(ii) Amendment 1, July 20, 2020. IBR approved for §§ 1030.23(d) and 1030.25(d).

(2) [Reserved]

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37 CFR Part 210

Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective; Final Rule

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–12]

Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: Pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, and following extensive solicitation of public comments, the U.S. Copyright Office is issuing a final rule addressing digital music providers' obligations to transfer and report accrued royalties for the use of unmatched musical works (or shares thereof) to the mechanical licensing collective for purposes of eligibility for the Act's limitation on liability for prior unlicensed uses.

DATES: The rule is effective February 10, 2021.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[1] It does so by switching from a song-by-song licensing system to a blanket licensing regime administered by a mechanical licensing collective (''MLC'') that becomes available on January 1, 2021 (the ''license availability date''). In July 2019, the Copyright Office (the ''Office'') designated an entity to serve as the MLC, as required by the MMA.[2] Digital music providers (''DMPs'') can obtain the new blanket license to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license), subject to compliance with various requirements.[3] As was true before the MMA, DMPs may enter into privately negotiated voluntary licenses with copyright owners in lieu of using the compulsory license.

Prior to the MMA, DMPs obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (''NOI'') on the copyright owner (or filing it with the Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[4] The MMA includes a ''transition period'' covering the period following its October 2018 enactment and before the blanket license becomes available in January 2021.[5] During this transition period, anyone seeking to obtain a compulsory license to make DPDs must continue to do so on a song-by-song basis by serving NOIs on copyright owners ''if the identity and location of the musical work copyright owner is known,'' and paying them applicable royalties accompanied by statements of account.[6] If the musical work copyright owner is unknown, a DMP can no longer file an NOI with the Office, but instead may rely on a limitation on liability that requires the DMP to, among other things, ''continue[ ] to search for the musical work copyright owner'' using good-faith, commercially reasonable efforts and bulk electronic matching processes.[7] The DMP must either account for and pay accrued royalties to the relevant musical work copyright owner(s) when found or, if they are not found before the end of the transition period, account for and transfer accrued royalties to the MLC at that time.[8] Congress believed that the liability limitation, which limits recovery in lawsuits commenced on or after January 1, 2018 to the statutory royalty that would be due, would ''ensure that more artist royalties will be paid than otherwise would be the case through continual litigation,''[9] and also viewed this provision as a ''key component that was necessary'' to ensure support for legislative change.[10]

With respect to reporting and payment requirements for eligibility for the limitation on liability, the statute details three scenarios. First, if the DMP is successful in identifying and locating a copyright owner of a musical work (or share) by the end of the calendar month in which the DMP first makes use of the work, it must provide statements of account and pay royalties to that copyright owner in accordance with section 115 and applicable regulations.[11] The second and third scenarios apply if the copyright owner is not identified or located by that date.[12] In such cases, the DMP must accrue and hold applicable statutory royalties in accordance with usage of the work, from the initial use of the work until the royalties can be paid to the copyright owner or are required to be transferred to the MLC at the end of the transition period.[13] If a copyright owner of an unmatched musical work (or share) is identified and located before the license availability date, the DMP must pay the copyright owner all accrued royalties accompanied by a cumulative statement of account that includes the information that would have been provided had the DMP been providing monthly statements of account to the copyright owner from its initial use of the work in accordance with section 115 and applicable regulations.[14] If a copyright owner of an unmatched musical work (or share) is not identified and located by the license availability date, the DMP must, among other things, transfer, no later than 45 calendar days after the license availability date, ''all accrued royalties'' to the MLC ''accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the [DMP] been serving monthly statements of account on the copyright owner from initial use

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] 84 FR 32274 (July 8, 2019).

[3] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[4] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017).

[5] H.R. Rep. No. 115–651, at 10 (2018); S. Rep. No. 115–339, at 10 (2018).

[6] 17 U.S.C. 115(b)(2)(A), (c)(2)(I); *see* H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 3.

[7] 17 U.S.C. 115(b)(2)(A), (d)(9)(D)(i), (d)(10)(A)–(B); *see* H.R. Rep. No. 115–651, at 4, 10; S. Rep. No. 115–339, at 3, 10, 22.

[8] 17 U.S.C. 115(d)(10)(B); *see* H.R. Rep. No. 115–651, at 4, 10; S. Rep. No. 115–339, at 3, 10.

[9] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 14–15; Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 12 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'').

[10] H.R. Rep. No. 115–651, at 13; S. Rep. No. 115–339, at 14; Conf. Rep. at 12.

[11] 17 U.S.C. 115(d)(10)(B)(iii).

[12] *Id.* at 115(d)(10)(B)(iv).

[13] *Id.*

[14] *Id.* at 115(d)(10)(B)(iv)(II).

of the work in accordance with [section 115] and applicable regulations,'' including the certification that would have been provided to an identified copyright owner [15] as well as an additional certification attesting to the DMP's matching efforts during the transition period.[16]

In December 2018, the Office published an interim rule and requested comments to address payment and reporting obligations during the transition period.[17] That interim rule specified that DMPs must pay royalties and provide cumulative statements of account to copyright owners and the MLC in compliance with the Office's preexisting regulations regarding monthly statements of account.[18] The Office received no comments in response to this public rulemaking and finalized the rule in March 2019.[19] In September 2019, the Office issued a notification of inquiry regarding various topics related to MMA implementation.[20] Observing the ''persistent concern about the 'black box' of unclaimed royalties, including its amount and treatment by digital music providers and the MLC,'' this notice provided additional opportunity for public comment on, among other things, ''any issues that should be considered relating to the transfer and reporting of unclaimed royalties by digital music providers to the MLC.'' [21] Both the MLC and DLC provided comments in response to this later inquiry, as discussed further below. The MLC generally sought to expand the reporting and formatting requirements in a manner that approximated its requests for monthly reporting by blanket licensees on a prospective basis, to better facilitate its matching activities (which the DLC opposed).[22] The DLC specifically sought regulatory certainty to ensure that monies previously paid by DMPs to copyright owners pursuant to privately negotiated, pre-MMA agreements need not also be paid a second time to the MLC to maintain DMP eligibility for the limitation on liability (which the MLC opposed).[23]

In July 2020, the Office issued a notice of proposed rulemaking (''NPRM'') to address these comments.[24] It proposed expanding the reporting requirements to accommodate the MLC's request for additional information. The NPRM also offered initial guidance regarding the potential relationship of pre-MMA agreements to the cumulative statement reporting obligations, but did not propose specific regulatory language concerning the issue of potential ''double payments'' in connection with such agreements; the Office invited further comment on the issue. The MLC's comments to the NPRM were largely supportive of the NPRM's proposed approach.[25] The DLC supported some aspects of the proposed rule, but expressed concern with some of the proposed reporting requirements and urged the Office to promulgate regulations addressing privately negotiated pre-MMA agreements and their interaction with the limitation on liability requirements.[26] Through the Office's permitted *ex parte* meeting option, those parties, as well as individual DMPs, music publishers, and songwriter groups provided additional views regarding these issues, as summarized on the Office's *ex parte* communications web page.[27]

In November 2020, the Office issued an SNPRM after determining that the public process would benefit from soliciting comments on alternative regulatory language to ensure that further views could be duly considered on the issues raised in the proceeding.[28] The Office noted that the SNPRM resulted from then-received public comments, a letter from Senate Judiciary Committee Chairman Lindsey O. Graham specifically raising the issue of pre-MMA agreements between DMPs and music publishers and the payment of unclaimed accrued royalties, and the D.C. Circuit's partial vacatur and remand of the Copyright Royalty Judges' (''CRJs'') *Phonorecords III* determination.[29] The Office explained that although it had not reached any final conclusions, it was issuing the SNPRM to provide interested parties with adequate notice and opportunity to comment in advance of the February 2021 deadline for DMPs to be able to submit cumulative statements of account to the MLC.

The SNPRM presented two main potential modifications to the NPRM. First, to address the DLC's comments, the requirements governing reporting of sound recording and musical work information would more closely track existing regulations, with an added requirement that DMPs report certain additional information if requested by the MLC.[30] Second, the circumstances under which a DMP may estimate and adjust the computation of its accrued royalties would be expanded where such computation depends upon an input that is unable to be finally determined at the time the cumulative statement of account is due.[31] In response to the SNPRM, the MLC and DLC largely reached consensus on the data reporting issue, except with respect to partially matched works.[32] On the second issue, the MLC and DLC both supported the SNPRM's approach to more closely track the December 2018 interim rule on estimates and adjustments adopted for reports of usage

[15] *See* 37 CFR 210.6(f)(1)(v).

[16] 17 U.S.C. 115(d)(10)(B)(iv)(III).

[17] 83 FR 63061 (Dec. 7, 2018).

[18] *See* 37 CFR 210.10.

[19] *See* 84 FR 10685 (Mar. 22, 2019).

[20] 84 FR 49966 (Sept. 24, 2019).

[21] *Id.* at 49971.

[22] *See* MLC Initial NOI Comment at 22–23; MLC Reply NOI Comment at 27–30, App. D at 19; MLC *Ex Parte* Letter at 2–4 (June 17, 2020).

[23] *See* DLC Initial NOI Comment at 18–19; DLC Reply NOI Comment at 24–25, Add. A–24.

[24] 85 FR 43517 (July 17, 2020) (''NPRM''). All rulemaking activity, including public comments, as well as educational material regarding the MMA, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization. Comments* received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docket?D=COLC-2019-0002,* comments received in response to the NPRM and supplemental notice of proposed rulemaking (''SNPRM'') are available at *https://www.regulations.gov/docket?D=COLC-2020-0011.* Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* References to these comments are by party name (abbreviated where appropriate), followed by ''Initial NOI Comment,'' ''Reply NOI Comment,'' ''NPRM Comment,'' ''SNPRM Comment,'' or ''*Ex Parte* Letter,'' as appropriate.

[25] *See* MLC NPRM Comment at 1 (''The Proposed Regulation considers the aims and goals of the MMA in creating the new mechanical licensing system, and works to empower the MLC to improve the matching of DMP usage to musical works and the owners thereof and thereby reduce unmatched and unclaimed royalties. The MLC agrees with the bulk of the language in the Proposed Regulation.'').

[26] *See* DLC NPRM Comment at 2–3.

[27] *See, e.g.,* Artist Rights Alliance (''ARA''), Music Artists Coal. (''MAC''), Nashville Songwriters Ass'n Int'l (''NSAI''), Google *Ex Parte* Letter (Oct. 23, 2020); MediaNet *Ex Parte* Letter (Oct. 28, 2020); MLC *Ex Parte* Letter (Oct. 16, 2020); Nat'l Music Publishers' Ass'n (''NMPA'') *Ex Parte* Letter (Nov. 3, 2020); Recording Acad. & Songwriters of N. Am. (''SONA'') *Ex Parte* Letter (Sept. 22, 2020); DLC *Ex Parte* Letter (Oct. 14, 2020); Songwriters Guild of Am. (''SGA''), Soc'y of Composers & Lyricists (''SCL''), All. for Women Film Composers (''AWFC'') & Music Creators N. Am. (''MCNA'') *Ex Parte* Letter (Sept. 15, 2020); SATV Music Publ'g (''SATV'') *Ex Parte* Letter (Oct. 28, 2020); Spotify *Ex Parte* Letter (Oct. 9, 2020); Universal Music Publ'g Grp. (''UMPG'') *Ex Parte* Letter (Oct. 30, 2020); Warner Music Grp. (''WMG'') *Ex Parte* Letter (Oct. 21, 2020).

[28] 85 FR 70544, 70546 (Nov. 5, 2020) (''SNPRM'').

[29] *Id.* at 70545–46; Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020); *Johnson* v. *Copyright Royalty Bd.,* 969 F.3d 363 (D.C. Cir. 2020).

[30] SNPRM at 70547.

[31] *Id.* at 70546–47.

[32] *See* DLC SNPRM Comment at 12–13; MLC SNPRM Comment at 15–17; DLC & MLC *Ex Parte* Letter (Dec. 9, 2020).

under the blanket license.[33] They disagreed, however, on the SNPRM's proposed approach to address reporting with respect to any applicable pre-MMA agreements. The DLC supported the SNPRM's approach [34] while the MLC did not,[35] and songwriter groups were split.[36]

At Chairman Graham's request, the Office also convened a joint meeting to discuss their views on the treatment of certain pre-MMA agreements in connection with the limitation on liability requirements. Although it became clear that no significant consensus had emerged, the Office found it helpful for the parties to engage with each other directly, and believes that the record has benefited from the input of a variety of perspectives, each of which the Office has carefully considered in moving forward with a rule regarding cumulative statements consistent with the MMA's statutory deadline.[37]

Having reviewed and considered all relevant comments received in response to the notification of inquiry, NPRM, and SNPRM, including through a number of permitted *ex parte* communications as detailed under the Office's procedures, the Office has weighed the legal, business, and practical implications and equities that have been raised. Pursuant to its authority under 17 U.S.C. 115 and 702, it is adopting final regulations with respect to DMP obligations to transfer and report accrued royalties for unmatched musical works (or shares) to the MLC for purposes of eligibility for the MMA's limitation on liability for prior unlicensed uses, which it believes best reflect the statutory language and its animating goals in light of the rulemaking's record.[38] In doing so, the Office has exercised its ''broad regulatory authority'' and ''use[d] its best judgement in determining the appropriate steps'' as Congress directed.[39]

II. Final Rule

Several aspects of the proposed rule were not opposed. Where parties objected to other aspects of the proposed rule, the Office has considered those comments and resolved the issues as discussed below. If not otherwise discussed, the Office has concluded that the relevant proposed provision should be adopted as final for the reasons stated in the NPRM (though in some such cases, the adopted language reflects minor technical edits). In promulgating this rule, the Office has endeavored to ensure that the MLC receives the information and royalties it needs to fulfill its statutory duties, that copyright owners and songwriters are accurately paid any royalties they are owed, and that DMPs can realistically and practicably obtain the limitation on liability by complying with the statutory requirements.

A. Cumulative Statements of Account Content and Format

This section of the preamble discusses the final rule's content and format requirements for cumulative statements of account delivered to the MLC, except with respect to requirements connected to the reliance upon estimates, adjustments, and reconciliation of statements, which are addressed below.

1. Sound Recording and Musical Work Information

The NPRM proposed requiring DMPs to provide additional information concerning sound recording and musical work metadata beyond what is required by existing regulations governing cumulative statements of account.[40] The proposed requirements largely mirrored the content requirements the Office had proposed in a parallel rulemaking (and has recently adopted) for monthly reports of usage under the blanket license.[41] This general approach was recommended by the MLC but disfavored by the DLC, which called it ''impractical'' and explained that ''digital music providers have maintained usage information . . . with the *existing* statement of account regulations in mind.'' [42]

The Office sought to address the DLC's concerns by including a practicability standard: DMPs would only be required to report information that would not have been reported to copyright owners in monthly statements of account, ''to the extent practicable.'' [43] In response, the DLC ''emphatically opposed'' the NPRM, and described the requirement to report additional information as ''impossible,'' explaining that some of the information had not been collected by DMPs in the past and could not be collected in time to include in cumulative statements of account.[44] The DLC further stated that the addition of a ''practicability'' standard did not alleviate its concerns, and implied that the reporting requirement as proposed might cause DMPs to forgo taking advantage of the limitation on liability.[45]

The SNPRM sought additional comments on this issue, stating the Office was considering adopting alternative language ''to reflect the DLC's comments and incentivize optional participation in th[e] transition period reporting for cumulative statements of account.'' [46] The Office proposed a baseline reporting requirement for sound recording and musical work information that was closer to the existing requirements for transition period cumulative statements of account, but added a requirement that DMPs additionally ''report information

[33] *See* DLC SNPRM Comment at 2; MLC SNPRM Comment at 13–14, App. A at v, ix–x.

[34] *See* DLC SNPRM Comment at 1–12.

[35] *See* MLC SNPRM Comment at 2–13.

[36] *See* ARA, Future of Music Coal. (''FMC'') & MusicAnswers SNPRM Comment at 2–4 (supporting); MAC, Recording Acad. & SONA SNPRM Comment at 2–3 (opposing); SGA, SCL & MCNA SNPRM Comment at 5–6 (declining ''to speak directly in these Comments regarding the USCO's proposed Supplemental USCO Rules'' due to underlying concerns with DMP and publisher transparency surrounding pre-MMA agreements).

[37] *See* Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020).

[38] *See* H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12 (''The Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.''); 17 U.S.C. 115(d)(12)(A) (''The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection.''); *Alliance of Artists & Recording Cos.* v. *DENSO Int'l Am., Inc.,* 947 F.3d 849, 863 (D.C. Cir. 2020) (''[T]he best evidence of a law's purpose is the statutory text, and most certainly when that text is the result of carefully negotiated compromise among the stakeholders who will be directly affected by the legislation.'') (internal quotation marks, brackets, and citations omitted); 84 FR at 49967–68.

[39] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12 (acknowledging that ''it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations''); *see* 17 U.S.C. 115(d)(12)(A); *Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in the statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)).

[40] NPRM at 43519; *see* 37 CFR 210.20.

[41] NPRM at 43519; the interim rule regarding monthly reports of usage was published in 85 FR 58114 (Sept. 17, 2020).

[42] NPRM at 43519 (quoting DLC NPRM Reply at 24).

[43] *Id.* at 43525.

[44] DLC NPRM Comment at Add. 21; DLC *Ex Parte* Letter at 2 (Aug. 11, 2020).

[45] DLC NPRM Comment at 8 (''This uncertainty and ambiguity undermines the central bargain of the statute by eroding DMPs' confidence in their ability to rely on the limitation on liability, thus decreasing their incentive to pay accrued royalties to the MLC if they cannot provide certain data included in the new rules.''); *see also* DiMA NPRM Comment at 6–7 (saying the NPRM's reporting amendments would create ''massive operational hurdles'' and would ''jeopardize[ ] every [DMP's] eligibility for the limitation on liability'').

[46] SNPRM at 70547.

referenced in 17 U.S.C. 115(d)(10)(B)(i)(I)(aa) or (bb) that was acquired by the DMP in connection with its efforts to obtain such information under 17 U.S.C. 115(d)(10)(B)(i)(I), or a DMP-assigned identifier, if such information is requested by the MLC.'' [47] It sought comment on the feasibility and adequacy of this proposal or whether, as an alternative to DMPs providing such information upon the MLC's request, the regulations should require submission of such supplementary information by a set date.[48] The Office encouraged ''continued dialogue between the MLC and DLC as to this aspect of the reporting regulations, as well as submission of any joint proposals that may result from discussions.'' [49]

The MLC and DLC did engage in continued discussions on this issue, which proved fruitful. In a December 2020 *ex parte* meeting, the organizations reported that they had reached agreement ''on an operational framework that ensures the MLC obtains all reasonably available metadata for unmatched works via a simplified format that DLC members are well-prepared to operationalize,'' along with proposed regulatory language.[50] Their proposal would require DMPs to provide to the MLC by February 2021 a cumulative statement of account ''containing all metadata information that would have been delivered to copyright owners under the pre-MMA monthly statements of account,'' similar to the present transition period requirement for cumulative statement of account.[51] DMPs would also be required to submit a supplemental metadata report to the MLC by June 15, 2021 containing ''(1) available and up-to-date track-level metadata that has been obtained by the services and (2) in the event copyright owners of partial shares of particular works were identified and paid, information regarding those paid parties and the amounts that were paid.'' [52] The cumulative statement of account would also contain both a DMP-provided track identifier and a unique identifier for each individual ''usage'' line that the MLC will use to index to the later-delivered supplemental metadata report.[53]

The Office appreciates the cooperative efforts of the MLC and DLC in crafting this joint proposal and generally agrees with their approach and list of information to be reported. The Office believes the proposal constitutes a reasonable approach that provides legal certainty and effectuates the intent of the MMA in light of the operational realities DMPs face at this time.[54] The supplemental metadata provided by DMPs beyond what they are required to report under existing cumulative statement of account regulations should benefit the MLC in executing its matching duties, and the inclusion of a unique identifier will further enable the MLC to link data received through usage reports and the supplemental metadata report with sound recording and musical work information it receives in cumulative statements of account. At the same time, this pragmatic approach mitigates the risk that DMPs would forgo the statutory limitation on liability, which would ultimately harm songwriters, copyright owners, and DMPs by incentivizing continued litigation.

The joint proposal provides that ''failure to deliver the supplemental metadata report would not result in the loss of limitation of liability or the blanket license.'' [55] The MLC and DLC additionally propose that the MLC could enforce the supplemental metadata report delivery requirement by bringing an action in federal court against a DMP for ''injunctive relief requiring delivery of that report, plus costs and attorney's fees and, potentially, a penalty on the amount of accrued royalties paid to the MLC.'' [56] During the *ex parte* meeting, the Office asked the MLC and DLC about the Office's authority to adopt language prescribing these enforcement remedies.[57] The MLC and DLC responded that they believed the Office's general regulatory authority under section 115(d) was broad enough to cover this enforcement mechanism.[58] They explained that the proposal ''is intended to fill a gap in the statutory scheme,'' saying that while the statute requires collection of such metadata by DMPs, it does not explicitly require delivery of the metadata to the MLC.[59]

The Office agrees with the MLC and DLC that failure to provide the additional metadata should not result in loss of the limitation on liability or default of the blanket license.[60] This result is consistent with the statute, which premises the limitation on liability on a requirement to report only ''all of the information that would have been provided to the copyright owner had the digital music provider been providing monthly statements of account to the copyright owner from initial use of the work in accordance with this section and applicable regulations.'' [61]

The Office declines, however, to adopt the enforcement mechanism provisions proposed by the MLC and DLC. The Office has accommodated concerns regarding a gap in the statute by requiring, via regulation, that DMPs report the requested supplemental metadata. Multiple reasons compel the Office not to prescribe penalties for noncompliance to a federal court (which would also construct an entirely new monetary damages scheme for the MLC to administer). First, the timing of the proposal came too late in the rulemaking process to provide adequate notice to other potentially interested parties. Second, the establishment of such a penalty provision via regulations would be a significant departure from

[47] *Id.; see also* 17 U.S.C. 115(d)(10)(B)(i)(I)(aa) (''Sound recording name, featured artist, sound recording copyright owner, producer, international standard recording code, and other information commonly used in the industry to identify sound recordings and match them to the musical works they embody.''); *id.* at 115(d)(10)(B)(i)(I)(bb) (''Any available musical work ownership information, including each songwriter and publisher name, percentage ownership share, and international standard musical work code.'').

[48] SNPRM at 70547.

[49] *Id.*

[50] DLC & MLC *Ex Parte* Letter at 1 (Dec. 9, 2020).

[51] *Id.*

[52] *Id.* at 2. The MLC and DLC's proposed regulations do not require reporting of publisher or copyright owner information in the supplemental metadata report. This absence makes sense given that the data applies to unmatched royalties. Reporting requirements for partially matched tracks are discussed below.

[53] *Id.* The Office presumes that the DLC's support of this joint proposal moots any concerns it voiced regarding the NPRM.

[54] In an *ex parte* meeting subsequent to the publication of the DLC & MLC joint proposal, Music Reports (a vendor of various DMPs) raised concerns regarding the introduction of new reporting requirements for cumulative statements of account so close to the required delivery date. Music Reports *Ex Parte* Letter at 2 (Dec. 15, 2020). While the Office does not discount the validity of these concerns, it notes that it is the DMPs, not Music Reports, who bear the risk, since they are subject to this requirement to maintain the statutory limitation on liability. Given that the DLC, which represents DMP interests, believes the reporting requirements are appropriate, the Office declines to deviate from the proposal.

[55] DLC & MLC *Ex Parte* Letter at 2 (Dec. 9, 2020).

[56] *Id.* The proposed language states, *inter alia,* that in the event injunctive relief is granted, ''the court shall award, notwithstanding anything to the contrary in section 505, reasonable attorney's fees and costs, as well as such other relief as the court determines appropriate,'' or, in the event the court finds that the DMP acted unreasonably or in bad faith, ''damages in the amount of 1.5% per month on the amount of royalties transferred pursuant to subsection (b)(3)(i), or the highest lawful rate, whichever is lower, for the period from June 15, 2021 until the supplemental metadata report is provided to the mechanical licensing collective.'' *Id.* at 10.

[57] *Id.* at 3.

[58] *Id.*

[59] *Id.*

[60] *Id.* at 2–3 (''As an initial matter, DLC and MLC agree that loss of the limitation of liability or the blanket license would be an inappropriate means of enforcing the format and supplemental metadata report requirements proposed herein.'').

[61] 17 U.S.C. 115(d)(10)(B)(iv)(II)(aa).

historical practice: The Office is not aware of analogous provisions elsewhere in its regulations. Finally, the Office notes that multiple provisions in the MMA provide that a ''district court shall determine the matter de novo.'' [62] The statute provides the MLC with the authority to enforce rights and obligations, including regulatory obligations, through the courts, which are well-positioned to determine appropriate remedies. The MLC and DLC also requested that, ''if the Office is disinclined to adopt the particular enforcement mechanisms proposed herein, . . . [it] revert to the MLC and DLC for discussion of potential alternatives.'' [63] In light of the advanced stage of this process and fast-approaching statutory deadline, however, the Office declines further discussion.[64]

2. Partially Matched and Paid Works

Next, the Office addresses conflicting proposals from the MLC and DLC regarding the level of information that must be provided with respect to partially matched musical works. As discussed in the NPRM, the MLC initially requested that cumulative statements of account include information about matched shares of a musical work where unmatched shares for the work are reported, it expressed the concern that if a DMP paid one copyright owner its royalty share and held accrued royalties for any remaining unmatched share(s), then upon transfer of such unmatched royalties, if the paid share is not properly identified, the a paid co-owner might be able to collect a portion of an unpaid co-owner's share.[65]

The NPRM noted that the DLC did not appear to disagree with the MLC's description of the issue, but had suggested that DMPs' third-party vendors, who it said are subject to ''strict contractual confidentiality restrictions,'' may have this information and not the DMPs themselves.[66] The DLC asked that the Office ''account for these [confidentiality] restrictions and protect digital music providers from any liability related to their breach.'' [67] In response, the MLC offered to amend its proposal to limit share reporting ''to the share percentage and the owner of the share that was paid, [and] omit[ ] the precise amount of royalties paid under the voluntary license terms,'' presuming that the DLC's confidentiality concern ''relates to the amounts of royalties paid under voluntary licenses.'' [68]

The NPRM largely adopted the MLC's amended proposal, stating that for each track for which a share of a musical work has been matched and for which accrued royalties for that share have been paid, but for which one or more shares remains unmatched and unpaid, the DMP must provide a clear identification of the share(s) that have been matched, the owner(s) of such matched shares, and, for shares other than those paid pursuant to a voluntary license, the amount of the accrued royalties paid.[69] The Office tentatively concluded that the MLC's proposal was reasonable in light of the statutory function of cumulative statements of account, noting that the situation the MLC anticipated seems likely to occur and that having the matched share information will be important.[70]

In response, the MLC generally agreed with the NPRM's proposal but asked for two clarifications: [71] First, that the identification of the matched share(s) explicitly be of the ''percentage'' share(s); [72] and second, that unique party identifiers known by the DMP be provided for the owner(s) of the matched shares being reported, as they ''are very valuable for efficiency and accuracy.'' [73] The Office agreed that having these identifiers will be helpful to the MLC in processing cumulative statements and proposed these clarifications as part of the SNPRM.[74] Having received no comments in opposition, the Office incorporates these changes into the final rule.

The DLC's response to the NPRM confirmed its agreement that the treatment of partially matched works is ''a legitimate issue that needs to be resolved.'' [75] It noted that it ''support[s] providing information regarding partially matched works to ensure that the appropriate copyright owners are paid,'' but only ''as long as [DMPs] that do not have that information because of confidentiality restrictions in contracts with third-party vendors are not required to provide it in order to claim the benefits of the MMA's limitation on liability.'' [76] The DLC expanded on its vendor-related concerns, claiming that one such vendor, Music Reports, ''has notified its client DMPs that it is unwilling to share any musical work ownership share information with the MLC or the DMPs, as it regards that information to be proprietary.'' [77] The DLC expressed concern that other vendors could take a similar position.[78] The DLC additionally stated that ''there is also an issue related to voluntary licenses, in that the information that publishers provide about their share splits are subject to their own confidentiality restrictions.'' [79] The DLC ultimately proposed that DMPs provide, on a per-track basis, a clear identification of the total aggregate percentage share that has been matched and the owner(s) of that share, without identifying the specific shares owned by each owner or the actual amount paid (which, the DLC argued, would be unnecessary and potentially problematic). It proposed that this requirement would be further subject to the limitation that if the information is maintained by a third-party vendor that the information is made available to the DMP on commercially reasonable and non-discriminatory terms.[80]

In response to the DLC's assertions, Music Reports informed the Office that it ''has never said it will not release information about partially matched works—only that such data has independent commercial value given the twenty-five years of effort the company has invested in curating that data.'' [81] Despite initial speculation, the DLC has not informed the Office of any other vendors who have expressed an

[62] *E.g., id.* at 115(d)(2)(A)(v) (improper rejection of notice of license); *id.* at 115(d)(4)(E)(iv) (improper termination of blanket license).

[63] *Id.* at 115(d)(3)(C)(i)(VIII); DLC & MLC *Ex Parte* Letter at 3 (Dec. 9, 2020).

[64] The SNPRM itself was the latest formal call for public comment on an issue that has been open to public comment through various mechanisms since December 2018. *See* 83 FR 63061 (interim rule); *see also* 84 FR 49966 (notification of inquiry); NPRM; SNPRM.

[65] NPRM at 43521; *see* MLC Reply NOI Comment App. D at 19; MLC *Ex Parte* Letter at 3 (June 17, 2020) (giving the example of an identified 50% co-owner being paid their 50% share by a DMP, and then subsequently being paid half of the remaining share by the MLC due to lack of record of the first payment; stating that ''reporting on partially-matched works and the respective shares that the DMP already paid is essential to allow the MLC to properly credit share owners who have been paid and avoid double payments'').

[66] NPRM at 43521; *see* DLC Reply NOI Comment at 25.

[67] DLC Reply NOI Comment at 25.

[68] MLC *Ex Parte* Letter at 4 (June 17, 2020).

[69] NPRM at 43525.

[70] *Id.* at 43521.

[71] MLC NPRM Comment at 6.

[72] *Id.* at 6, App. A at v.

[73] *Id.* at 6–7, App. A at v–vi.

[74] *See* SNPRM at 70550.

[75] DLC NPRM Comment at 6.

[76] *Id.* at 2.

[77] *Id.* at 6.

[78] *Id.*

[79] *Id.* at 7 n.15.

[80] DLC *Ex Parte* Letter at 5, 14–15 (Oct. 14, 2020); *see* DLC NPRM Comment at 7.

[81] Music Reports *Ex Parte* Letter at 2 (Sept. 29, 2020) (''We are currently working with our clients to understand and support their needs, on commercially reasonable terms, with respect to these needs. . . .''); *see* DLC *Ex Parte* Letter at 5 (Oct. 14, 2020) (''Music Reports, Inc., has recently expressed willingness to provide this information to the MLC on behalf of its clients, although the commercial terms are still being discussed, and any regulatory provision here should ensure that vendors are not given undue bargaining power.'').

unwillingness to provide share information.

The MLC objected to the DLC's proposal, stating that it ''would not provide the MLC with adequate information to ensure proper payment allocation.'' [82] The MLC disputed that copyright owner splits are subject to publisher confidentiality restrictions, noting that ''[c]opyright owners will be providing their claimed splits to the MLC to receive royalty distributions and the MMA directs that such splits be included in the MLC's public database.'' [83] The MLC further stated that ''the logical conclusion of the DLC's argument is that it could not report any partially-paid royalty information where there was only one partially-paid copyright owner, since the aggregate percentage paid would of course reveal the percentage of the single copyright owner that was paid.'' [84]

The DLC countered that, with respect to the issue of ''some copyright owners regard[ing] the splits of musical works they control as confidential,'' ''the MLC is not a party to these agreements, and does not purport to represent any parties to these agreements,'' and that ''there is no reason that the MLC would need detailed *matched* share information in order to find the owners of *unmatched* shares.'' [85] As with requirements to report certain sound recording and musical work information discussed above, the DLC also asserted that split information should be included in a supplemental report provided to the MLC at some point in time after the cumulative statement of account and that such reporting should not be tied to eligibility for the limitation on liability.[86]

To obtain additional public input, the SNPRM noticed an alternative approach that more closely resembled the DLC's proposal than the MLC's proposal, which had been largely embodied in the NPRM. The SNPRM proposed that DMPs provide ''a clear identification of the total aggregate percentage share that has been matched and paid and the owner(s) of the aggregate matched and paid share (including any unique party identifiers for such known owner(s)), so long as, in the event such information is maintained by a third-party vendor, that information is made available to the digital music provider on commercially reasonable terms.'' [87] The SNPRM was informed by the DLC's explanation that the MLC did not necessarily need payment amounts and non-aggregated splits to perform its duties, and concern about DMPs potentially losing eligibility for the limitation on liability in the event of a legitimate inability to provide this information. The SNPRM did not include the DLC's proposal about third-party vendor terms needing to be ''non-discriminatory,'' as a vendor may well have commercially reasonable reasons for not treating differently situated DMPs the same.

The DLC fully supported the SNPRM's proposed provision,[88] as did Music Reports, which said it ''nicely draws a difficult line.'' [89] The MLC, however, expressed concern, stating that ''the reporting of only aggregate share information would make it impossible for the MLC to determine with confidence what partial payments have been made, where multiple shares have been paid.'' [90] The MLC provided an example to illustrate:

> [I]f a DMP reports on a partial match only that Publishers A and B were paid an aggregate 75%, and the MLC's records show Publisher A owning 50% and Publisher B owning 50%, how can the MLC possibly determine how to fairly allocate the remaining 25% between Publisher A and B? The MLC needs the breakdown that Publisher A received 50% and Publisher B received 25%, instead of merely the aggregated 75% payment, in order to properly allocate the remaining royalties.[91]

The MLC also reiterated its previous argument that the DLC's position on confidentiality restrictions is ''illogical'' because ''[t]he DLC has no objection to reporting 'aggregate' shares paid *when there has been only one share paid,* which is of course equivalent to reporting the individual share paid.'' [92]

With respect to the SNPRM's proposal to excuse reporting where the information is maintained by a third-party vendor and not made available to the DMP on commercially reasonable terms, the MLC agreed that ''[i]f there truly was a situation where a digital music provider was somehow legally and commercially unable to obtain its own historical royalty payment information, then the rule could accommodate this,'' but contended that because the information is ''so critical to ensuring that royalties are paid to the correct parties,'' the exception should be stricter.[93] The MLC proposed the following conditions: (1) The information is maintained only by a third-party vendor; (2) the DMP does not have any contractual or other rights to access the information; (3) the DMP is unable to compile the information from records in its possession; and (4) the vendor refuses to make the information available to the DMP on commercially reasonable terms.[94] The MLC further proposed that a DMP relying on the exception must provide the MLC with a certification, under penalty of perjury, that the conditions apply, and include a description of any terms on which the vendor offered to provide access to the information.[95]

Although the MLC and DLC continued to disagree about what should be reported, they agreed that the reporting itself should be contained in a supplemental report separate from the cumulative statement of account and delivered to the MLC by June 15, 2021, rather than by February 2021; they also agreed, as discussed above, that the supplemental report should not be a condition of the limitation on liability or the blanket license.[96]

Having considered this issue, the Office agrees with aspects of both the MLC's and DLC's respective positions and has adopted a final rule that is essentially a hybrid approach. The Office is persuaded by the MLC's new example that there are at least some plausible situations where non-aggregated share information will need to be known.[97] At the same time, while the Office is not in a position to opine on the legitimacy of asserted confidentiality concerns, it declines to issue a rule that may interfere with alleged confidentiality restrictions that may exist. And as the MLC agrees, to the extent there is a legitimate inability to report the information, the rule should accommodate it.[98]

Consequently, the adopted rule requires a DMP to provide a clear identification of the percentage share(s) that have been matched and paid and the owner(s) of such matched and paid share(s). If this information cannot be

[82] MLC *Ex Parte* Letter at 6 (Oct. 5, 2020).

[83] *Id.*

[84] *Id.*

[85] DLC *Ex Parte* Letter at 5 n.9 (Oct. 14, 2020).

[86] DLC *Ex Parte* Letter at 2 (Nov. 10, 2020) (''[T]here are significant operational and commercial obstacles to producing and submitting the reports by February 15.'').

[87] SNPRM at 70550.

[88] DLC SNPRM Comment at 13 n.35.

[89] Music Reports SNPRM Comment at 1.

[90] MLC SNPRM Comment at 16.

[91] *Id.*

[92] *Id.* at 15–16 (''[I]t is not conceivable that there exists a reasonable restriction on disclosing individual shares that only applies when multiple shares are being disclosed together.'').

[93] *Id.* at 16.

[94] *Id.* App. A at xiii.

[95] *Id.*

[96] DLC SNPRM Comment at 12–13, 13 n.35; MLC SNPRM Comment at 15; DLC & MLC *Ex Parte* Letter at 2, Add. A (Dec. 9, 2020).

[97] While the DLC asserted that this scenario ''is not one that tends to occur in reality,'' it did not dispute the possibility that it could arise or that the MLC would need non-aggregated information in such cases, even if they are relatively rare. DLC *Ex Parte* Letter at 3 (Dec. 11, 2020).

[98] *See* MLC SNPRM Comment at 16.

reported for a particular track because it is subject to a contractual confidentiality restriction, the DMP, for each such track, must certify to the confidentiality restriction and instead provide a clear identification of the total aggregate percentage share that has been matched and paid and the owner(s) of the aggregate matched and paid share. Both scenarios are subject to the SNPRM's proposed exception for vendor-held information, which the Office agrees should be made stricter, along the lines of the MLC's proposal. Subject to a slight modification, the MLC's four proposed conditions are reasonably focused to ensure that the exception only applies where there is a legitimate issue without foreclosing practical reliance on the exception. The final rule adjusts the proposed third condition to limit it to where the DMP cannot compile the information using commercially reasonable efforts within the required reporting timeframe. A DMP relying on the exception must certify that the conditions apply, but the Office disagrees that it is necessary to provide the MLC with a description of any terms on which the vendor offered to provide access to the information. The certification is adequate.

The Office also agrees with the MLC and DLC that it is sufficient for partially matched work information to be delivered to the MLC in a subsequent supplemental report by June 15, 2021, and that delivery of this supplemental report should not be a condition of the limitation on liability. This is reflected in the final rule.

3. Format

The final rule includes adjusted language regarding the formatting of cumulative statements that may be submitted to the MLC. To facilitate efficient and accurate reporting and processing of cumulative statements of account, as supported by the MLC, the NPRM proposed carrying over the existing provision reports of usage format, which requires delivery to the MLC in a machine-readable format that is compatible with its information technology systems, as reasonably determined by the MLC and taking into consideration relevant industry standards.[99]

The DLC expressed concern with this provision, asserting that ''the records at issue are very old in many instances, and therefore reflect the formats of their time,'' and that, for at least some DMPs, ''it would be impossible to produce historical records in the DDEX standard that the MLC has indicated it will use for these purposes.'' [100] (Elsewhere in the record, this DDEX standard is disclosed as DSRF.) [101] The DLC further stated that ''the alternative to a DDEX report—a so-called 'flat file' spreadsheet—is smaller and more manageable,'' is something ''DMPs generally use,'' and ''can be converted by the MLC into a uniform format with some simple computer programming.'' [102] The DLC also said that ''while there are many DMPs, there are not many different formats (even within flat files),'' so the MLC ''will not be significantly burdened by the DMPs' use of formats that are not 100% consistent.'' [103] The DLC also proposed including a qualification that compliance with format requirements be conditioned ''[t]o the extent practicable'' to ''allow some flexibility to [DMPs], which is particularly necessary given the relatively short amount of time left to produce the required report.'' [104]

While noting the DLC's concerns, Music Reports, a major DMP vendor, said that using the MLC's initially intended DDEX format will not be a problem and ''all of Music Reports' current clients are certainly capable of reporting to the MLC in DDEX format, because Music Reports has stored their historical records of use and is capable of transcoding these into the MLC's required DSRF format when necessary.'' [105]

In December 2020, the MLC and DLC reported that they had reached agreement on format requirements.[106] The negotiated proposal would require the MLC to accept both the cumulative statement of account and supplemental metadata report in a simplified format, which the MLC and DLC refer to as the ''simplified usage reporting format'' (''SURF''), a format developed by the MLC in consultation with the DLC and its members.[107] They proposed regulations that would permit the MLC to accept reports from DMPs in alternative formats, but require a DMP to pay to the MLC costs incurred for accepting the alternative format.[108] Music Reports subsequently expressed concern that the announcement of this ''simplified framework'' ''fails to take into account the development lead times necessary to process and present billions of rows of data (per service) in a new format.'' [109]

The Office adopts the format requirements proposed by the MLC and DLC with two modifications. First, although the Office understands the preference for most parties to accept a simplified usage reporting format, it wishes to avoid discouraging submission of reports in alternate, but still acceptable formats, where this may be necessary for a DMP to comply with the statutory timeframe for reporting and transfer of royalties to the MLC, to the ultimate benefit of copyright owners.[110] Thus, the Office has modified the proposed language to require submission of cumulative statements of account in SURF to the extent practicable, but otherwise allow submission of an alternative format by agreement. As a part of this proceeding, the Office is adopting provisions that permit voluntary agreements to alter particular reporting procedures, similar to the one adopted for reports of usage.[111] The Office does not anticipate that the MLC will generally rebuff requests to report in alternative formats—indeed, there appears to be little authority for it to reject a cumulative statement of account and accompanying transfer of royalties in different formats. Nevertheless, the rule provides that the MLC's consent to such requests should not be unreasonably withheld. For example, given the MLC's previous signaling of the intention to require reporting in the more complex DSRF format, which apparently generated some reliance interests, the

[99] NPRM at 43520; *see* MLC NPRM Comment at 2 (supporting the proposed format provision).

[100] DLC *Ex Parte* Letter at 3 (Aug. 27, 2020); *see also* DiMA NPRM Comment at 6; DLC NPRM Comment at 10. Music Reports takes issue with the DLC's further assertion that ''[t]he vendors who maintain [historical records of use] are also unlikely to be familiar with DDEX,'' stating that, at least with respect to Music Reports, this is ''inaccurate.'' Music Reports *Ex Parte* Letter at 2 (Sept. 29, 2020) (alterations in original) (quoting DLC *Ex Parte* Letter at 3 n.6 (Aug. 27, 2020)).

[101] *See, e.g.,* MLC *Ex Parte* Letter at 3 (June 17, 2020) (noting the MLC will employ the DDEX DSRF format for reports of usage); *see generally* DDEX, *DSRF Royalty Reporting Profile, https://kb.ddex.net/display/3mil/DSRF+Royalty+Reporting+Profile* (last visited Dec. 20, 2020).

[102] DLC *Ex Parte* Letter at 3 (Aug. 27, 2020).

[103] *Id.*

[104] DLC NPRM Comment at 10, Add. 23.

[105] Music Reports *Ex Parte* Letter at 2 (Sept. 29, 2020) (''[W]e are in communication with the MLC at senior levels and are already working with them on the DDEX integration and testing process to ensure both sides are ready to exchange the necessary files. It appears to Music Reports that the time available for this task is adequate, and that commencement of operations on (or, where applicable, before) the License Availability Date is reasonably on track to occur.'').

[106] DLC & MLC *Ex Parte* Letter at 2 (Dec. 9, 2020).

[107] *Id.; see also* Music Reports *Ex Parte* Letter at 2 (Sept. 29, 2020)

[108] DLC & MLC *Ex Parte* Letter at 2, Add. A–8 (Dec. 9, 2020); *see also* Music Reports *Ex Parte* Letter at 2 (Sept. 29, 2020)

[109] Music Reports *Ex Parte* Letter at 2 (Dec. 15, 2020)

[110] *See also, e.g.,* 37 CFR 210.27(h)(1) (requiring the MLC to offer at least two formatting methods for submitting reports of usage).

[111] *See id.* at 210.27(n).

Office assumes that it would be reasonable for the MLC to accept a report submitted in that format.

Although the Office appreciates the joint proposal's intention behind requiring DMPs to incur incremental costs of submitting reports in alternative formats, thereby encouraging standard reporting formats and reducing the potential MLC burden, the Office declines to require this by regulation. Funding of the total costs of the MLC is already provided for in the statute, including covering any unanticipated shortfalls.[112] The Office is reluctant to establish a precedent whereby the MLC can directly charge individual DMPs; such a proposal may be more appropriately considered under the aegis of the Copyright Royalty Judges in connection with their establishment of the administrative assessment.[113] The Office notes, however, that the statute permits voluntary contributions from DMPs to fund the collective total costs of the MLC.[114] The parties could consider whether this provision, along with the ability to enter into voluntary agreements to alter process, might accomplish the same goal as their proposal to require payment of incremental costs.

B. Estimates, Adjustments, and Reconciliation of Cumulative Statements

This section of the preamble discusses requirements connected to the reliance upon estimates, adjustments, and reconciliation of statements, with respect to royalty calculation inputs as well as the relationship between voluntary agreements and the obligation to transfer accrued royalties to the MLC.

1. Estimates and Adjustments Relating to Royalty Pool Calculation Inputs

The Office is adopting a rule that establishes a mechanism for DMPs to employ necessary estimates and adjustments, including to account for unknown royalty pool calculation inputs, in a manner similar to the recently adopted rule governing submission of reports of usage under the blanket license. Under the cumulative statement of account regulations initially adopted in December 2018, DMPs could make estimates to the extent permitted by 37 CFR 210.6(d)(3)(i) (where the final public performance royalty has not yet been determined), and there would be no adjustment mechanism.[115] The NPRM proposed to retain this status quo, except to allow any overpayment (whether resulting from an estimate or otherwise) to be credited to a DMP's account, or refunded upon request.[116] The Office tentatively declined to conform the proposed provision to the estimates and adjustments provisions for reports of usage given the one-time nature of the cumulative statements as compared to the regulatory structure designed for the ongoing reporting of reports of usage.[117]

Both the MLC and DLC sought modification to this aspect of the rule. While they gave different reasons and offered different proposed modifications in their comments to the NPRM,[118] more recent submissions revealed concurrence that the most prudent approach is for the Office to adopt a final rule that more closely tracks the estimates and adjustments provisions adopted for reports of usage under the blanket license.[119] The Office agrees and, following notice in the SNPRM and due consideration of the public comments, has revised the rule accordingly. On reflection, the Office acknowledges that while cumulative statements of account are a one-time filing, the need to estimate inputs that cannot be finally determined at the time reporting is due, and to make adjustments in the future, is no less critical here than in the context of reports of usage. Although the NPRM would have narrowly allowed estimates where the final public performance royalty is unknown, the Office has concluded that broadening this provision and allowing DMPs to make estimates and adjustments more generally as necessary, such as based on the discovery of fraudulent streams after algorithms are applied, and also accounting for the possibility of both underpayments and overpayments, best fulfills the statutory objectives of facilitating accurate royalty payment.[120]

The recent remand of the CRJs' *Phonorecords III* determination by the D.C. Circuit further illustrates why this provision should be expanded.[121] The CRJs' *Phonorecords III* determination was intended to set rates and terms for the section 115 mechanical license for the period from January 1, 2018 through December 31, 2022, but the D.C. Circuit's decision means that ultimate rates for this time period have not yet been finalized. As a result, when DMPs are required to deliver their cumulative statements of account to the MLC in February they will not know what the final operative royalty rate is for the compulsory license for the period going back to 2018. Without changes to the NPRM's proposal, there would be no mechanism for DMPs to make adjustments after the CRJs eventually establish final rates and terms, meaning that a DMP acting in good faith could, through no fault of its own, end up with an incurable underpayment and be rendered ineligible for the limitation on liability.[122] The Office does not believe Congress could have intended for a DMP's limitation on liability to depend on how well it predicts what the CRJs may do on remand.

The statutory language requiring that ''*all* accrued royalties'' be transferred 45 days after the license availability date does not restrict the Office's authority or discretion to adopt the rule's system of estimates and adjustments.[123] Estimates and adjustments have long been a part of the section 115 reporting and payment structure,[124] and Congress was surely aware of that when it adopted the further statutory language requiring related reporting to include ''information . . . provided . . . in accordance with . . . applicable regulations.''[125] The tension between these two phrases in the same statutory provision creates an ambiguity that the Office concludes to be properly within its authority to resolve in its reasonable discretion.[126] Moreover, given the degree of importance Congress placed

[112] 17 U.S.C. 115(d)(7).

[113] In December 2020, the DLC and MLC jointly petitioned the CRJs to modify the terms of implementation of the initial administrative assessment. *See* Joint Motion to Modify the Terms of Implementation of the Initial Administrative Assessment, Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective (No. 19–CRB–0009–AA) (filed Dec. 18, 2020), *https://app.crb.gov/document/download/23405.*

[114] 17 U.S.C. 115(d)(7)(A)(ii).

[115] NPRM at 43520.

[116] *Id.*

[117] *Id.*

[118] DLC NPRM Comment at 5–6, Add. 24; MLC NPRM Comment at 4–5, App. A at vi.

[119] DLC SNPRM Comment at 2; MLC SNPRM Comment at 13–14, App. A at v, ix–x; DLC *Ex Parte* Letter at 3–4, 12–14 (Oct. 14, 2020); MLC *Ex Parte* Letter at 2 (Oct. 5, 2020).

[120] *See* DLC NPRM Comment at 5–6 (supporting approach); DLC *Ex Parte* Letter at 2–3 (Nov. 10, 2020) (providing examples of various estimates and adjustments).

[121] *See Johnson* v. *Copyright Royalty Bd.,* 969 F.3d 363.

[122] *See* DLC NPRM Comment at 6 (''[A]s a result, the cumulative statements will undoubtedly need to be adjusted to account for the new rates when they come into force.''); DLC *Ex Parte* Letter at 3 (Oct. 14, 2020) (''[D]igital music providers may require significant retroactive adjustments to the amount of accrued royalties during the relevant time period depending on the resolution of that proceeding.'').

[123] *See* 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa) (emphasis added).

[124] *See* 37 CFR 210.6, 210.7.

[125] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[126] *See, e.g., id.* at 115(d)(12)(A); *City of Arlington* v. *FCC,* 569 U.S. 290, 296 (2013); *Brand X internet Servs.,* 545 U.S. at 980, 982.

upon the limitation on liability,[127] it would be unreasonable to believe Congress intended that, where the precise royalty owed cannot be ascertained at the time it is due to the MLC, the DMP must guess and hope that subsequent events outside of its control do not render that amount too low.[128]

Accordingly, the Office is adopting language that allows DMPs to use certain estimates where the computation of attributable royalties depends on an input that cannot be finally determined at the time the cumulative statement of account is due, and the reason is outside of the DMP's control.[129] The rule also permits DMPs to subsequently adjust cumulative statements in five situations:[130] First, where a previously estimated input becomes finally determined, such as a determination of the final public performance royalty; second, where an audit of a DMP reveals a need to adjust a payment; third, in response to a change in applicable rates or terms by the CRJs; fourth, where the DMP discovers or is notified of an inaccuracy in the cumulative statement of account, or in the amounts of royalties owed, based on information that was not previously known to the DMP despite its good-faith efforts; and finally, as the DLC requested in response to the SNPRM,[131] to ensure consistency with any adjustments made in an annual statement of account generated under 37 CFR 210.7 for the most recent fiscal year. The Office finds this additional scenario to reasonably further the aims of accuracy and consistency. To ensure promptness, the final rule provides that where more than one scenario necessitates the same adjustment, the six-month period to make the adjustment begins to run from the occurrence of the earliest triggering event.

The MLC and DLC both signaled support for the SNPRM's approach, and the Office received no comments opposing it.[132] The MLC maintained that this provision should be limited to information outside a given DMP's control and expressed concern that the use of the word ''attributable'' before ''royalties'' may be read to allow a DMP to report ''something less'' than total royalties.[133] The Office does not intend the use of the word ''attributable'' to allow a casual approach to royalty calculations; the royalty calculation requirements of paragraph (d), including the estimate provision in paragraph (d)(2), are tied to the requirement in paragraph (c)(4) to report on all unmatched usage, meaning these provisions require reporting of the total potential royalties, calculated at the applicable rate under 37 CFR part 385, that could be owed for all such usage.

2. Estimates and Adjustments Relating to Private Agreements

Relatedly, the Office is resolving requests by DMPs that the rule address the treatment of payments made pursuant to agreements that required the distribution of unmatched royalties that predate the MMA's enactment, to avoid a scenario that DMPs contend could result in ''double payment'' of royalties to musical work copyright owners for uses covered under these agreements. As explained below, the rule resolves this request by establishing conditions under which a DMP may in good faith employ estimates in calculating total accrued royalties, subject to subsequent adjustments, to reflect the effect of these agreements upon the DMP's cumulative reporting obligations. A relevant copyright owner may notify the MLC of a dispute in good faith over a DMP's reliance on such an agreement. If so, once the MLC would otherwise be ready to distribute the disputed royalties, the MLC will invoice the DMP for the disputed royalty amounts and hold those amounts until the dispute is resolved.

i. Factual Background

Although the Office received no comments in 2018 when it solicited public input on the transition rule that is currently in place, the DLC and individual DMPs subsequently requested that the Office update its rule to address the interrelationship between statutory obligations and certain private agreements.[134] The DLC initially proposed that the Office adopt a provision stating:

> Notwithstanding anything in this section to the contrary, digital music providers are not required to accrue any royalties that are required to be paid to copyright owners of musical works pursuant to any agreements entered into prior to the effective date of the Music Modernization Act, and such royalties shall not be treated as ''accrued royalties'' for purposes of this section or 17 U.S.C. 115(d)(10).[135]

The Office declined to adopt this initial proposal, in part over concerns that it was overbroad, noting that the Office ''must be careful to avoid speaking over either the statute or private transactions.''[136] The Office noted that if these agreements were, as the DLC suggested, in ''conflict'' with ''the MMA's directions in section 115(d)(10) regarding the accrual of unmatched royalties,'''[137] the statute ''could not yield to such agreements.''[138] To address the DLC's concerns, however, the Office provided preliminary guidance regarding the statutory obligations to report all accrued royalties while preserving the effectiveness of existing voluntary agreements, noting that the proposed rule included a provision that would require the MLC to credit or refund any overpayment back to the DMP, and offered to have a further dialogue.[139]

A number of parties took the Office up on this offer, and the record now benefits from this enriched dialogue. While the Office reiterates its view that matters regarding the specific interpretation of various private contracts should be resolved by the relevant parties rather than a blanket rule, additional information has been provided that narrows the focus of the

[127] *See* H.R. Rep. No. 115–651, at 13–14; S. Rep. No. 115–339, at 14–15; Conf. Rep. at 12–13 (''[C]ontinued litigation generates unnecessary administrative costs, diverting royalties from artists. . . . The imposition of detailed statutory requirements for obtaining [the] limitation of liability ensure that more artist royalties will be paid than otherwise would be the case through continual litigation.''; provision is a ''key component that was necessary to bring the various parties together in an effort to reach common ground''); Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020) (stating that ''the intent of the MMA was to provide legal certainty for past, present, and future usage'').

[128] *See, e.g., Mova Pharm. Corp.* v. *Shalala,* 140 F.3d 1060, 1068 (D.C. Cir. 1998) (''If the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, the intention of the drafters, rather than the strict language, controls. The rule that statutes are to be read to avoid absurd results allows an agency to establish that seemingly clear statutory language does not reflect the unambiguously expressed intent of Congress, and thus to overcome the first step of the *Chevron* analysis.'' (internal citations omitted)).

[129] *See* SNPRM at 70549.

[130] *Id.* at 70550–51.

[131] *See* DLC SNPRM Comment at 14–15.

[132] *Id.* at 2; MLC SNPRM Comment at 14, App. A at v, ix–x; *see also* MLC *Ex Parte* Letter at 2 (Oct. 5, 2020); DLC *Ex Parte* Letter at 3–4, 12–14 (Oct. 14, 2020).

[133] MLC SNPRM Comment at 14 n.7. As noted above, it is separately possible that computation errors could be corrected under the adjustment provisions, for example, following an audit. *See* DLC NPRM Comment at 5; DLC SNPRM Comment at 2 (supporting the Office's approach).

[134] *See* 84 FR 10685, 10686 (noting the Office received no comments in Dkt. 2018–10); *see also, e.g.,* DLC Initial NOI Comment at 3 (''Rulemaking will be necessary to clarify the relationship between these preexisting deals and the MMA's provisions regarding accrual of unmatched royalties during the transition period leading to the license availability date.'').

[135] DLC Initial NOI Comment at 18–19.

[136] NPRM at 43522–23.

[137] DLC Initial NOI Comment at 18.

[138] NPRM at 43523 (citing DLC Initial NOI Comment at 19).

[139] *Id.*

DLC's request.[140] The DLC, NMPA, and individual DMPs and publishers disclosed details regarding agreements that certain DMPs apparently entered into with the NMPA and the ''vast majority'' of the U.S. music publishing industry.[141] These agreements have been referred to using various terms by the parties, including as liquidation agreements, pending and unmatched agreements, or NMPA settlement agreements, but it has become clear that the issue centers on sets of agreements with four signatory services.[142] The DLC represented that these services are Spotify,[143] YouTube,[144] MediaNet, and Rhapsody; the first three met with the Office individually, generally corroborating the DLC's position and providing specifics as to their individual circumstances.[145] The Office also met with the NMPA and certain individual publishers.[146] From the information provided, the Office has gleaned a general sense of the shared understandings between the interested parties, as well as areas of disagreement.

It appears undisputed that these agreements were generally structured through an umbrella agreement between the NMPA and the relevant service, where publishers were subsequently able to, and did, enter into individual agreements with such DSPs.[147] The DLC characterizes these agreements as forming the framework for the idea of the MMA, and factual reports of the time support this characterization.[148] As reported with respect to two of these agreements, publishers released claims against the relevant service for a relevant period of time of usage in exchange for payments, including (i) for works that were claimed and (ii) for a market-share based distribution of unclaimed royalties after a subsequent period of time.[149] For example, under its agreement, Spotify agreed to hold back amounts required to pay non-participating publishers, which was represented to the Office as calculated conservatively to account for the risk that the participating parties had undercounted the royalties accrued for non-participating copyright owners.[150]

As described by NMPA at the time of agreement in 2016, the NMPA-Spotify agreement established ''a large bonus compensation fund that is a substantial percentage of *what is currently being held by Spotify for unmatched royalties,* and creates a better path forward for finding the owners of publishing rights who should receive streaming royalties.'' [151] As a result, the NMPA and Spotify announced that:

> The deal will allow copyright owners to identify their works and receive the money Spotify has set aside for the past usage of unmatched works. It will allow the entire industry to benefit by filling in the gaps in ownership information, which help to ensure that royalties are promptly paid to their rightful owners in the future. Any royalties associated with works that remain unmatched after each claiming period will be distributed to publishers and songwriters who participate in the settlement, but the agreement will not affect the royalties owed to any publisher or writer who does not choose to participate. The agreement is a key step in improving transparency in the music community and ensuring that music's creators receive royalties when their music is used.[152]

NMPA's President and CEO further explained, ''we have found a way for Spotify to quickly get royalties to the right people.'' [153] Spotify represented that as it turned out, the transaction costs associated with claiming musical works, coupled with the assurance of a market-share based distribution for unclaimed works, resulted in a low level of publisher participation in claiming ownership of musical works.[154] As a result, most payments were made pursuant to the unmatched

[140] *See id.*

[141] The DLC quotes an NMPA statement claiming that one agreement covered ''virtually the entire commercially relevant publishing community.'' DLC NPRM Comment at 15 (quoting Tim Ingham, *Hunt for US Streaming Publishing Settlements Won't Stop at Spotify,* Music Business Worldwide (Mar. 20, 2016), *https://www.musicbusinessworldwide.com/hunt-for-us-streaming-publishing-settlements-wont-stop-at-spotify*); *see also* Ed Christman, *Vast Majority Join Royalties Settlement Between Spotify and Publishing Group,* Billboard (July 11, 2016), *https://www.billboard.com/articles/business/7431272/nmpa-spotify-settlement-most-members-join.*

[142] To inform its background analysis, and by the consent of the contracting parties, the Office has received three of the agreements between the NMPA and individual services on a confidential basis, which has been duly noted in this rulemaking docket. *See* DLC NPRM Comment at 13 (''We urge the Office to request copies of these NMPA agreements, subject to appropriate confidentiality protections.''); Google *Ex Parte* Letter at 1 (Oct. 23, 2020); MediaNet *Ex Parte* Letter at 1–2 (Oct. 28, 2020); NMPA *Ex Parte* Letter at 1 (Aug. 25, 2020); Spotify *Ex Parte* Letter at 1–3 (Oct. 9, 2020); *see also* 5 U.S.C. 552(b)(4).

[143] *NMPA and Spotify Announce Landmark Industry Agreement for Unmatched U.S. Publishing and Songwriting Royalties* (Mar. 17, 2016), *http://nmpa.org/press_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties.*

[144] *NMPA and YouTube Reach Agreement to Distribute Unclaimed Royalties* (Dec. 8, 2016), *http://nmpa.org/press_release/nmpa-and-youtube-reach-agreement-to-distribute-unclaimed-royalties.*

[145] DLC *Ex Parte* Letter at 1–2 (Oct. 14, 2020); Google *Ex Parte* Letter at 1–3 (Oct. 23, 2020); MediaNet *Ex Parte* Letter at 2 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 2 (Oct. 9, 2020).

[146] NMPA *Ex Parte* Letter at 1–2 (Aug. 24, 2020); SATV *Ex Parte* Letter at 1–2 (Oct. 28, 2020); UMPG *Ex Parte* Letter at 1–2 (Oct. 30, 2020); WMG *Ex Parte* Letter at 1 (Oct. 21, 2020). The Office also offered to meet with additional publishers.

[147] *See, e.g.,* DLC Initial NOI Comment at 17; MediaNet *Ex Parte* Letter at 2 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 1 (Sept. 1, 2020); *see also* Ed Christman, *Vast Majority Join Royalties Settlement Between Spotify and Publishing Group,* Billboard (July 11, 2016), *https://www.billboard.com/articles/business/7431272/nmpa-spotify-settlement-most-members-join* (''The vast majority of our members have opted into our settlement,'' NMPA president and CEO David Israelite tells *Billboard,* saying the agreement has ''one of our highest opt-in rates ever.'').

[148] DLC NPRM Comment at 13 (''[A]t issue are specific industry-wide accrued royalty liquidation agreements that the NMPA . . . structured with DMPs with the specific purpose of distributing accrued royalties to copyright owners, based on a claiming and market-share distribution model that was later essentially codified in the MMA. These landmark agreements were aimed at solving the exact same problem that the MMA address: Ensuring that accrued royalties for unmatched works are paid out promptly to copyright owners.''); DLC *Ex Parte* Letter at 1 (Aug. 11, 2020) (''We discussed industry-wide agreements between certain digital services (Spotify, Google, MediaNet, and Napster/Rhapsody) and the [NMPA] that predated the enactment of the [MMA] and facilitated distribution of historic accrued royalties to copyright owners. As we explained, those agreements were the model for the MMA.'').

[149] Ed Christman, *Spotify and Publishing Group Reach $30 Million Settlement Agreement Over Unpaid Royalties,* Billboard (Mar. 17, 2016), *https://www.billboard.com/articles/business/7263747/spotify-nmpa-publishing-30-million-settlement-unpaid-royalties* (''In exchange for participating in the settlement, publishers release Spotify from any claims related to the identified pool of pending and unmatched works.''); Ed Christman, *YouTube Strikes Settlement Deal Over Unpaid Royalties with National Music Publishers Assoc.,* Billboard (Dec. 8, 2016) *https://www.billboard.com/articles/business/7616409/youtube-settlement-unpaid-royalties-national-music-publishers-association.*

[150] *NMPA and Spotify Announce Landmark Industry Agreement for Unmatched U.S. Publishing and Songwriting Royalties* (Mar. 17, 2016), *http://nmpa.org/press_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties* (''the agreement will not affect the royalties owed to any publisher or writer who does not choose to participate''); Spotify *Ex Parte* Letter at 2 (Oct. 9, 2020) (''Spotify confirmed that this 'holdback' reflects the portion of the market that NMPA and Spotify estimated as a conservative amount designed to cover the market share of non-participating publishers—and that Spotify's data reflected that the non-covered streaming during the relevant usage periods is likely even smaller than that.'').

[151] *NMPA and Spotify Announce Landmark Industry Agreement for Unmatched U.S. Publishing and Songwriting Royalties* (Mar. 17, 2016), *http://nmpa.org/press_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties* (emphasis added).

[152] *Id.*

[153] *Id.*

[154] Spotify *Ex Parte* Letter at 2–3 (Oct. 9, 2020) (''The effect of this was that publishers did not need to claim unmatched works—and, for the most part, did not do so—in order to participate in the market share distribution of unclaimed royalties at the conclusion of each claiming period.''); *id.* at 2 n.2 (noting ''[the] tremendous difficulty in identifying works embodied in particular tracks'').

liquidation provision of the agreement.[155]

Contemporary statements surrounding the NMPA-Google/YouTube agreement made similar claims that the agreement structure would represent a breakthrough path ''to help pay out millions of dollars in previously unclaimed royalties to publishers and songwriters.'' [156] The Google/YouTube agreement was reported to be structured slightly differently, with an initial four-month claiming period, followed by three-month claiming periods that were open for respective twelve-month usage periods.[157] The Office was also informed that it covered more than just uses eligible for the section 115 license, *e.g.,* broader access to YouTube's Content ID claiming platform.[158] Similar to the MMA structure, payment for unmatched uses based on market share occurred only after an additional holdback period, two years for the Google/YouTube program.[159] Like Spotify, Google disclosed that participation in claiming activities was relatively low, with ''about 18% to 20%'' of unmatched works ''eventually claimed, with the remainder distributed on a market share basis.'' [160]

Participation by publishers in these agreements for the relevant time periods was apparently extremely high.[161] For example, NMPA reported that 96% of its members participated in the Spotify agreement.[162] As a result, for the time periods these agreements were respectively in effect, the services in question paid ''tens of millions of dollars'' to copyright owners that the DLC describes as payments to release claims for accrued royalties based on usage that was unmatched to a particular musical work.[163] In describing the landscape, the Office also credits NMPA's assertion that the ''pending and unmatched agreements'' varied with respect to material provisions and market coverage, as well as with respect to performance by the relevant services.[164] The Office does not, however, understand any party to dispute the general contours of these agreement structures as described herein.

The relevant parties agree that these agreements, to the extent they are valid, performed, and relevant, do not address the entire obligations for the participating services. First, as noted, they do not account for royalties accrued by DSPs for uses owed to non-participating music publishers or other copyright owners (*e.g.,* self-administered songwriters). The Office does not understand any party, including the DLC, to contend that these agreements may be used to alleviate a DMP's obligation under the limitation on liability to transfer royalties for usages of musical works that are not subject to a valid agreement. Second, these agreements only cover a portion of the period DMPs need to report on to obtain the statutory limitation on liability, meaning that the DMP would need to transfer unclaimed accrued royalties for any uncovered periods.[165] After conducting ''a limited survey of a subset of DLC members,'' the DLC estimates ''that several hundred million dollars were available to be transferred to the MLC as accrued royalties'' by the relevant services, not including amounts that those DMPs maintain do not constitute accrued royalties as a result of the operation of pending and unmatched agreements.[166]

DMPs repeatedly reminded the Office that submission of cumulative statements and payment of accrued royalties is a condition for DMPs to make use of the optional limitation on liability, and not a condition of the ongoing blanket license.[167] From their perspective, an obtainable limitation on liability was a critical piece of the MMA's core compromise, intended to short-circuit an inefficient and costly pattern of litigation so long as a DMP complied with the relevant provisions.[168] The DLC thus sought clarity surrounding this reporting obligation, suggesting that absent regulatory certainty, ''DMPs may be forced to *retain* accrued royalties to fund'' ensuing infringement litigation, ''precisely what the MMA was supposed to prevent.'' [169] It further suggested that if regulations ''increase[] the risk that a court would deem a DMP to not have complied with the requirements in section 115(d)(10), a DMP could make the rational choice to forego the payment of accrued royalties entirely, and save that money to use in defending itself against any infringement suits.'' [170]

Given the DLC's statement that ''several hundred million'' dollars are otherwise ''available to be transferred to the MLC as accrued royalties,'' a DMP's election to retain accrued royalties for litigation expenses would have the troubling result of withholding from copyright owners—those who did *not* participate in the agreements at issue (or for time periods outside such valid agreements)—compensation that all agree they are otherwise entitled to receive.[171] Accordingly, the Office concludes that regulations, to the extent appropriate and permissible under the statute, should maintain the calibration intended by Congress to incentivize DMPs to participate in transferring over accrued royalties, without prejudicing the entitlements of music publishers or songwriters to receive compensation for past usages of their works. As Chairman

[155] Google *Ex Parte* Letter at 2 (Oct. 23, 2020); Spotify *Ex Parte* Letter at 2–3 (Oct. 9, 2020).

[156] *NMPA and YouTube Reach Agreement to Distribute Unclaimed Royalties* (Dec. 8, 2016), *http://nmpa.org/press_release/nmpa-and-youtube-reach-agreement-to-distribute-unclaimed-royalties.*

[157] *Id.;* Google *Ex Parte* Letter at 1–2 (Oct. 23, 2020).

[158] *See* Google *Ex Parte* Letter at 2–3, 2 n.2 (Oct. 23, 2020) (noting that the agreement ''encompasses more than section-115-eligible uses; rather, it covers usage on YouTube more generally'').

[159] *See id.* at 2.

[160] *Id.*

[161] DLC NPRM Comment at 13 (quoting *Lowery et al.* v. *Rhapsody Int'l Inc.,* No. 4:16-cv-01135–JSW (N.D. Cal. filed Mar. 7, 2016), Dkt. No. 175 at 3) (''Rhapsody has been advised by the NMPA that the aggregate market share of the NMPA members who opted-in to the NMPA[-Rhapsody] agreement is approximately 97.13%.''); Spotify *Ex Parte* Letter at 5 (Oct. 9, 2020) (projecting that ''an estimated 5–10% of the market of non-participating publishers'' were not part of Spotify's agreement); *see* DLC NPRM Comment at 14 (''These agreements have all operated in essentially the same way. . . . [F]or each period covered by the agreement, the vast majority of the pool of accrued unmatched royalties (*e.g.,* 90%) was distributed to participating copyright owners based on their respective market shares'' and ''[t]he remaining, smaller share of royalties (*e.g.,* 10%) was left in the accrued pool as reserve funds.'').

[162] Ed Christman, *Vast Majority Join Royalties Settlement Between Spotify and Publishing Group,* Billboard (July 11, 2016), *https://www.billboard.com/articles/business/7431272/nmpa-spotify-settlement-most-members-join.*

[163] DLC *Ex Parte* Letter at 2 (Nov. 17, 2020). The Office understands that this amount does not encompass the smaller subset of royalties paid pursuant to ''claimed'' uses of works. Google *Ex Parte* Letter at 2 (Oct. 23, 2020); Spotify *Ex Parte* Letter at 2–3 (Oct. 9, 2020)

[164] NMPA *Ex Parte* Letter at 1–2 (Aug. 24, 2020).

[165] *See, e.g., NMPA and YouTube Reach Agreement to Distribute Unclaimed Royalties* (Dec. 8, 2016), *http://nmpa.org/press_release/nmpa-and-youtube-reach-agreement-to-distribute-unclaimed-royalties* (noting initial claiming period covering uses from ''August 1, 2012 through December 31, 2015'' and that the claiming process ''will be repeated for future twelve-month usage periods beginning on January 1, 2016 and ending on December 31, 2019''); MediaNet *Ex Parte* Letter at 2 (Oct. 28, 2020) (noting performance periods for MediaNet agreements); Spotify *Ex Parte* Letter at 5 (Oct. 9, 2020) (noting that Spotify terminated its agreement).

[166] DLC *Ex Parte* Letter at 2 (Nov. 17, 2020) (''DLC also explained that the accruals that were derecognized because copyright owners were paid and provided releases were a fraction of that amount [of several hundred million dollars]—on the order of tens of millions of dollars.'').

[167] *See, e.g.,* DiMA NPRM Comment at 3; DLC *Ex Parte* Letter at 4 (Oct. 14, 2020); DLC & MLC *Ex Parte* Letter at 2 (Dec. 9, 2020).

[168] DiMA NPRM Comment at 3; *see also* H.R. Rep. No. 115–651, at 13; S. Rep. No. 115–339, at 14; Conf. Rep. at 12.

[169] DLC NPRM Comment at 3–4.

[170] *Id.* at 4; *see also* MediaNet *Ex Parte* Comment at 3 (Oct. 28, 2020).

[171] DLC *Ex Parte* Letter at 2 (Nov. 17, 2020).

Graham explained in a letter to the Register:

> The legislative history makes clear that . . . ''continued litigation generates unnecessary administrative costs, diverting royalties from artists.'' . . . Since the intent of the MMA was to provide legal certainty for past, present, and future usage, it is critical that this issue be resolved in a manner that protects copyright owner interests while ensuring that songwriters are paid their splits and services are not burdened with double payments. If the parties are unable to address this current dispute on their own in the immediate future, I urge the Copyright Office to bring them together in order to prevent a return to the inefficient litigation that featured prominently in the prior licensing regime.[172]

In response, the Office convened a multi-stakeholder call to address the substance of this rulemaking, and this rule reflects the comments from that discussion.[173]

The crux of the dispute concerns the statutory requirement to accrue and hold royalties, and to maintain them in accordance with GAAP principles. While there is agreement that the statute requires ''all accrued royalties'' [174] to be reported and paid over to the MLC, there is disagreement regarding the meaning of this requirement in light of these industry-wide agreements and surrounding statutory language. The DLC and individual DMPs contend that the requirement to maintain accrued royalties in accordance with GAAP has resulted in the derecognition of obligations extinguished by these agreements, such that these previous liabilities are not part of what must be transferred to the MLC to be eligible for the limitation on liability.[175] Participating DMPs also suggest that an alternate reading would penalize those companies that entered into voluntary agreements to ensure royalties were paid to publishers and songwriters, in comparison to DMPs who did not enter into such agreements to settle pre-MMA disputes.[176] As the DLC put it, ''these agreements were designed to, and did, put tens of millions of dollars in statutory royalties in the hands of copyright owners—money that they had been unable to access due to the broken pre-MMA statutory royalty system.'' [177] The DLC also noted that ''some DMPs simply do not have the financial resources to make duplicate payments'' under both their agreements and the limitation on liability, which would force them to forgo the benefit of the limitation on liability.[178]

In contrast, the MLC stated that ''[w]hile prior to the enactment of the MMA, certain DMPs entered into settlement agreements with certain music publishers in connection with disputes arising from their failure to license, match and/or pay royalties due, such settlement payments were definitively not the proper payment of royalties to copyright owners of unmatched uses,'' and were ''more likely consideration for releases from liability for copyright infringement or covenants not to sue.'' [179] As discussed below, the MLC contends that the clear directive of the statute precludes the DLC's interpretation and that services must transfer over all royalties (calculated at the statutory rate) for all unmatched uses without regard for these agreements.

The MLC and various music publishers acknowledge, however, that there may be a need for some resolution with respect to the effect of past payments related to usage of unmatched works. Strikingly, despite much discussion on this matter, the administrative record contains no statement by any music publisher or other copyright owner professing entitlement to royalty payments related to usages for which they have entered into a valid liquidation agreement. Warner Music Group, for example, explained, ''[f]or those DSPs with which we have already settled claims for the distribution of royalties owed before the enactment of the MMA, we consider these claims closed.'' [180] Universal Music Publishing Group (''UMPG'') ''believes that any issues relating to payments under private settlements can and should be dealt with between the contracting parties'' and ''intends to assist and facilitate voluntary procedures for doing so with the digital services, to the extent applicable.'' [181] And Sony/ATV Publishing (''SATV'') ''is open to discussing letters of direction and other potential solutions that would ensure that the requirements of the MMA are satisfied and also address the concerns raised by the digital services regarding payments made pursuant to private settlements.'' [182] SATV prefers ''that any potential reimbursements to digital services be made by the MLC rather than music publishers.'' [183] Representing the marketplace at large, NMPA indicated a preference that the issue ''be addressed through state contract law and discussions between the contracting parties.'' [184]

The MLC and others suggested that one potential solution could be to rely upon letters of direction. Although this approach was not entirely fleshed out, as the Office understands it, the idea is that disputes could be resolved by letters of direction sent by a copyright owner directing the MLC to return royalties that would otherwise go to the copyright owner to the DMP with whom the copyright owner had contracted.[185] The MLC opined that DMPs participating in these agreements would be able to ''sit in the position of an entity that has acquired rights through a license or sale'' and that ''payments can be redirected to the new owner pursuant to the explicit or implicit terms of the private contract.'' [186] Apart from its proffered statutory interpretation addressed below, the MLC did not address how a scheme requiring a DMP to transfer funds to the MLC with an expectation by both the DMP and copyright owner that those funds will ultimately just be returned to that DMP would effectuate Congress's

[172] Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020).

[173] Summaries of that October 30, 2020 discussion are available here: *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office invited every party who had submitted comments on this issue in this rulemaking docket to participate in the discussion.

[174] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[175] DLC SNPRM Comment at 9–10 (stating ''the statute specifically incorporates [GAAP], which specifically contemplate de-recognition of liabilities when they have been extinguished'' and ''it is the incorporation of [GAAP] that, when given meaning (as they must be), provide that once a liability has been extinguished, it is not accrued''); *see also* ARA, FMC & MusicAnswers SNPRM Comment at 3 (''GAAP clearly allows for 'derecognition' of liabilities if certain conditions are met—conditions that these agreements and the releases they include apparently satisfy.''); DLC NPRM Comment at 17 n.45; DLC *Ex Parte* Letter at 2 (Nov. 10, 2020); Spotify *Ex Parte* Letter at 2 (Oct. 9, 2020) (noting that ''the [Spotify] Agreement extinguished such [copyright owner] rights for the periods of time covered by the Agreement—not only because the copyright owner had already received unmatched royalties for those periods, but because the copyright owner had released any and all claims to such royalties'').

[176] DLC Initial NOI Comment at 19; Spotify *Ex Parte* Letter at 1 (Sept. 1, 2020) (''Congress certainly did not intend for double payment of royalties paid to publishers who released claims under those [pre-MMA] agreements''); Google *Ex Parte* Letter at 3 (Oct. 23, 2020) (Google asserts that its YouTube agreement ''was not established to resolve any pending or even threatened litigation. Rather, it was born out of a joint effort by Google and NMPA to ensure that royalties flowed to copyright owners.'').

[177] DLC NPRM Comment at 3.

[178] *Id.* at 11.

[179] MLC Reply NOI Comment at 29.

[180] WMG *Ex Parte* Letter at 1 (Oct. 21, 2020).

[181] UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020).

[182] SATV *Ex Parte* Letter at 1–2 (Oct. 28, 2020).

[183] *Id.*

[184] NMPA *Ex Parte* Letter at 2 (August 24, 2020).

[185] MLC *Ex Parte* Letter at 5 (Oct. 16, 2020) (reflecting NSAI's comments); MLC *Ex Parte* Letter at 5 (Oct. 5, 2020); NMPA *Ex Parte* Letter at 2 (Nov. 3, 2020).

[186] MLC SNPRM Comment at 10.

intention that the MLC operate efficiently and fairly.[187]

DMPs disagreed that reliance upon letters of direction to the MLC would be workable, with Google explaining that a DMP would be unlikely to get complete coverage via letters of direction and, to address any gaps, would ''need to file a significant number of separate declaratory judgment actions in courts around the country.'' [188] The DLC strongly objected to the MLC's suggestion that DMPs should first pay the contested amounts, then seek redress for ''double payments'' by ''proving the existence of a release'' or ''clawing back'' overpayments, contending that ''the DMP does not get any benefit from the transfer of royalties that might be matched (or paid via market share distribution) by the MLC to those same owners pursuant to the limitation on liability provision in the MMA; *it already has a limitation on liability pursuant to the release.*'' [189]

Separately, the MLC clarified that in the event of a relevant dispute between a DMP and a copyright owner, it intended to ''hold such unmatched royalties pending the resolution of the dispute,'' accruing interest until the dispute was resolved.[190] The MLC reasoned that ''Congress intended for the MLC to be that trusted party to receive unmatched royalties and ensure that they are paid to the right parties.'' [191] Spotify objected to this position, stating that the MLC's proposal to require all funds at issue under these agreements to be immediately paid to the MLC would create a dispute ''in the first instance,'' as they are not aware of any participating copyright owner who claims they are entitled to additional funds.[192]

In light of this additional information, the SNPRM proposed a solution that would allow for participating DMPs to pay their accrued royalties in accordance with GAAP, permitting reliance on certain temporary estimations and subject to detailed adjustment provisions. And the SNPRM explained that, ''[u]nder no circumstances could this [noticed] provision be used to shortchange payment of accrued royalties for musical work copyright owners who did not participate in such agreements.'' [193]

The Office received many comments opining on Congress's intent and the statutory payment and reporting requirements for the limitation on liability contained in 17 U.S.C. 115(d)(10)(B)(iv). Some commenters, including the Artists Rights Alliance, the Future of Music Coalition, and MusicAnswers, opined that the statute was ambiguous on this point.[194] Others, including the DLC, DiMA, individual DMPs, the MLC, and representatives of copyright owners and songwriters, suggested that the applicable statutory language is unambiguous,[195] although they offered conflicting interpretations of the relevant requirements. Because of these disparate views, the DLC suggested that parties would benefit from a ''regulatory clarification.'' [196] As discussed below, there was considerable disagreement regarding the meaning of section 115(d)(10)(B)(iv)'s requirement that ''[a]ccrued royalties shall be maintained by the digital music provider in accordance with [GAAP],'' whether this provision would benefit from a regulatory clarification, and whether the Office had authority to promulgate the rule proposed in the SNPRM (or alternate proposals suggested by the DLC).[197]

In brief, the MLC believes that section 115(d)(10)(B)(iv) ''sets out a statutory accrual and payment obligation that identifies precisely what must be accrued, the time frame for holding and the two accepted ways the accrued royalties can be paid,'' that is, to a matched copyright owner or the MLC.[198]

DMPs contend that the aforementioned agreements extinguished their statutory duties to transfer royalties to the MLC, ''not only because the copyright owner had already received unmatched royalties for those periods, but because the copyright owner had *released* any and all claims to such royalties.'' [199] The DLC stated that a ''regulatory clarification . . . may help music industry participants understand the proper treatment of unclaimed royalties under the MMA.'' [200] Beyond the liquidation agreements at issue, the services contended that the MLC's reading would prohibit reliance upon voluntary agreements generally, despite other statutory provisions guaranteeing that such agreements would remain in effect.[201]

The Artist Rights Alliance commented that the proposed rule ''creates a workable, practical system that serves the foundational statutory goal of ensuring songwriters and publishers are accurately, completely, and fairly paid for all uses of their work . . . while providing business certainty needed to ensure the broadest number of digital music providers possible participate in the transfer of unmatched royalty funds contemplated by the MMA.'' [202] The DLC concurred with this assessment and ''strongly supports the proposed rule noticed in the SNPRM.'' [203]

ii. Statutory Analysis

Having considered these comments and examined the relevant statutory text, the Office concludes that the MMA '' 'is silent or ambiguous with respect to the specific issue' '' at hand, *i.e.,* the DMP payment and reporting requirements for the limitation on

[187] *See* Conf. Rep. at 4 (noting that the MLC should engage in an ''efficient and fair administration of the collective in a manner that respects varying interests and concerns'').

[188] Google *Ex Parte* Letter at 3 (Oct. 23, 2020); *see also* DLC SNPRM Comment at 11 (''the MLC's invitation for DMPs to rely on self-help and battle it out in court later is contrary to the spirit of the statute . . . and may lead some DMPs to simply withhold all the royalties in order to fund such litigation''); SGA SNPRM Comment at 8.

[189] DLC SNPRM Comment at 5; *see also* Spotify *Ex Parte* Letter at 4–5 (Oct. 9, 2020) (''[W]e are aware of *no* copyright owner who has released their claims to the royalties covered by the Agreement that is now demanding, or at any time since the Agreement has demanded, a double payment of those royalties.'').

[190] MLC *Ex Parte* Letter at 5 (Oct. 5, 2020). The MLC's proposal would not fall under the MLC's Dispute Resolution Committee and related provisions, as the dispute is not between copyright owners. *See* 17 U.S.C. 115(d)(3)(G)(i)(III)(bb), (K); *see also* DLC *Ex Parte* Letter at 2, n.2 (Oct. 14, 2020) (''The dispute resolution process required by the MMA is aimed at resolving disagreements among copyright owners. . . . Thus, even the solution that the MLC has proposed would require regulatory action by the Office.'').

[191] MLC *Ex Parte* Letter at 5 (Oct. 5, 2020).

[192] Spotify *Ex Parte* Letter at 4–5 (Oct. 9, 2020).

[193] SNPRM at 70546–47.

[194] ARA, FMC & MusicAnswers SNPRM Comment at 2; ARA *Ex Parte* Letter at 1 (Nov. 17, 2020); *see also* DLC NPRM Comment at 16 (noting that Office ''regulation is plainly necessary to provide unambiguous guidance to DMPs and the MLC'').

[195] *See, e.g.,* DiMA NPRM Comment at 5–6; MLC SNPRM Comment at 3; SGA & SCL SNPRM Comment at 2; NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020).

[196] DLC Initial NOI Comment at 18; DLC Reply NOI Comment at 24 (requesting that the Office ''clarify that agreements under which accrued royalties for unmatched musical works were paid to rightsowners, are not 'accrued royalties' subject to transfer to the MLC''); DLC SNPRM Comment at 3 (''the proposed rule provides the clarity needed to preserve the core bargain struck in the MMA'').

[197] MLC SNPRM Comment at 5–8, App. A at i; *see also* NMPA *Ex Parte* Letter at 1 (Nov. 17, 2020); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020); SGA, SCL & MCNA *Ex Parte* Letter at 3 (Nov. 18, 2020).

[198] MLC *Ex Parte* Letter at 3 (Oct. 16, 2020); *see also* NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020); MAC, Recording Acad. & SONA SNPRM Comment at 4; SGA, SCL & MCNA *Ex Parte* Letter at 3 (Nov. 18, 2020).

[199] Spotify *Ex Parte* Letter at 2–4 (Oct. 9, 2020).

[200] DLC Initial NOI Comment at 18; *see also* DLC Reply NOI Comment at 24; DLC SNPRM Comment at 4.

[201] *See, e.g.,* Spotify *Ex Parte* Letter at 3–4 (Oct. 9, 2020); DLC *Ex Parte* Letter at 3 (Oct. 14, 2020).

[202] ARA *Ex Parte* Letter at 1 (Nov. 17, 2020).

[203] DLC SNPRM Comment at 1–3 (quoting ARA *Ex Parte* Letter at 1 (Nov. 17, 2020)).

liability contained in 17 U.S.C. 115(d)(10)(B)(iv) and its subclauses (I) through (III)—particularly the treatment during the transition period of voluntary licenses and other agreements whereby copyright owners may have released certain royalty claims such that a DMP's obligation to pay royalties for related uses has been extinguished, and the related possibility that some portion of unmatched musical work uses may not have accrued royalties associated with them.[204]

First, the statute is not clear about what happens if a DMP legitimately cannot determine what accrued royalties are owed by the required date of transfer to the MLC under section 115(d)(10)(B)(iv)(III). At first glance, the statute presumes this amount will be a final and ascertainable figure by the deadline, directing that DMPs ''not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective.'' [205] But, as discussed above, both the MLC and DLC acknowledge that this may not be possible, particularly in light of the *Phonorecords III* remand, and agree that a regulatory scheme of estimates and adjustments is necessary in at least some instances, such as where the computation of accrued royalties depends upon one or more then-unknown royalty pool inputs outside the DMP's control (such as applicable performance royalties), or where the applicable statutory royalty rates or terms change retroactively after the cumulative statement of account has been delivered to the MLC.[206] Commenters disagree, however, as to whether an estimate and adjustment mechanism should also be applied where certain usage of certain unmatched works may be subject to a voluntary license or other agreement containing an appropriate release of royalty claims. Under such a scenario, because the specific works are unmatched and cannot be identified as being subject to the agreement at the time of delivery of the cumulative statement, the amount of accrued royalties is predicated upon estimating certain usages for which royalties have already been paid or otherwise are not considered accrued.[207]

The statute is no less unclear in the contested scenario (where a voluntary agreement may affect accrued royalties) than the agreed-upon scenario (where an unknown royalty pool input may affect accrued royalties); both involve the statutory reference to ''all accrued royalties,'' which, as discussed above, is ambiguous.[208] Under both scenarios, the purported need to estimate and adjust stems from a DMP's need to pay all accrued royalties by the statutory payment due date when the precise accrued royalties is not yet calculable.[209]

Second, the limitation on liability provision does not address the application of voluntary licenses, making no explicit acknowledgement of their existence. The MLC argues that for ''works initially unmatched that are later matched to voluntary licenses, . . . for periods prior to the license availability date, the MMA provides for payments of matched royalties to be made to copyright owners, and does not provide for the MLC to carve out voluntary agreements,'' further contending that ''the distinction between blanket license coverage and voluntary license coverage only exists after the license availability date.'' [210] The MLC also argues that for a DMP to be eligible for the limitation on liability, after royalties have been accrued in accordance with section 115(d)(10)(B)(iv), they must ''be held through the date when the royalties are either (a) matched and distributed to the proper copyright owner pursuant to subsection II or (b) transferred to the MLC pursuant to subsection III.'' [211] Given that neither section 115(d)(10)(B)(iv)(II) nor (III) references voluntary licenses, this interpretation would seem to result in such licenses not being given effect, whether entered into before the MMA or after. Taken literally, this would seem to mean, for example, that if a DMP uses a work that is not matched by the end of the calendar month of first usage, even if its efforts later result in a match subject to an existing voluntary license (such as delayed matching of new releases), the DMP must pay the copyright owner pursuant to the statutory payment and reporting requirements instead of the terms of the existing agreement in order to retain eligibility for the limitation on liability.[212] The MLC tries to avoid this conclusion by arguing that ''Section 115(d)(10)(B)(iv)(II) is fully consistent on its face with the payment of royalties under voluntary license terms'' because ''[t]he subsection provides that, when a DMP matches an unmatched work, it shall pay all respective accrued royalties to the identified copyright owner 'in accordance with this section and applicable regulations.' '' [213] But, as the DLC observes, this is a misreading of the statute.[214] The language quoted by the MLC concerns ''the information'' that must be ''include[d]'' in the required cumulative statement of account; it does not relate to the payment of royalties or other aspects of the reporting.[215]

The DMPs contend that section 115(d)(10)(B)(iv)(I) speaks to this issue by requiring that ''[a]ccrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles.'' [216] They argue that this provision covers how accrued liabilities can be extinguished, asserting that GAAP permits this in ways not provided for in

[204] *See City of Arlington,* 569 U.S. at 296 (quoting *Chevron,* 467 U.S. at 843); *see also* ARA, FMC & MusicAnswers SNPRM Comment at 2–3 (opining that the statute is ambiguous); ARA *Ex Parte* Letter at 1 (Nov. 17, 2020).

[205] *See* 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[206] *See* DLC NPRM Comment at 5–6; DLC SNPRM Comment at 2; MLC SNPRM Comment at 13–14, App. A at v, ix–x; DLC *Ex Parte* Letter at 3–4, 12–14 (Oct. 14, 2020); MLC *Ex Parte* Letter at 2 (Oct. 5, 2020). In addition, the DLC has suggested that an adjustment scheme is appropriate to address subsequent discoveries of fraudulent stream counts.

[207] *See, e.g.,* ARA, FMC & MusicAnswers SNPRM Comment at 2–4; DLC NPRM Comment at 3–4, 11–18; DLC SNPRM Comment at 1–12; MAC, Recording Acad. & SONA SNPRM Comment at 2–3; MLC NPRM Comment at 8; MLC SNPRM Comment at 2–13; SGA, SCL & MCNA SNPRM Comment at 9; ARA *Ex Parte* Letter at 1 (Nov. 17, 2020); DLC *Ex Parte* Letter at 2 (Oct. 14, 2020); Google *Ex Parte* Letter at 2 (Oct. 23, 2020); MLC *Ex Parte* Letter at 2–3 (Oct. 16, 2020); MLC *Ex Parte* Letter at 2–5 (Oct. 5, 2020); MLC *Ex Parte* Letter at 2–7 (Nov. 17, 2020); NMPA *Ex Parte* Letter at 1 (Nov. 17, 2020); NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020); SATV *Ex Parte* Letter at 1 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 2–5 (Oct. 9, 2020); UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020); WMG *Ex Parte* Letter at 1 (Oct. 21, 2020).

[208] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa); *see supra* section II(B)(1).

[209] The Office finds the MLC's assertion that ''[a] DMP does not *estimate* its total accrued royalties'' unpersuasive, as it begs the question of how a DMP can know its accrued royalties with certainty and finality if, as the MLC agrees, a DMP can estimate its royalty pool inputs where unknown, or where, as is the case presently, no ultimate royalty rates have even been set. MLC SNPRM Comment at 8–10. *Compare id. with* DLC SNPRM Comment at 12 n.33 (referring to ''the necessary estimates that GAAP requires—not just to account for the release of claims prior to the MMA, but for other estimates, including royalty rates and inputs,'' and noting that ''[a]s a result of the D.C. Circuit's vacatur and remand of the Copyright Royalty Board's determination of the relevant statutory royalty rates, it is a given that all DSPs will need to use estimates when calculating accrued royalties pursuant to this provision''). The rule discussed herein simply clarifies that certain good-faith estimates, subject to adjustments, are permitted for purposes of the payment and reporting requirements of the limitation on liability.

[210] MLC *Ex Parte* Letter at 5 (Oct. 5, 2020) (citing 17 U.S.C. 115(d)(3)(I)).

[211] MLC *Ex Parte* Letter at 2–4 (Oct. 16, 2020); *see* MLC SNPRM Comment at 3; MLC *Ex Parte* Letter at 2–3 (Nov. 17, 2020); *see also* MAC, Recording Acad. & SONA SNPRM Comment at 2; Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020).

[212] *See* 17 U.S.C. 115(d)(10)(B)(iv)(II).

[213] MLC *Ex Parte* Letter at 7 (Nov. 17, 2020) (quoting 17 U.S.C. 115(d)(10)(B)(iv)(II)(aa)).

[214] *See* DLC SNPRM Comment at 10.

[215] *See* 17 U.S.C. 115(d)(10)(B)(iv)(II)(aa).

[216] *See id.* at 115(d)(10)(B)(iv)(I).

section 115(d)(10)(B)(iv)(II) or (III), such as pursuant to agreement.[217] They argue that ''this is how Subclause (I) *has* to work, in order to account for voluntary licenses'' because subclause (II) ''does not address voluntary licenses at all'' and instead ''requires—regardless of the terms of any contrary agreement—payment of 'all accrued royalties' on a specific timetable, accompanied by a statutorily mandated 'cumulative statement of account.' '' [218]

The Office concludes that the limitation on liability provision is not clear about the treatment of voluntary licenses. The MLC's formulation assumes that any amount transferred to the MLC must necessarily be ''accrued,'' failing to recognize that some portion of what is transferred may instead constitute an overpayment subject to credit or refund.[219] Additionally, neither the MLC's nor the DMPs' interpretations resolve conflicts between section 115(d)(10)(B)(iv) and at least two other related provisions in section 115 intended to preserve the effect of existing voluntary transactions.[220] The first provision states that ''[l]icense agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license . . . shall be given effect in lieu of any determination by the Copyright Royalty Judges.'' [221] The second provides that ''[a] voluntary license for a covered activity in effect on the license availability date will remain in effect unless and until the voluntary license expires according to the terms of the voluntary license, or the parties agree to amend or terminate the voluntary license.'' [222] Both in essence require that voluntary licenses be given effect in lieu of compulsory licenses, and yet by the MLC's read (despite its attempts to suggest otherwise), section 115(d)(10)(B)(iv)(II) and (III) would require the opposite.[223]

It seems highly unlikely that Congress, without being explicit about what it was doing, would have adopted a statutory scheme that broadly encourages and gives effect to the common practice of voluntary licenses (including by preserving existing agreements), only to override them and risk marketplace confusion for purposes of the limitation on liability requirements. It is possible that Congress may have assumed that an unmatched work would not be subject to a voluntary license, but that appears to be factually untrue, as it has been represented to the Office that many voluntary licenses operate on a participating-party or musical work catalog or library basis, rather than a per-matched-work (or ''title-bound'') basis.[224]

The DMPs' reliance on the GAAP provision in subclause (I) does not resolve the matter, however. Even if the provision encompassed derecognition of liabilities, including by agreement, in certain contexts, it would still be in conflict with subclause (II). For example, where a previously unmatched work becomes matched prior to the license availability date, if the work is matched to a copyright owner with whom the DMP has a voluntary license, then under subclause (I), that license could be given effect, or, if there is no such license, the DMP and copyright owner could agree to one at that time to extinguish the liability. But under subclause (II), in the exact same situation, the DMP is told to undertake certain acts that could be contrary to any such agreement.[225] Even if a voluntary license was structured so that no further accrued royalties would be due, to the extent further reporting is still required under the agreement, there could be a conflict with the reporting requirements of subclause (II). Congress has given no indication as to whether subclause (I) or (II) should control in these types of situations.

Third, the Office finds section 115(d)(10)(B)(iv) to be ambiguous on its face. The MLC argues that the provision is clear and requires that ''on enactment of the MMA, DMPs must accrue and hold royalties for all of their historical and ongoing unmatched uses, with such accrued royalties to be calculated at the statutory rate and to cover all uses from initial use of the work, with such accrued royalties to be held through the date when the royalties are either (a) matched and distributed to the proper copyright owner pursuant to subsection II or (b) transferred to the MLC pursuant to subsection III.'' [226] The MLC contends that the ''first clause'' of section 115(d)(10)(B)(iv) [227] ''serves to identify what is being addressed by the provision, namely all unmatched works and associated royalties;'' the ''second clause'' [228] ''sets forth the unambiguous

[217] *See* DLC NPRM Comment at 17 (''[U]nder GAAP, accrued royalties that were paid to participating publishers, who released all entitlement to royalties for such usage, would cease being 'maintained' in accordance with GAAP; only those royalties expected to be due to third parties who had not released such royalty claims would be accrued.''); DLC SNPRM Comment at 10; DLC *Ex Parte* Letter at 2 (Oct. 14, 2020); Spotify *Ex Parte* Letter at 3–4 (Oct. 9, 2020).

[218] Spotify *Ex Parte* Letter at 4 (Oct. 9, 2020); *see* DLC SNPRM Comment at 10; DLC *Ex Parte* Letter at 2 (Oct. 14, 2020) (''[T]he MLC's proffered statutory argument . . . would improperly read the GAAP requirement out of the law, and fail to account for voluntary licenses.'').

[219] *See* 17 U.S.C. 115(d)(3)(I)(ii), (d)(10)(B)(iv)(II)–(III) (all referring to the payment of ''accrued royalties''). For example, where a DMP transferred over royalties for an unmatched work that, when later matched by the MLC, turns out to be subject to a catalog-based voluntary license where payment for the relevant usage was already made to the copyright owner under the terms of that agreement.

[220] *See, e.g., R–S–C* v. *Sessions,* 869 F.3d 1176, 1183–85 (10th Cir. 2017) (finding statute ambiguous where it was ''apparent'' that statutory provisions were ''at odds with one another,'' such that the ''intra-statutory conflict obscure[d] any clear command from Congress'' on the subject at issue).

[221] 17 U.S.C. 115(c)(2)(A)(i); *see also id.* at 801(b)(7)(A), (C); H.R. Rep. No. 115–651, at 4; S. Rep. No. 115–339, at 4; Conf. Rep. at 3 (''Consistent with the current 115 compulsory license, subsection (c)(2)(A) makes clear that voluntary licenses entered into between musical work copyright owners and digital music providers are given effect in lieu of the rates established for the blanket license.'').

[222] 17 U.S.C. 115(d)(9)(C); *see also id.* at 115(d)(1)(C); H.R. Rep. No. 115–651, at 10; S. Rep. No. 115–339, at 10–11; Conf. Rep. at 8–9 (''[A]ny voluntary license agreement between a digital music provider and a musical work copyright owner continues to be effective and takes precedence over the blanket license until such license expires according to its own terms.'').

[223] *See* U.S. Copyright Office, *Views of the United States Copyright Office Concerning PRO Licensing of Jointly Owned Works,* at 20 (Jan. 2016), *https://www.copyright.gov/policy/pro-licensing.pdf* (''Congress established [compulsory licenses] to address specific market conditions, and they are narrowly construed in their application.'') (citing *Fame Publ'g Co.* v. *Alabama Custom Tape, Inc.,* 507 F.2d 667, 670 (5th Cir. 1975) and *WPIX, Inc.* v. *ivi, Inc.,* 691 F.3d 275, 281 (2d Cir. 2012)); *see also* DLC SNPRM Comment at 10 (observing that ''other references to voluntary agreements in the statute say nothing about how those agreements should be applied to the issues posed by accrued unmatched royalties'').

[224] *See* 85 FR 22518, 22528 (Apr. 22, 2020) (''The DLC is specifically concerned with the handling of voluntary licenses, explaining that because such licenses are often procured through blanket deals covering all musical works in a publisher's catalog, the DMP usually does not know which specific musical works are covered, and will be reliant on the MLC to make that determination based on its statutorily directed matching efforts; this in turn affects the amount of royalties the DMP owes under the blanket license.''); DLC SNPRM Comment at 9 (''[I]t is common in the industry, if not standard, for full-catalog licenses not to identify each work covered, and for the list of covered works to change from time to time. . . . [I]t is precisely for this reason that the MLC must provide a response file identifying the works covered by a voluntary license, in order to allow the licensee to calculate the royalties owed pursuant to the blanket license for the remaining works.''); *see also, e.g.,* Steven Winogradsky & David Lowery, *Music Publishing: The Complete Guide* 267 (2nd ed. 2019) (discussing production music library licenses on a non-title basis).

[225] *See* 17 U.S.C. 115(d)(10)(B)(iv)(II).

[226] MLC *Ex Parte* Letter at 2–3 (Oct. 16, 2020); *see* MLC SNPRM Comment at 3.

[227] The first clause reads, ''[i]f the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work.'' 17 U.S.C. 115(d)(10)(B)(iv).

[228] The second clause reads, ''the digital music provider shall accrue and hold royalties calculated

obligation to accrue and hold royalties at the statutory rate,'' with ''[t]he statutory obligation to accrue and hold these royalties begin[ning] on the enactment date;'' and the ''third clause'' [229] ''details the scope of the accrual to be made, the time frame for holding, and the ultimate payment obligation.'' [230] Based on this analysis, the MLC disagrees with the DMPs' position on the meaning of the GAAP provision in section 115(d)(10)(B)(iv)(I), asserting that ''[r]eading the generic direction to 'maintain' royalties in accordance with GAAP as overriding the detailed statutory instructions and producing a result where the DMP in fact does *not* maintain the accrued royalties and does *not* transfer them under either subsection II or III—the exact opposite of the explicit statutory directive—does not appear reasonable.'' [231]

The DMPs disagree, arguing that ''the MLC's proffered statutory argument . . . would improperly read the GAAP requirement out of the law, and fail to account for voluntary licenses.'' [232] Instead, they contend that the phrase ''as follows'' at the end of clause (iv) must mean that ''the subsequent Subclauses (I)–(III) describe how and when the royalties are accrued, paid to copyright owners, or transferred to the MLC.'' [233] They further explain that ''Subclause (I) provides a general instruction that the royalties 'shall be maintained' in accordance with GAAP—which means that GAAP standards apply to the initial calculation of the accrual as well as to any adjustment of that initial calculation in light of new facts. That is made clear by the fact that Clause (iv) ends with the phrase 'as follows,' which links the initial accrual determination described in Clause (iv) to the application of GAAP standards specified in Subclause (I).'' [234]

The Office finds that neither of these interpretations eliminates the ambiguities in clause (iv). A key uncertainty lies in what the MLC refers to as the ''third clause'' of clause (iv): ''from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective.'' [235] It is not clear what that phrase is referencing. Looking at the immediately preceding phrase (''the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work''), it seems that two possibilities are most likely.

First, the ''third clause'' of clause (iv) could be referencing ''accrue and hold royalties calculated under the applicable statutory rate.'' Under that reading, it would direct when the DMP must accrue statutory royalties for an unmatched usage of the work and for how long it must hold them. For example, if first use of a work occurred in May 2015 and that work remained unmatched at the license availability date, the DMP must have started accruing statutory royalties in May 2015 and must be holding all such royalties until they are transferred to the MLC in early 2021. Second, the ''third clause'' could be referencing ''in accordance with usage of the work.'' Under that reading, it would define the lookback period for the unmatched usage of the work that may be subject to accrual and holding of statutory royalties, but would not speak to when royalties must actually be accrued by the DMP or for how long they must be held. For example, if first use of a work occurred in May 2015 and that work remained unmatched at the license availability date, those uses occurring between May 2015 and the date of transfer to the MLC in early 2021 would be subject to royalty accrual requirements for purposes of cumulative reporting and transfer to the MLC (but this clause would not speak to what those requirements are, including when or for how long royalties must be accrued and held; *e.g.,* following enactment in October 2018, a DMP could first accrue royalties for the period of use stretching back to May 2015). The ''third clause'' could perhaps also be referring to both the royalty accrual and holding period and usage lookback period, but that formulation would not resolve the issues identified below.

The first construction, which would construe this phrase as a set holding period for accrued royalties, mostly aligning with the MLC's interpretation, is problematic in multiple ways. One obvious issue is that it causes significant friction with the structure of the overall provision. Clause (iv) ends with the phrase ''as follows:'' after which detailed requirements are provided under subclauses (I) through (III). Thus, the most natural reading is that DMPs ''shall accrue and hold royalties'' as specified in subclauses (I) through (III). But if the ''third clause'' of clause (iv) is construed as speaking to the accrual and holding of royalties in absolute terms, it would essentially act as an exception to the operation of subclauses (I) through (III). There is no indication that the ''third clause'' is meant to function this way, to undercut the subclauses in the very same provision. As the DMPs argue, treating it in such a manner would significantly diminish the scope and application of the GAAP provision in subclause (I). If Congress had meant to further delineate the requirements of subclauses (I) through (III), it would likely have done so within that framework of subclauses, or by at least using verbiage indicative of an exception. Further, subclauses (II) and (III) do not merely dictate the initial bulk historical payment and cumulative statement of account requirements,[236] but also the ongoing payment and reporting obligations for subsequent reporting periods,[237] making it even less likely that the ''third clause'' is meant as an overarching exception to the whole of subclauses (I) through (III).

Another problem is that to read the ''third clause'' as referring to the royalty holding period, it would have to define both the beginning and end points of that period—*i.e.,* starting with the ''initial use of the work'' and ending when ''the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective.'' [238] If understood this way, to qualify for the limitation on liability, a DMP would have needed to ''accrue and hold royalties . . . from initial use of the work,'' no matter how many years ago that may have been and regardless of whether the DMP addresses any historic bookkeeping or

under the applicable statutory rate in accordance with usage of the work.'' *Id.*

[229] The third clause reads, ''from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective.'' *Id.*

[230] MLC *Ex Parte* Letter at 3 (Oct. 16, 2020).

[231] *Id.* at 3–4; *see* MLC SNPRM Comment at 5–10; MLC *Ex Parte* Letter at 2–4 (Nov. 17, 2020); *see also, e.g.,* Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020) (''[The GAAP provision] is meant to safeguard the royalties until they can be successfully matched to the owner or transferred to the MLC. It is not intended to provide a trap door through which accrued royalties can be disposed of in a way not prescribed in the statute.''); NMPA *Ex Parte* Letter at 1 (Nov. 17, 2020); SGA, SCL & MCNA *Ex Parte* Letter at 3 (Nov. 17, 2020).

[232] DLC *Ex Parte* Letter at 2 (Oct. 14, 2020); *see also, e.g.,* ARA, FMC & MusicAnswers SNPRM Comment at 3 (non-DMP organizations agreeing that ''Congress clearly intended the . . . [relevant] provisions to cover usages of musical works for which rightsholders had not yet received payment at all—not usages for which a corresponding payment had been negotiated and made,'' and that ''[t]he financial structures and allowances of GAAP are incorporated in their entirety by a plain reading of the statute''); DLC SNPRM Comment at 9; Spotify *Ex Parte* Letter at 3–4 (Oct. 9, 2020).

[233] Spotify *Ex Parte* Letter at 3 (Oct. 9, 2020); *see also* DLC *Ex Parte* Letter at 2 (Oct. 14, 2020).

[234] Spotify *Ex Parte* Letter at 3–4 (Oct. 9, 2020); *see also* DLC *Ex Parte* Letter at 2 (Oct. 14, 2020).

[235] *See* 17 U.S.C. 115(d)(10)(B)(iv).

[236] *Id.* at 115(d)(10)(B)(iv)(II)(aa), (III)(aa).

[237] *Id.* at 115(d)(10)(B)(iv)(II)(bb)–(cc), (III)(bb).

[238] *See id.* at 115(d)(10)(B)(iv).

accounting issues by reporting on and paying all properly accrued royalties as required under subclauses (II) and (III).[239] It seems unlikely that Congress would have intended something so sweepingly retroactive and incurable given its clear intent to encourage participation in the limitation on liability and concerns about imposing potentially retroactive obligations on DMPs to qualify for this limitation.

Even the MLC does not go this far, instead stating that ''[t]he statutory obligation to accrue and hold these royalties begins on the [MMA's] enactment date.'' [240] It is not clear why the MLC believes this to be the case, since it contends that the ''third clause'' details ''the time frame for holding.'' [241] The MLC's view would only give effect to the half of the provision purportedly detailing the end date. To the extent the MLC qualifies its reading by the overall direction that the requirements for the limitation on liability ''shall apply on the enactment date and through the end of the period that expires 90 days after the license availability date,'' the Office finds that provision to be yet another reason why the ''third clause'' of clause (iv)—with its conflicting reference to the starting point of ''initial use of the work'' (at least where initial use predates the MMA's enactment)—cannot be construed as the royalty holding period, or at minimum adds a layer of ambiguity.[242]

The second construction, which would construe this phrase as defining the applicable usage lookback period, despite avoiding most of the problems plaguing the first construction is also problematic. As noted above, the details of subclauses (II) and (III) do not merely dictate the initial bulk historical payment and cumulative statement of account requirements,[243] but also the ongoing payment and reporting obligations for subsequent reporting periods.[244] Understanding the ''third clause'' of clause (iv) to be defining the usage lookback period does not resolve that tension.

The main issue, though, concerns the end points of the usage lookback period. Defining the end of the period as the dates when ''the accrued royalties can be paid to the copyright owner [under subclause (II)(aa)] or are required to be transferred to the mechanical licensing collective [under subclause (III)(aa)]'' [245] creates tension with the usage periods defined in those subclauses, which in both cases end 45 calendar days earlier.[246] This discrepancy means that the ''third clause'' of clause (iv) does not refer to an unambiguous usage lookback period.

The foregoing demonstrates that Congress's intent cannot be clearly divined, and '' 'Congress has [not] directly spoken to the precise question at issue' '' [247] or prescribed a ''precise course of conduct.'' [248] Therefore, the Office may proceed to fill the statutory gap in a reasonable fashion.[249] Specifically with respect to the MMA, Congress ''expected that situations will arise that were not contemplated by the legislation'' and imbued the Office with ''broad regulatory authority'' to act, directing that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations.'' [250]

iii. Appropriateness of Regulatory Action

In light of the statutory ambiguities identified above in the limitation on liability provision, including those raised when reading it in connection with the provisions preserving voluntary licensing, the Office concludes that the most reasonable interpretation is one that does not disrupt the existing marketplace for licensing on a participating-party or musical work catalog or library basis, as opposed to a title-bound basis. An alternative conclusion that disfavors transactions not based on song-by-song licenses would be at odds with animating legislative desires to facilitate large scale licensed uses of musical works and avoid disrupting the marketplace that has arisen around the compulsory license.[251] Accordingly, the Office finds that it is necessary and appropriate to promulgate a rule that accounts for voluntary agreements (whether considered licenses, settlements, liquidations, releases, or otherwise) during the transition period, and the corresponding possibility that the royalties a DMP has accrued may not associate with all unmatched musical work usages because some of those usages may be subject to relevant agreements.[252] Beyond the broad statutory grant of authority bestowed upon the Office as part of the MMA and the authority delegated to the Office by virtue of the ambiguities identified above, it has long been recognized to be well within the ambit of the Office's authority to promulgate rules governing processes for reporting and paying royalties, including reliance upon estimates and adjustments.[253] Indeed, the Office's longstanding pre-MMA statement of account regulations, and the more-recently enacted reports of usage regulations under the blanket license, employ a system of estimates and adjustments.[254]

[239] *See id.*

[240] MLC *Ex Parte* Letter at 3 (Oct. 16, 2020).

[241] *Id.*

[242] *See* 17 U.S.C. 115(d)(10)(B).

[243] *Id.* at 115(d)(10)(B)(iv)(II)(aa), (III)(aa).

[244] *Id.* at 115(d)(10)(B)(iv)(II)(bb)–(cc), (III)(bb).

[245] *See id.* at 115(d)(10)(B)(iv).

[246] *See id.* at 115(d)(10)(B)(iv)(II)(aa)–(bb), (III)(aa)–(bb).

[247] *See City of Arlington,* 569 U.S. at 296 (quoting C*hevron,* 467 U.S. at 842–43).

[248] *See Vill. of Barrington* v. *Surface Transp. Bd.,* 636 F.3d 650, 659 (D.C. Cir. 2011).

[249] *See Brand X Internet Servs.,* 545 U.S. at 980 (''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'').

[250] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12; *see* 17 U.S.C. 115(d)(12)(A); *see also AT&T Corp.* v. *Iowa Utils. Bd.,* 525 U.S. 366, 397 (1999) (''Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency.''); *Brand X Internet Servs.,* 545 U.S. at 982. The Office is not persuaded by the MLC's invocation of *expressio unius est exclusio alterius* to argue that because there is a provision in the MMA relating to private agreements in the context of pre-1972 sound recordings, weight should be given to the assertion that with respect to the limitation on liability requirements, ''the MMA could have easily included language providing for the deduction of moneys paid in private settlements, but it did not.'' MLC SNPRM Comment at 4–5 (discussing 17 U.S.C. 1401(d)). The provision about pre-1972 sound recordings is in a separate section of title 17, was enacted in a separate title of the MMA that originated from a completely different bill, and is unrelated to the section 115 compulsory license. It is difficult to see how in such circumstances silence can be construed as dispositive of Congress's intent, especially in light of the other ambiguities identified above and Congress's express cautioning to the Office with respect to the portions of the MMA relating to section 115 that uncontemplated issues will arise and need to be addressed. *See* H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12.

[251] *See* U.S. Copyright Office, *Copyright & the Music Marketplace* 30–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (noting that pre-MMA, the statutory license served as a ''ghost in the attic'' while voluntary licensing facilitated the majority of licensed uses).

[252] *See* 17 U.S.C. 115(d)(12)(A) (''The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection.''); *see also* ARA, FMC & MusicAnswers SNPRM Comment at 2–4; ARA *Ex Parte* Letter at 1 (Nov. 17, 2020) (noting ambiguity and asserting that ''[a]s a consequence of this ambiguity, we believe the Copyright Office has discretion to interpret the MMA's terms and the authority to promulgate a rule that creates a workable, practical system''); SGA, SCL & MCNA *Ex Parte* Letter at 1 (Nov. 17, 2020) (''[R]eject[ing] the assertion by some music publisher representatives (backed by at least one of their affiliated songwriter groups) that the USCO's oversight and rulemaking authority concerning matters related to 2020–12 should be viewed as being narrowly limited.'').

[253] *See* 17 U.S.C. 115(d)(4)(A)(iv) (directing Office to adopt regulations ''regarding adjustments to reports of usage by digital music providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods'').

[254] *See* 37 CFR 210.6, 210.7, 210.27.

Concluding otherwise would be at odds with Congress's intent to create certainty and discourage litigation over historical usage.[255] The Office did give thought to remaining silent on the issue, as some commenters urged. In particular, the MLC and others contended that a regulation is unnecessary, essentially opining that since the DMPs believe the statute is clear, they should simply rely on their asserted interpretation.[256] in contrast, the DLC and DMPs asserted that ''[t]he need for [a] rule is critical'' because ''the MLC's very insistence that the statute doesn't square with the interpretation advanced by the DLC confirms that clarifying regulation is imperative, and that a lack of such clarification is likely to provoke litigation—which will be a burden not just for DMPs, but also for the copyright owners who would have to bring those infringement suits.'' [257]

The Office concludes that the better approach is to provide regulatory guidance to address what most parties seem to agree will be inevitable situations where usage that certain DMPs could not match is subsequently determined by the MLC to be owned by copyright owners who may be party to a valid agreement covering the relevant period. Contrary to the MLC's and others' statements, the rule's approach is in many ways aligned with the original NPRM, as it seeks to give effect to voluntary agreements, where appropriate, without opining on any particular individual agreements.[258] At its heart, the rule detailed below simply creates a mechanism through which the MMA's limitation on liability requirements can accommodate voluntary agreements (including those adopted on a non-title-bound basis) to the extent they may be appropriately relied upon in computing accrued royalties. Moreover, in the event that a court found the statute unambiguously to require the DLC's and DMPs' interpretation, a rule would still be necessary to prescribe conditions under which their interpretation could be given effect, including by articulating how estimates and adjustments as well as underpayments and overpayments should operate.[259] In this respect, the Office believes regulatory guidance will help guide DMP compliance, and provide a mechanism for additional royalty monies to be payable to copyright owners entitled to such payment, in the event obligations have been underestimated. Without the uniformity in application that a regulatory scheme brings, it could negatively impact the MLC's ability to process cumulative statements of account.

Importantly, the Office also concludes that regulatory action will best limit the risk of DMPs choosing to forego the limitation on liability by providing added certainty, helping to ensure that accrued royalties owed to copyright owners and songwriters are transferred to the MLC and eventually matched and distributed accurately without resorting to litigation, as Congress intended.[260] The transfer of cumulative statements and royalties is an optional condition to the limitation on liability and not otherwise required for DMPs to use the blanket license. As explained below, the adopted rule acknowledges, without endorsing, the DMPs' proffered interpretation of relevant agreements by establishing a process that leaves room for such issues to be litigated if necessary.[261] DMP participation is particularly important for smaller publishers and self-published songwriters who may not have the means to engage in the litigation that could otherwise be necessary to obtain royalty payments.[262] That loss could be significant; as noted, the DLC ''estimated that several hundred million dollars were available to be transferred to the MLC as accrued royalties, even after accounting for the derecognition of accruals based on preexisting agreements containing releases to claims for accrued royalties.'' [263] Indeed, regulatory action seems particularly appropriate to ensure that those copyright owners who did *not* participate in voluntary agreements will see the money to which they are entitled for uses of their works transferred to the MLC and ultimately paid without needing to resort to litigation. The adopted final rule is a practical solution to a complex issue. It is a permissible construction of the statute that best effectuates Congress's intent and is within the Office's authority to adopt.

Other practical considerations weigh in favor of adopting the rule. Most notably, it would be a waste of resources to require DMPs to transfer ''tens of millions of dollars'' [264] to the MLC, which the MLC and music publishers seem to agree, may have to circuitously make their way back to the DMPs in cases where valid releases apply.[265] The

[255] *See* H.R. Rep. No. 115–651, at 13–14; S. Rep. No. 115–339, at 14–15; Conf. Rep. at 12; Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020).

[256] *See, e.g.,* MAC, Recording Acad. & SONA SNPRM Comment at 2–3 (''The original NPRM, which remained silent on how the Agreements should be treated, is the better approach. If the DMP interpretation of GAAP is correct and can be justified, the Office does not need to explicitly ratify it in the regulations. The DMPs can simply comply with the statute and transfer their accrued royalties as they understand them along with the usage data.'') MLC SNPRM Comment at 2, 10–11.

[257] DLC SNPRM Comment at 11; *see* DLC NPRM Comment at 16–17 (''[R]egulation is plainly necessary to provide unambiguous guidance to DMPs and the MLC. . . . [L]eaving this provision open ended will undoubtedly invite litigation that second-guesses DMPs' accounting determinations and render the limitation on liability illusory. . . . Regulatory clarification to guard against that result is warranted.''); DLC *Ex Parte* Letter at 2 (Oct. 14, 2020); Spotify *Ex Parte* Letter at 4 n.5 (Oct. 9, 2020).

[258] *See* NPRM at 43523.

[259] *See* DLC SNPRM Comment at 12 (''[E]ven if the DMPs are to employ the self-help invited by the MLC with respect to the GAAP treatment of pre-MMA releases, the Office would still need to issue regulations clarifying the manner in which DMPs reconcile the cumulative statement of account with the necessary estimates that GAAP requires—not just to account for the release of claims prior to the MMA, but for other estimates, including royalty rates and inputs.'').

[260] *See* H.R. Rep. No. 115–651, at 13–14; S. Rep. No. 115–339, at 14; Conf. Rep. at 12 (noting concerns over continued litigation, including how it diverts royalties from artists); Letter from Senator Lindsey O. Graham, Chairman, Senate Committee on the Judiciary, to U.S. Copyright Office 1 (Sept. 30, 2020) (noting that the MMA was intended to provide legal certainty and that it is ''critical'' to resolve the issue, considering copyright owner, songwriter, and DMP interests).

[261] *See* ARA, FMC & MusicAnswers SNPRM Comment at 3–4 (agreeing that the ''structure seems to accomplish exactly what Congress intended'' and ''resolves the current controversy in a way that best serves the interest of independent and working songwriters who have a strong interest in bringing as much money as possible into the MLC matching and payment process for pre-MMA uses'').

[262] *See* Am. Intellectual Prop. Law Ass'n, *2019 Report of the Economic Survey* 54 (2019) (median cost in 2019 for a party to litigate a copyright infringement lawsuit with less than $1 million at risk through to appeal was $550,000; median cost to reach the close of discovery was $150,000).

[263] DLC *Ex Parte* Letter at 2 (Nov. 17, 2020); *see* ARA, FMC & MusicAnswers SNPRM Comment at 4 (stating that ''potentially hundreds of millions of dollars for songwriters and publishers are at stake'' because the risk of DMPs foregoing the limitation on liability ''is real'').

[264] DLC *Ex Parte* Letter at 2 (Nov. 17, 2020).

[265] *See, e.g.,* NMPA *Ex Parte* Letter at 2 (Nov. 3, 2020) (discussing the ability of DMPs to get letters of direction from relevant publishers and potential litigation to enforce contract rights); MLC *Ex Parte* Letter at 5 (Oct. 5, 2020) (noting that ''in the event of any such legal dispute between a DMP and a copyright owner concerning the right to receive unmatched royalties that the DMP had turned over under the MMA, the MLC would hold such unmatched royalties pending the resolution of the dispute,'' and that the MLC would ''follow[ ] the direction of the parties or appropriate courts as to how royalties should be distributed pursuant to private agreements''); SATV *Ex Parte* Letter at 2 (Oct. 28, 2020) (''SATV is open to discussing letters of direction and other potential solutions that would ensure that the requirements of the MMA are satisfied and also address the concerns raised by the digital services regarding payments made pursuant to private settlements.''); UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020) (''UMPG believes that any issues relating to payments under private settlements can and should be dealt with between the contracting parties. UMPG intends to assist and facilitate voluntary procedures for doing so with the digital services, to the extent applicable.''); WMG *Ex Parte*

Continued

Office is mindful that Congress expects the MLC to operate in an ''efficient and fair'' manner without engaging in ''waste'' or the ''unreasonable use of funds.'' [266] Unnecessary reimbursement would be an inefficiency and waste to be avoided. Music publishers may also not want to incur their own administrative costs if funds distributed to them by the MLC are ultimately returnable to DMPs, such as those relating to legal review and accounting processes.[267] There is no practical purpose to this exercise, especially if it is correct, as appears uncontested, that a large portion of the music publishing industry (in terms of market share) is subject to relevant releases for relevant reporting periods.[268]

iv. Regulatory Approach

The Office declines to adopt the DLC's initial proposal, made in response to the NPRM, which would have the Office establish a blanket rule that draws conclusions about private contracts.[269] Instead, the Office concludes that a reasonable and appropriate approach is to promulgate a rule that: (1) Incorporates the statutory reference to GAAP in section 115(d)(10)(B)(iv)(I) and confirms this includes principles with respect to derecognition of liabilities where appropriate; (2) clarifies that the requirements of section 115(d)(10)(B)(iv)(II) do not supersede a relevant voluntary agreement to the contrary; and (3) with respect to section 115(d)(10)(B)(iv)(III), adopts an estimate and adjustment mechanism for cases where certain usage of certain unmatched works is believed to be subject to a voluntary agreement, but because the specific works are unmatched, the DMP's accrued royalties do not fully identify which works are subject to such an agreement at the time of delivery of the cumulative statement to the MLC and the amount of accrued royalties may need to be adjusted in response to matching.

GAAP treatment. To address, in part, the discussed ambiguities in section 115(d)(10)(B)(iv) and to clarify the operation of subclause (I), the SNPRM proposed language stating that ''[a]ccrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles, including those concerning derecognition of liabilities.'' [270] The SNPRM also stated that ''[a]ccrued royalties can cease being accrued royalties within the meaning of 17 U.S.C. 115(e)(2) if the digital music provider's payment obligation is extinguished, such as pursuant to a voluntary license or other agreement whereby the digital music provider is legally released from the liability by the relevant creditor copyright owner.'' [271]

The MLC and other commenters object, contending that this language conflicts with the statute and blesses an incorrect interpretation of GAAP.[272] On the first point, as discussed, the Office has concluded that the regulatory clarification to address an area of ambiguity is appropriate. On the second, the Office is unconvinced that incorporating the statutory directive to maintain accrued royalties in accordance with GAAP can be read as blessing a specific interpretation of GAAP.[273] To the extent the proposed language expressly acknowledges a GAAP provision that DMPs indicate is relevant to their reporting, and to the extent that copyright owners disagree that this provision is, in fact, relevant, copyright owners may contest whether a DMP has appropriately applied GAAP, but the Office will not presume that DMPs may *not* rely upon this provision.[274]

Nor is the Office convinced by the MLC's contention that ''since the copyright owners of unmatched works are by definition not known or located, there cannot be private agreements that dispose of these unmatched royalties prior to the required transfer to the MLC.'' [275] The MLC does not adequately support this assertion or point to relevant principles of contract law. While the DLC does not cite clear authority either, its reasoning is more persuasive:

> [These assertions are] patently wrong: It is common in the industry, if not standard, for full-catalog licenses not to identify each work covered, and for the list of covered works to change from time to time. . . . [I]t is precisely for this reason that the MLC must provide a response file identifying the works covered by a voluntary license, in order to allow the licensee to calculate the royalties owed pursuant to the blanket license for the remaining works. To suggest that the license simply does not exist or is ineffective until that matching takes place is contrary to the law and is inconsistent with long-standing industry practice. Moreover, the notion that derecognizing liability for unmatched royalties can never be appropriate unless and until *all* royalties are matched ignores the reality of the market. If the owners of the works that generated over 90% of the royalties have released their claims, there is no need to know exactly which owner released which royalties to know that there is not an outstanding liability of 100% of the royalties.[276]

Indeed, a public version of an agreement purporting to be one of the agreements referenced by the DMPs includes a broadly worded release provision that would apply to claims ''whether disclosed or undisclosed, whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether strict, absolute or continent, whether accrued or unaccrued, whether liquidated or unliquidated, whether in law, in equity, or otherwise, whether incurred or consequential, whether due or to become due, and of any kind or

Letter at 1 (Oct. 21, 2020) (''For those DSPs with which we have already settled claims for the distribution of royalties owed before the enactment of the MMA, we consider these claims closed.'').

[266] H.R. Rep. No. 115–651, at 6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4, 6.

[267] *See* SATV *Ex Parte* Letter at 2 (Oct. 28, 2020) (noting, in the context of market-based solutions, a preference for ''any potential reimbursements to digital services be made by the MLC rather than music publishers'').

[268] *See, e.g.,* DLC NPRM Comment at 14–15 (''The NMPA has represented that 90%-plus of all usage was covered by the NMPA agreements: It would be absurd to require DMPs to make an acknowledged duplicate payment of tens of millions of dollars to cover payments that are merely around 10%, or less, of that amount.''); *id.* at 13 (quoting Ed Christman, *Vast Majority Join Royalties Settlement Between Spotify and Publishing Group,* Billboard (July 11, 2016), *https://www.billboard.com/articles/business/7431272/nmpa-spotify-settlement-most-members-join* (stating that participation was ''96% of [NMPA's] market share'')); *id.* (quoting *Lowery et al.* v. *Rhapsody Int'l Inc.,* No. 4:16–cv–01135–JSW (N.D. Cal. filed Mar. 7, 2016), Dkt. No. 175 at 3) (noting opt in market share of 97.13%).

[269] *Id.* Add. at 22; *see also* NPRM at 43523; NMPA *Ex Parte* Letter at 2 (Aug. 25, 2020) (''[R]esolution of issues and disputes concerning privately negotiated agreements such as the pending and unmatched settlement agreements . . . is to be addressed through state contract law and discussions between the contracting parties.''); MLC NPRM Comment at 8–9 (accord).

[270] SNPRM at 70548; *see id.* at 70546 (citing Fed. Acct. Standards Bd. (''FASB'') Acct. Standards Codification (''ASC''), titled ''Derecognition'').

[271] *Id.* at 70548.

[272] *See, e.g.,* MAC, Recording Acad., & SONA SNPRM Comment at 2–3; MLC SNPRM Comment at 2–10; NMPA *Ex Parte* Letter at 1–2 (Nov. 17, 2020); MLC *Ex Parte* Letter at 2–5 (Nov. 17, 2020); SGA, SCL & MCNA *Ex Parte* Letter at 3 (Nov. 17, 2020).

[273] *See* 17 U.S.C. 115(d)(10)(B)(iv)(I) (''Accrued royalties shall be maintained by the digital musical provider in accordance with generally accepted accounting principles.'').

[274] *See* MLC SNPRM Comment at 2–10. The MLC's approach seems to assume that the principle that derecognition is only appropriate if there is payment to the creditor or a release ''judicially or by the creditor'' cannot be used to reflect payments to, and/or releases by, creditors that are made on a creditor basis as opposed to a title-bound basis. *See id.* at 7. The MLC does not fully explain the basis for its assumption, which the DLC does not share. *See* DLC NPRM Comment at 17. Neither party submitted statements from any accounting authority in support of their respective contentions.

[275] *See* MLC *Ex Parte* Letter at 2–3 (Nov. 17, 2020); *see also* MLC SNPRM Comment at 6–8; MLC *Ex Parte* Letter at 3–4 (Oct. 16, 2020); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020).

[276] *See* DLC SNPRM Comment at 9.

nature whatsoever.'' [277] If a relevant voluntary agreement were worded appropriately, it would be difficult to see how a work would not be subject to the agreement just because it is not matched at a particular point in time by a particular DMP; a work belonging to a copyright owner under the relevant period of agreement still belongs to that owner regardless of whether the DMP knows it. Moreover, if the DMPs' assertions about GAAP are correct, the MLC's position seems to read the word ''accrued'' out of subclause (III).[278] Only ''*accrued* royalties'' for uses of unmatched works must be transferred to the MLC, and these may not necessarily be the same as the royalties that would otherwise be attributable to such usage under the statutory rate in the absence of any voluntary agreements that may extinguish or alter such royalty obligations for certain uses of certain works.[279]

The Office also disagrees that the requirement for accrued royalties to be ''maintained'' in accordance with GAAP must be read to prohibit royalties from ceasing to be maintained.[280] It is far more logical that relevant principles governing maintenance of such royalties may dictate how and under what circumstances or conditions such maintenance may conclude prior to the events of subclauses (II) and (III). In light of the foregoing, the Office is adopting as final the proposed language clarifying that GAAP treatment can include its derecognition principles where appropriate, to make clear that ''[t]he financial structures and allowances of GAAP are incorporated in their entirety.'' [281]

With respect to the MLC's assertion that the SNPRM blesses an incorrect interpretation of GAAP, the Office does not concur. The Office agrees, however, that it can clarify that it is not opining on what GAAP may or may not allow. Accordingly, the final rule omits the second sentence of the proposed provision, relating to the interaction between GAAP and the statute. The Office intends for this deletion to make clear that *to the extent* something (*e.g.,* the potential extinguishment of a DMP's payment obligation pursuant to a voluntary license or other agreement whereby the DMP is legally released from the liability by the relevant creditor copyright owner) is permitted under GAAP, it is also permitted under the statute and regulations. While the rule does not opine on *whether* royalty payment liabilities were appropriately extinguished and derecognized by DMPs pursuant to GAAP, the final rule accommodates that possibility within the MMA's transitional cumulative reporting and payment structure *if* DMPs are correct in their assertions about GAAP with respect to their relevant agreements. The Office believes this approach is reasonable particularly in light of the asserted purpose of certain voluntary agreements at issue.[282]

Voluntary agreements and works matched during the transition period. As noted, the limitation on liability provision makes no explicit acknowledgement of the existence of voluntary licenses or other agreements, while Congress has elsewhere broadly encouraged and given effect to voluntary licenses (including by preserving existing licenses). In the absence of clear congressional intent otherwise, to harmonize these provisions and ensure that such agreements are given effect in the context of the limitation on liability as well, the SNPRM proposed to limit the application of the requirements in section 115(d)(10)(B)(iv)(II) where a voluntary license or other relevant agreement, entered into before the statutory reporting and payment deadline, applies to the relevant musical work (or share) that the DMP has matched during the transition period.[283] That way, the DMP can pay and report, and the copyright owner can receive royalties and reporting, in accordance with their preexisting or a newly-entered-into mutual agreement. Notably, even the MLC seems to concur that voluntary agreements should apply in lieu of the requirements detailed in section 115(d)(10)(B)(iv)(II).[284] This aspect of the proposed rule is being adopted as final, as a necessary and appropriate clarification.

Estimating and adjusting accrued royalties reported and transferred to the MLC. All agree that, at a minimum, the total accrued royalties owed by a DMP at the end of the transition period may not be a finally calculable figure because of the need to estimate certain royalty pool inputs that are unknown at that point in time. At present, because of the *Phonorecords III* remand, no final operative rates have been set; not even a rate structure has been finally established. This means that, even in the absence of any other need to estimate and adjust, whatever amount is transferred to the MLC in February is unlikely to align with what a DMP will ultimate owe under the finally determined rates and terms. Because of this need to make estimates and adjustments, the Office concluded, as discussed above, that the statutory reference in section 115(d)(10)(B)(iv)(III)(aa) to ''*all* accrued royalties'' cannot be read to prohibit a regulatory structure permitting DMPs to make estimates and subsequent adjustments. Anticipating this conclusion, the SNPRM omitted the word ''all'' from the proposed regulatory language to alleviate any ambiguity.[285]

The MLC opposed the deletion, stating that ''the SNPRM's provisions for less than all accrued royalties to be transferred conflicts with the MMA,'' which seems inconsistent with its agreement that royalty pool inputs should be subject to estimation and adjustment, including regulations specifically addressing the ''underpayment of royalties'' (*i.e.,* some amount less than ''all'').[286] The MLC appears to believe that allowing for potential underpayment is appropriate where the reason is due to an unknown royalty pool input, but not where the reason is due to the unknown applicability of a voluntary agreement;

[277] *See Participating Publisher Pending and Unmatched Usage Agreement* 15 (2016) (embedded in Paul Resnikoff, *Exclusive: This Is the Contract Songwriters Are Signing With Spotify,* Digital Music News (Apr. 27, 2016) *https://www.digitalmusicnews.com/2016/04/27/exclusivespotify-establishing-direct-publisher-contracts-to-solve-mechanicals-issues* (document is embedded in article)). The Office again emphasizes that it is not in any way opining on the meaning of this or any other relevant private agreement, but noting the language used as a potential example. No party disputes the DLC's suggestion that this public version of the agreement is authentic, although the MLC and others note that there exist supplemental agreements and other documentation concerning negotiation or performance. *See, e.g.,* MLC SNPRM Comment at 9.

[278] *See* DLC SNPRM Comment at 10.

[279] *See* MLC SNPRM Comment at 8–9.

[280] *See id.* at 5–6, 8 (''Maintaining an accrued liability under GAAP means maintaining accounting records and financial statements that reflect the details of the accrual.''); MLC *Ex Parte* Letter at 3–4 (Oct. 16, 2020) (arguing it ''does not appear reasonable'' if ''producing a result where the DMP in fact does *not* maintain the accrued royalties''); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020) (''The provision to 'maintain' accrued royalties in accordance with GAAP is meant to safeguard the royalties until they can be successfully matched to the owner or transferred to the MLC.'').

[281] ARA, FMC, & MusicAnswers SNPRM Comment at 3; *see* DLC SNPRM Comment at 9.

[282] *See NMPA and Spotify Announce Landmark Industry Agreement for Unmatched U.S. Publishing and Songwriting Royalties* (Mar. 17, 2016), *http://nmpa.org/press_release/nmpa-and-spotify-announce-landmark-industry-agreement-for-unmatched-u-s-publishing-and-songwriting-royalties* (noting ''the agreement establishes a large bonus compensation fund that is a substantial percentage of what is currently being held by Spotify for unmatched royalties'').

[283] *See* SNPRM at 70548.

[284] *See* MLC *Ex Parte* Letter at 7 (Nov. 17, 2020) (''Section 115(d)(10)(B)(iv)(II) is fully consistent on its face with the payment of royalties under voluntary license terms.'').

[285] *See* SNPRM at 70548.

[286] *See* MLC SNPRM Comment at 3–4, 13–14, App. A at v, ix–x.

it does not adequately explain its basis for this distinction.[287] Nevertheless, to address the MLC's comment, the final rule restores the word ''all'' and resolves any ambiguity by adding clarifying language that it is subject to the ability to estimate and adjust pursuant to other regulatory provisions.

In addition to identifying the possibility of needing to estimate and adjust royalty pool inputs, the SNPRM recognized another type of unknown variable that could affect the calculation of accrued royalties: whether an unmatched work is subject to a voluntary agreement whereby the DMP's payment obligations have been extinguished, whether by blanket or advance payment, release of claims, or otherwise (to the extent permitted by GAAP and thereby the statute). The SNPRM proposed an estimate and adjustment mechanism to cover this scenario as well, as follows:[288]

• Under paragraph (c)(4), a DMP would have to report on all unmatched usage, meaning that the royalty calculation provisions in paragraph (d), which are tied to paragraph (c)(4), would require reporting of the total potential royalties, calculated at the applicable rate under 37 CFR part 385, that could be owed for all such usage. Such calculations would be subject to potential estimation of royalty pool inputs under paragraph (d)(2).

• Under paragraph (c)(5)(i), a DMP would be permitted to report total accrued royalties that employ reasonable estimations if it has a reasonable good-faith belief that the total accrued royalties are less than the total potential royalties calculated under paragraph (c)(4), and the unmatched status of relevant musical works at the end of the transition period requires reliance upon estimations in calculation of such accrued royalties.

• Under paragraph (c)(5)(ii), DMPs reporting and transferring accrued royalties that employ estimations would have to provide detailed information about any voluntary agreement being relied on in making a (c)(5)(i) estimation so that the MLC is able to confirm uses of musical works subject to such an agreement. The required information largely tracks information about voluntary licenses required to be reported to the MLC under the blanket license for similar purposes.[289]

• Under paragraph (c)(5)(iii), the MLC would have to engage in efforts to confirm uses of musical works that are subject to any identified agreement, and may notify relevant copyright owners about the DMP's reliance. Where the MLC confirms that a reported use of a musical work is subject to an identified agreement, the MLC would be required to presume that the DMP appropriately relied on the agreement, and during the pendency of any dispute between a DMP and copyright owner over the DMP's reliance, the MLC would not be permitted to make a corresponding distribution to the copyright owner or treat the amount at issue as an overpayment unless directed to do so by agreement of the parties or by order.

• Under paragraph (c)(5)(iv), if a DMP's estimate turns out to be insufficient to cover a required distribution to a copyright owner, the MLC would deliver an invoice and/or response file to the DMP for the additional amount outstanding (including interest) along with the basis for the MLC's conclusion that such amount is due. The DMP would have 14 business days to pay the invoiced amount or dispute the bill. If the bill were disputed, the MLC would notify the relevant copyright owner. If a DMP were ultimately found by an appropriate adjudicative body to have erroneously withheld any accrued royalties—whether as part of its estimate or in response to an MLC bill—it would be able to potentially remain in compliance with the regulations for purposes of retaining its limitation on liability if the other requirements for the limitation have been satisfied, the additional amount due is paid, and the DMP did not withhold the royalties unreasonably or in bad faith.

• Under paragraph (c)(5)(v), an overpayment based on a (c)(5)(i) estimate would be subject to credit or refund like any other overpayment.

• Under paragraph (c)(5)(vi), any underpayment of royalties would have to be remedied by a DMP without regard for the relevant statute of limitations, and by using an estimate—whether under (c)(5)(i) or (d)(2)—the DMP would be deemed to have agreed to waive any statute-of-limitations-based defenses with respect to any asserted underpayment of royalties connected to the use of the estimate.

To provide a workable estimate and adjustment mechanism that is consistent with the statute and congressional aims, and that appropriately balances the flexibility DMPs need to help ensure they participate in the limitation on liability against the right of copyright owners to receive complete and prompt payment of accrued royalties (to the extent a DMP participates), the Office is adopting many core aspects of the proposed rule as final, while making significant modifications in response to various stakeholder concerns, as discussed below.

The MLC and others oppose the SNPRM's proposed rule primarily on the grounds that it would allow DMPs to improperly deduct accrued royalties, that it would improperly shift burdens from DMPs to copyright owners and otherwise prejudice copyright owners, and that it will lead to the increased litigation the proposed rule sought to avoid.[290] The Office addresses each in turn.

With respect to deductions, commenters seem to misunderstand the SNPRM's proposal, and therefore no changes are being made in the final rule with respect to this concern. To be clear, the final rule does not permit deductions of accrued royalties; all accrued royalties must be transferred to the MLC. The rule merely allows DMPs, in transferring such accrued royalties by the statutory deadline, to rely upon temporary estimates, subject to later adjustment, where that precise figure of all accrued royalties is not otherwise ascertainable at that time.

For example, if the total potential royalties (calculated at the statutory rate) attributable to all of a DMP's unmatched usage is $20 million, the rule does not permit the DMP to deduct $5 million because that is what it previously paid out under certain pre-MMA agreements. Instead, the rule acknowledges that DMPs may be correct that because of such agreements—whether due to previous payment, claim release, or otherwise—some portion of the $20 million may not constitute *accrued* royalties at the time of required transfer to the MLC in February.[291] In

[287] This distinction is striking given that the MLC did not oppose the inclusion of a provision in regulations governing reports of usage under the MMA's blanket license that permits DMPs in similar circumstances to, subject to later adjustment, ''compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for [usage subject to applicable voluntary licenses and individual download licenses] to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP.'' *See* 37 CFR 210.27(d)(2)(ii); MLC NPRM Comment at 34–35, U.S. Copyright Office Dkt. No. 2020–5, *https://www.regulations.gov/document?D=COLC-2020-0005-0014* (acknowledging the need for estimates in this context).

[288] *See* SNPRM at 70548–49.

[289] *See* 37 CFR 210.24(b)(8).

[290] *See, e.g.,* MLC SNPRM Comment at 11–13; SGA, SCL & MCNA SNPRM Comment at 9; MAC, Recording Acad., & SONA SNPRM Comment at 2; MLC *Ex Parte* Letter at 5–6 (Nov. 17, 2020); NMPA *Ex Parte* Letter at 1–2 (Nov. 17, 2020); NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020).

[291] It may not matter how much was paid or whether the payment constituted royalties under relevant voluntary agreements. *See* MLC NOI Reply

other words, certain unmatched usage may no longer have outstanding accrued royalties associated with it at the time of transfer because, to the extent permitted under GAAP, those liabilities may have been appropriately derecognized by the DMP. The rule allows the DMP to employ reasonable estimations, subject to adjustment, where the unmatched status of the work prevents the DMP from definitively confirming whether or not it is subject to a relevant voluntary agreement.[292] If the DMP appropriately calculates that $15 million are accrued royalties, then that is what it must transfer in February. If, after the MLC later engages in its matching activities,[293] it is discovered that the DMP's estimate was off because it mistakenly, but in good faith, believed certain usage of works to be subject to certain agreements when in fact the opposite turns out to be true once they have been identified, the DMP will either need to make a true-up payment for any shortfall or may be entitled to credit or refund for any surplus.

Thus, this is not a question of *whether* copyright owners will or will not see the money owed to them. It is only a question of *when,* and even then, that question only becomes relevant to the extent the DMP's February 2021 payment—which must be reasonable, determined in accordance with GAAP, made in good faith and on the basis of the best knowledge, information, and belief of the DMP at the time—ends up being an inadvertent underpayment. While some commenters raised statute of limitations concerns,[294] as noted, the rule anticipates and accounts for this explicitly, so it should not impede the recovery of any underpaid royalties.[295] To the extent some commenters also raise concerns about possible delayed payments to copyright owners, these are unfounded.[296] Copyright owners receive royalty distributions from the MLC either when the MLC matches usage to the owner or when the MLC makes a distribution of unclaimed accrued royalties to identified owners after a prescribed holding period. No money can be distributed until one of these events occurs, and a potential distribution of unclaimed accrued royalties cannot occur until 2023 at the earliest, and may well be later.[297] If there is a shortfall due to a DMP's estimate, the rule requires DMPs to pay the difference (with interest) within 14 business days after being billed by the MLC. That is hardly an undue delay when weighed against the reasons for permitting estimates.

With respect to burden shifting and prejudice to copyright owners, the Office finds commenter concerns to be largely overstated, but has made some adjustments to the final rule. As background, the proposed rule would not ''improperly shift the burden of proving compliance with the statutory requirements for the limitation on liability from the DMPs, who are seeking the limitation, to copyright owners.'' [298] In an infringement action, the limitation on liability would be an affirmative defense, and, as such, the DMP would bear the burden of proving compliance with its requirements.[299] The rule does not change this. Second, the proposed rule would not, as the MLC suggested, ''allow[ ] DMPs to unilaterally withhold unmatched royalties in their discretion.'' [300] Rather, it would have allowed a DMP to dispute a bill from the MLC on a reasonable, good-faith basis, not merely because it hoped to avoid paying by forcing a copyright owner to sue for the money—which would clearly be bad faith. Third, although the Office has calibrated this rulemaking to discouraging litigation within relevant statutory parameters, copyright owners are inherently in the position of potentially needing to bring an infringement suit to obtain royalties if a DMP does not transfer accrued royalties to the MLC. the Office also disagrees that allowing a DMP to potentially retain its limitation on liability if it is adjudged to have erroneously in good faith withheld accrued royalties would necessarily significantly ''impede[ ] the ability of copyright owners to enforce their rights'' [301] or otherwise deprive them of a ''just remedy.'' [302] The Office also notes the proposed rule limited the effect to compliance with the Office's regulations, not all statutory requirements. Finally, the record provides no basis for asserted fears of DMP insolvency.[303]

Nevertheless, to alleviate some of these concerns, the final rule has been adjusted to reach a better balance between copyright owners and DMPs. A significant change is how the final rule handles a dispute between a DMP and a copyright owner over the DMP's reliance on an agreement in connection with its estimation and adjustment of accrued royalties. Although, as noted, the available record suggests such disputes may be uncommon,[304] the final rule establishes a better-dispute mechanism for this eventuality,

Comment at 29 (''Simply paying lump sums of money to publishers who threaten to sue for copyright infringement is in no sense the equivalent of paying unclaimed accrued royalties. . . . Rather, settlement payments are more likely consideration for releases from liability for copyright infringement or covenants not to sue.''); MAC, Recording Acad., & SONA SNPRM Comment at 3; MLC *Ex Parte* Letter at 3 (Oct. 5, 2020). As a legal principle, it is not clear why the amount of consideration or how the consideration is classified should be material if the result is still an appropriately worded full and complete release of relevant royalty claims for a given period. Moreover, a voluntary license could theoretically, for example, be structured as a blanket license for all of an owner's works (without listing them) for which a one-time flat fee was paid for a covered period. Regardless of how common such an arrangement may be, the possibility of its existence highlights flaws in commenters' argument on this point.

[292] *See, e.g.,* DLC SNPRM Comment at 9 (''If the owners of the works that generated over 90% of the royalties have released their claims, there is no need to know exactly which owner released which royalties to know that there is not an outstanding liability of 100% of the royalties.'').

[293] The MLC has ''confirmed that its goal is to match all unmatched uses, including all historical unmatched uses for which accrued royalties are transferred to the MLC, and to minimize the incidence of unclaimed accrued royalties. The MLC's position has always been, and remains, that it can and will hold unmatched royalties for longer than the required minimum statutory period where appropriate in service of this goal.'' MLC *Ex Parte* Letter at 2 (Nov. 17, 2020).

[294] *See* SGA, SCL & MCNA SNPRM Comment at 10.

[295] While the DLC ''agrees with the aspect of the proposed rule that builds in protection for copyright owners by preserving their legal claims in the event that a DMP fails to remedy an underpayment of royalties,'' it proposes certain modifications ''to clarify that the defense is waived where the underpayment is one that is determined pursuant to the procedures in the rule, and is not remedied.'' DLC SNPRM Comment at 16; *see* DLC *Ex Parte* Letter at 2 n.7 (Dec. 11, 2020). The Office declines this request. The waiver provision is meant to be broad and not limited merely to the MLC invoice process provided for in the rule. On the contrary, this provision must also cover litigation surrounding an alleged underpayment where it is connected to the DMP's use of an estimate.

[296] *See, e.g.,* MAC, Recording Acad., & SONA SNPRM Comment at 4; MAC *Ex Parte* Letter at 1 (Nov. 17, 2020).

[297] *See* 17 U.S.C. 115(d)(3)(J)(i)(I); MLC *Ex Parte* Letter at 2 (Nov. 17, 2020).

[298] *See* NMPA *Ex Parte* Letter at 2 (Nov. 17, 2020).

[299] *See* Fed. R. Civ. P. 8(c)(1); *cf. Capitol Records, LLC* v. *Vimeo, LLC,* 826 F.3d 78, 94 (2d Cir. 2016) (describing the section 512 safe harbor as ''an affirmative defense'' that the ''defendant undoubtedly bears the burden of raising entitlement to'' and showing that it ''has taken the steps necessary for eligibility'').

[300] *See* MLC *Ex Parte* Letter at 6 (Nov. 17, 2020); *see also* NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020).

[301] *See* NSAI *Ex Parte* Letter at 1 (Nov. 17, 2020); *see also* NMPA *Ex Parte* Letter at 2 (Nov. 17, 2020) (citing 17 U.S.C. 115(d)(10)(D)).

[302] *See* MLC *Ex Parte* Letter at 6 (Nov. 17, 2020).

[303] *Compare id.* at 5–6 *and* MLC SNPRM Comment at 12 n. 4 *with* DLC SNPRM Comment at 11–12 n.32 (''Just because a DMP cannot re-pay millions of dollars of accrued royalties for nearly the entire market of usage for certain time periods does not suggest it would not be able to pay a potential shortfall to one or more copyright owners if it were to have incorrectly estimated the accrued royalties. . . .'').

[304] *See, e.g.,* DLC SNPRM Comment at 5 (''[T]here is nothing in the record to assume or even suggest that any DMP is likely to rely on a release improperly.''); SATV *Ex Parte* Letter at 2 (Oct. 28, 2020); Spotify *Ex Parte* Letter at 4–5 (Oct. 9, 2020); WMG *Ex Parte* Letter at 1 (Oct. 21, 2020); UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020).

whereby the MLC will hold disputed funds, as the MLC and others argue it should.[305]

After receiving the detailed information about any voluntary agreement being relied upon by the DMP in making its estimation, the MLC will be required to promptly notify relevant copyright owners of such reliance. A notified copyright owner may then dispute the appropriateness of the DMP's reliance by notifying the MLC within one year.[306] The copyright owner's notification must describe its basis with particularity and must be certified as being made in reasonable good faith. The notice must also specify whether the owner is disputing reliance with respect to potential distributions based on matched usage or of unclaimed accrued royalties under section 115(d)(3)(J), or both. The MLC must then promptly provide the DMP with any such notification it receives.

If the MLC has received a notice of dispute from a copyright owner, then at or around the point in time that the MLC would otherwise make a particular distribution to that copyright owner but for the DMP's reliance on the disputed agreement, the MLC must send an invoice and/or response file to the DMP for the amount that would otherwise be distributed at that time (including interest), accompanied by an appropriate explanation. Depending on the scope of the notice of dispute, this may include distributions based on matched usage and/or distributions of unclaimed accrued royalties under section 115(d)(3)(J).[307] In the case of the latter, the relevant approximate date to bill the DMP is the date the MLC provides the notice required under section 115(d)(3)(J)(iii)(II)(dd). To be clear, this means that the MLC may be in a position to invoice the DMP for usages that it has matched to a disputing copyright owner, while not yet able to invoice for unmatched remaining usages. Where a copyright owner delivers a notice of dispute after the relevant point in time has passed for a particular distribution, the MLC should bill the DMP promptly after receiving the notification. Upon receiving the bill, the DMP has 14 business days to pay the invoiced amount, which is then held by the MLC pending resolution of the dispute.

Because the holding of such funds would not be pursuant to policies and procedures that the MLC's dispute resolution committee is empowered to adopt to govern ownership disputes,[308] the final rule dictates how the MLC must hold the disputed funds. The MLC must hold the newly transferred funds in accordance with section 115(d)(3)(H)(ii) (*e.g.,* with interest) without regard for whether or not the funds are in fact accrued royalties. The MLC must not make a distribution of the funds or treat them as an overpayment unless directed to do so pursuant to the agreement of the relevant parties or by order of an appropriate adjudicative body. If the MLC has not been so directed within one year after the DMP transfers the disputed funds, and if there is no active dispute resolution occurring at that time (*e.g.,* litigation, arbitration, mediation, private settlement discussions), then the MLC shall credit or refund the disputed funds back to the DMP. Any resolution of the dispute should be reflected in the MLC's ongoing administration activities.

The Office believes these changes are a reasonable accommodation to help allay concerns about DMP insolvency and ensure that disputed funds are held somewhere that copyright owners trust and that is subject to public disclosure and oversight. At the same time, several features built into this dispute framework (*e.g.,* that it has to be triggered by the copyright owner, the certification requirement, the timing of when a DMP may need to transfer disputed funds, the limited holding period if there are no active efforts at resolution) should quell concerns about it becoming a back door compelling DMPs to make large potential double payments up front whenever an unfounded general dispute is raised.

With respect to the MLC's presumption that the DMP has appropriately relied upon the relevant agreement, that aspect of the proposed rule is retained in the final rule, with the clarification that the presumption applies where there is no dispute raised by the relevant copyright owner. It is unclear why the MLC should object to this,[309] as it should not be exercising independent judgment or discretion with respect to a DMP's asserted reliance on a voluntary agreement.[310] That is a private matter between the parties to the agreement.

As with the proposed rule, the final rule requires that if the amount transferred to the MLC ends up being insufficient to cover any required distributions to copyright owners, the MLC must send an invoice and/or response file to the DMP for the amount outstanding (including interest) that includes an explanation of the basis for the MLC's conclusion that such amount is due. The key change to this provision is that unlike the proposed rule, the final rule does not permit a DMP to dispute such a bill. The DMP must pay the invoiced amount within 14 business days or it will not be in compliance with the rule and will risk loss of the limitation on liability. The inability to dispute such a bill cuts off a potential avenue for misuse of the rule's estimate and adjustment mechanism, and should help alleviate concerns with the SNPRM's proposed approach.

The Office does not believe this change should cause alarm among DMPs. The practical effect is that a DMP cannot challenge a bill with respect to amounts that bear no relation to voluntary agreements that the DMP relied upon in estimating its accrued royalties, *e.g.,* a bill that concerns time periods not covered by such an agreement or copyright owners who are

[305] *See* MAC, Recording Acad., & SONA SNPRM Comment at 4 (''[T]he MLC should be viewed as a trusted party to hold the disputed funds for the benefit of both copyright owners and digital services.''); MLC *Ex Parte* Letter at 5 (Oct. 5, 2020) (''[I]n the event of any such legal dispute between a DMP and a copyright owner concerning the right to receive unmatched royalties that the DMP had turned over under the MMA, the MLC would hold such unmatched royalties pending the resolution of the dispute.''); MLC *Ex Parte* Letter at 6 (Nov. 17, 2020) (suggesting the MLC would hold funds in dispute); MLC SNPRM Comment at 11, 13 (same).

[306] This time limit is only for the administrative process described in the rule involving the MLC holding disputed funds and is without prejudice to a copyright owner's rights to otherwise dispute a DMP's reliance outside of this process, such as in court.

[307] The Office declines at this time to opine on statutory requirements surrounding distributions of unclaimed accrued royalties under section 115(d)(3)(J); that issue is not within the scope of this proceeding. *See* ARA, FMC, & MusicAnswers SNPRM Comment at 4–5 (addressing this issue); MAC, Recording Acad., & SONA SNPRM Comment at 4–5 (same). The statute provides that the MLC's unclaimed royalties oversight committee will establish relevant policies and procedures, 17 U.S.C. 115(d)(3)(J)(ii), and Congress has made clear that ''it is expected that such policies and procedures will be thoroughly reviewed by the Register to ensure the fair treatment of interested parties,'' S. Rep. No. 115–339, at 5. As there will be no such distribution until 2023 at the earliest, there is ample time for the Office to provide guidance if necessary.

[308] *See* 17 U.S.C. 115(d)(3)(G)(i)(III)(bb), (K).

[309] *See* MLC SNPRM Comment at 11–12 (''[T]he SNPRM would place the MLC in the middle, requiring the MLC to administer the agreements, and further to 'presume' that DMPs 'appropriately relied' on agreements (which would not even be provided to the MLC). Requiring the MLC to make presumptions in favor of certain disputing parties, let alone presumptions unconnected to knowledge or accuracy, is unreasonable and inconsistent with its mandate.'') (internal citation omitted).

[310] This is somewhat similar to what is required of the MLC in the context of the blanket license. There, the MLC will receive a similar level of information about voluntary licenses, see 37 CFR 210.24(b)(8), and then must use that information to ''confirm uses of musical works subject to voluntary licenses . . . , and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license,'' 37 CFR 210.27(g)(2)(ii).

not parties. This approach is consistent with the DLC's proposal made in response to the NPRM [311] and aligns with statements that ''the DLC and its members agree that copyright owners that did *not* participate in such an agreement should receive the full amount of royalties they may be owed.'' [312] In disputes involving copyright owners who are allegedly parties to an effective agreement for relevant time periods, no such bill can be sent via this provision; either the MLC is prohibited from doing so because it is required to presume that the DMP relied appropriately, or if the copyright owner has raised a dispute, the separate above-discussed dispute mechanism would control.

The final rule retains the provision that would permit a DMP to keep its limitation on liability even if it is adjudged to have erroneously withheld accrued royalties, so long as all other requirements for the limitation are satisfied, the additional amount due is paid, and the DMP is not found to have withheld the royalties unreasonably or in bad faith. With the final rule restricting a DMP's ability to dispute a bill from the MLC in the event of shortfall, challenges should generally be limited to circumstances where a copyright owner is allegedly party to an agreement relied upon by the DMP and the owner disputes the appropriateness of the DMP's reliance (assuming the DMP is otherwise in compliance with the limitation on liability). As noted, there is no evidence in the record that participating musical work copyright owners will necessarily dispute DMP reliance on voluntary agreements with respect to accrued royalties.[313]

Lastly, the Office has added a savings clause to make plain that nothing in the final rule should be construed as prejudicing a copyright owner's ability to challenge whether a DMP has satisfied the requirements for the limitation on liability.

With respect to suggestions of potential increased litigation, the Office is not persuaded to further adjust the rule. Commenters' arguments are based on a speculative comparison between the volume and complexity of litigation they believe might ensue under the rule for copyright owners to rectify underpayments, and the litigation that DMPs might engage in without a rule to rectify overpayments and enforce their voluntary agreements.[314] That is the wrong comparison. The main litigation the rule seeks to avoid is that which may be brought if DMPs choose to forego the limitation on liability and transfer nothing to the MLC. Indeed, the limitation on liability was enacted precisely to prevent such litigation. The rule provides the certainty DMPs have told the Office is necessary for them to participate in the limitation on liability instead of holding back the money as a litigation war chest. Potential litigation over the estimated tens of millions of dollars at issue with respect to these voluntary agreements pales in comparison to potential litigation over the estimated several hundred million dollars in unpaid royalties that may otherwise be withheld, including payments to those copyright owners who did not opt into the voluntary agreements at issue.

By establishing a default posture that accommodates potential private agreements but cabins reliance upon those agreements—as well as disputes about those agreements—through good-faith certifications of the very parties who allegedly entered into them, the rule should forestall further litigation and foster resolution of disagreements. Perhaps no regulation can secure against parties engaging in litigation in an area so contentious that it generated historic copyright legislation. Certainly, the rule does not curtail the ability of a copyright owner or DMP to seek judicial recourse. But to the extent there is a legitimate dispute, the rule seeks to incentivize DMPs and relevant copyright owners to privately resolve these issues.

A DMP's risk of losing its limitation on liability entirely if found to have acted unreasonably or in bad faith should be powerful motivation to try to avoid being sued, and the prospect of not being able to recover costs or statutory damages may make such a suit unappealing to a copyright owner. As noted several times, there is no evidence in the record that musical work copyright owners will necessarily dispute DMP reliance on voluntary agreements with respect to accrued royalties.[315] As the MLC points out, ''there is no basis to think that copyright owners would spend time or money on frivolous litigation over their contracts with DMPs.'' [316] Likewise, there is no basis to think that DMPs would act differently, such as by inappropriately using voluntary agreements (including those that may have been terminated, breached, or have performance issues), to avoid paying accrued royalties, or by employing unreasonable or inaccurate GAAP interpretations to try to rationalize a spurious underpayment.

3. Songwriter Concerns and Transparency Considerations

Upon publication of the NPRM, the Office heard from a variety of creator groups expressing unfamiliarity with the contours of these agreements or confusion regarding whether payments had been passed through to songwriters.[317] While the record contains some factual information regarding such practices, the Office notes that payment questions with respect to the operation of private agreements between publishers and songwriters are separate from this rulemaking's required focus on DMP obligations to transfer royalties and report information to satisfy the eligibility conditions for the limitation on liability. The MMA does not regulate the terms by which publishers (or administrators) and songwriters may enter into contractual arrangements—and certainly not on a retroactive basis, insofar as these questions may implicate payments passed through (or not) to

[311] *See* DLC NPRM Comment at 16, Add. at 22 (proposing that where there are ''insufficient funds . . . to pay royalties that are owed to a copyright owner who has not previously released claims to such royalties pursuant to an [identified] agreement . . . , the mechanical licensing collective shall issue an invoice and/or response file . . . , and the digital music provider shall pay the additional royalties to the MLC within 45 days of receipt of such invoice'').

[312] *See, e.g.,* DLC SNPRM Comment at 3 (''Copyright owners who did not participate in any pre-MMA agreements that released royalty obligations are not impacted by this proposed rule; they will still get all the royalties to which they are entitled.''); DLC NPRM Comment at 15–16; DLC *Ex Parte* Letter at 2 (Oct. 14, 2020).

[313] *See, e.g.,* WMG *Ex Parte* Letter at 1 (Oct. 21, 2020); SATV *Ex Parte* Letter at 2 (Oct. 28, 2020); UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020); DLC SNPRM Comment at 5; Spotify *Ex Parte* Letter at 4–5 (Oct. 9, 2020).

[314] *See, e.g.,* MLC *Ex Parte* Letter at 6 (Nov. 17, 2020) (''[The proposed rule] appears likely to generate far more litigation activity than a DMP simply enforcing its claimed unambiguous contractual right to be repaid royalties that match to copyright owners with who it has private agreements.''); NMPA *Ex Parte* Letter at 2 (Nov. 3, 2020) (arguing that if the regulations ''permit DSPs to not pay all of the accrued unmatched royalties that songwriters and copyright owners are expecting to be paid to the MLC, that will undoubtedly result in litigation that is far broader and more fundamental than an action to simply enforce a contract right'').

[315] *See, e.g.,* DLC SNPRM Comment at 5; Spotify *Ex Parte* Letter at 4–5 (Oct. 9, 2020); SATV *Ex Parte* Letter at 2 (Oct. 28, 2020); WMG *Ex Parte* Letter at 1 (Oct. 21, 2020); UMPG *Ex Parte* Letter at 1 (Oct. 30, 2020).

[316] MLC SNPRM Comment at 11 (''There is no history presented of copyright owners acting unreasonably with respect to private agreements with DMPs.'').

[317] *See, e.g.,* ARA, MAC, NSAI, Recording Acad. & SONA *Ex Parte* Letter at 1–3 (Sept. 22, 2020); Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020); SGA, SCL, AWFC & MCNA *Ex Parte* Letter at 1–2 (Sept. 15, 2020).

songwriters prior to enactment.[318] Further, even if DMPs were to transfer royalties for uses subject to pre-MMA agreements, it is not clear whether songwriters would be entitled to any of these funds, due to releases provided by copyright owners to whom they have assigned rights.

In any event, even if those agreements' details were widely public, it could not change the Office's analysis.[319] Even when the MLC distributes matched royalties and related statements to musical work copyright owners (*e.g.,* music publishers), the MMA does not further restrict the conditions, typically spelled out by contract, for how those copyright owners subsequently pay songwriters. This is true regardless whether the MLC is matching works connected to pre-MMA usages reported and payments made for purposes of eligibility for the limitation of liability or in connection with future usages authorized under the blanket license. To be sure, for those usages that the MLC cannot reasonably match after the prescribed holding period, the MMA specifies that copyright owners receiving future distributions of unclaimed accrued royalties by the MLC must pay or credit individual songwriters in accordance with applicable contractual terms, and in no case less than 50% of the payment received by the copyright owner attributable to usage of musical works.[320] But this rulemaking is focused on the separate, predicate obligation for DMPs to report unmatched usages and transfer accrued royalties to the MLC, which in turn will match usages and pay copyright owners, who will pay songwriters (either in accordance with contract for payments connected to matched uses, or in accordance with contract subject to the 50% floor for payments for unmatched uses).

Notwithstanding this clarification, and while the Office believes that the rule offers a reasonable and workable compromise to concerns raised by the MLC, DMPs, and songwriters in a manner consistent with the statutory language and congressional intent, the Office also recognizes that multiple creator groups expressed uncertainty regarding the substance of these pre-MMA agreements. At the core of these concerns is a perceived lack of transparency concerning the existence and terms of these agreements,[321] the amount of these agreements,[322] and whether songwriters received payments under these agreements (and if so, upon what terms).[323]

The Office appreciates that the music publishers who met with the Office each confirmed individually that they followed their respective business practices in sharing payments received through these agreements with songwriters affiliated with their publishing houses. For example, SATV stated that ''payments made by DSPs to SATV under private agreements, as well as any other distribution of unmatched funds, whether title bound or not, are always paid through to our songwriters'' and offered ''to explain to our writers who inquire how these royalties are distributed and reflected on their statements.'' [324] UMPG provided similar assurances, noting ''UMPG does so as a matter of policy, notwithstanding the fact that applicable contracts may not require payment for non-title-bound revenues.'' [325] The Office does not know whether individual songwriters or creator groups have made inquiries to publishers in response to these letters.[326]

To be sure, the Office continues to support greater transparency in the music industry. In its 2015 report, the Office identified the ''key principle'' that ''[u]sage and payment information should be transparent and accessible to rightsowners.'' [327] Following this report, the Office is gratified that Congress clearly intended the MLC to operate ''in a transparent and accountable manner.'' [328] And it appears that this rulemaking process has resulted in the voluntary public disclosure of additional information regarding these agreements, including with respect to the aggregate monies paid under the pre-MMA agreements.[329] The Office cannot, however, compel publishers or DMPs to disclose the terms of private deals to songwriters.[330] The Office encourages the interested parties to continue to engage on this matter and can make itself available to assist in facilitating dialogue. While the MMA addresses some longstanding complaints over transparency, the Office will keep creators' concerns in mind as it continues its implementation work and advises Congress on future potential improvements to the music ecosystem. The Office also notes that creator groups will have the opportunity to offer additional views on this issue at the upcoming Unclaimed Royalties policy study roundtables.[331]

4. Reconciliation

Relatedly, the Office proposed language that would address situations where the total amount of royalties transferred does not match the corresponding report. Although the MLC and DLC both supported the NPRM's proposed reconciliation provision—whereby if the total royalties turned over to the MLC do not reconcile with the corresponding cumulative statement of account, the DMP should include a clear and detailed explanation of the deviation—the DLC sought two

[318] In contrast, the section 114 license, currently administered by SoundExchange, does specify the percentage of statutory royalties that are payable to sound recording copyright owners, recording artists, nonfeatured musicians, and nonfeatured vocalists, respectively. 17 U.S.C. 114(g)(2). The MMA did not amend the section 115 license to adopt a similar approach.

[319] *See* NMPA *Ex Parte* Letter at 2 (Nov. 17, 2020) (''settlements entered into prior to the enactment date of the MMA, in some cases even years before, could not be considered to be subject to the requirements of the MMA'').

[320] 17 U.S.C. 115(d)(3)(J)(iv).

[321] *See, e.g.,* ARA, MAC, NSAI, Recording Acad. & SONA *Ex Parte* Letter at 1–3 (Sept. 22, 2020); MAC *Ex Parte* Letter at 1 (Nov. 17, 2020); Recording Acad. & SONA *Ex Parte* Letter at 3 (Nov. 17, 2020); SGA, SCL, AWFC & MCNA *Ex Parte* Letter at 1 (Sept. 15, 2020).

[322] *See, e.g.,* SGA & SCL NPRM Comment at 3; *see also* Cas Martin SNPRM Comment at 3; Rayn Jackson NPRM Comment at 1; Sophie Korpics SNPRM Comment at 2.

[323] Recording Acad. & SONA *Ex Parte* Letter at 2 (Nov. 17, 2020) (''Many songwriter groups expressed continued frustration that so little is known about the agreements, including how much money was involved, how the money was accounted for, and whether songwriters benefited from it.'').

[324] SATV *Ex Parte* Letter at 2 (Oct. 28, 2020); *see also* WMG *Ex Parte* Letter at 1 (Oct. 21, 2020) (accord).

[325] UMPG *Ex Parte* Letter at 2 (Oct. 30, 2020).

[326] No creator group has reported the results of reaching out to publishers on this issue. *See* SGA, SCL & MCNA *Ex Parte* Letter at 1–2 (Dec. 14, 2020) (acknowledging Office recommendation to contact publishers directly).

[327] U.S. Copyright Office, *Copyright and the Music Marketplace* 1 (2015), *https://www.copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.*

[328] S. Rep. 115–339 at 17. To that end, the Office has separately conducted a rulemaking aimed at furthering appropriate transparency of the MLC. 85 FR 58170 (Sept. 17, 2020).

[329] *Compare* SGA & SCL NPRM Comment at 3 (suggesting unmatched royalties encompassing a range ''from a few hundred million dollars to over $1.5 billion'') (citation omitted) *with* SGA, SCL & MCNA *Ex Parte* Letter at 2 (Nov. 18, 2020) (reflecting understanding that ''while there remain hundreds of millions of dollars in accrued, unmatched royalties in the possession of the Digital Music Providers, tens of millions of dollars in accrued unmatched royalties were indeed turned over directly to music publishers pursuant to the terms of the confidential, private negotiated agreements'' (emphasis omitted)).

[330] ARA, FMC & MusicAnswers SNPRM Comment at 3 n.2 (''urg[ing] the [O]ffice to use all levers available to it''); SGA & SCL SNPRM Comment at 8 (stating that the Office ''has sufficient authority to compel disclosure of the details of the private and confidential agreements between DSPs and music publishers'').

[331] These roundtables have not been scheduled at the time of this rule's publication. For more information on the policy study, visit *https://www.copyright.gov/policy/unclaimed-royalties.*

minor modifications.[332] First, the DLC ''suggest[ed] changing the phrase 'total royalty *payable'* to 'total royalty *reported,'* to avoid any suggestion that the amount reflected on the cumulative statement of account is necessarily 'payable' to the MLC.'' [333] The Office incorporated this technical edit into the SNPRM, proposing the phrase ''total accrued royalty reported'' (inserting ''accrued'' for added precision), which it now adopts as final.[334]

Second, the DLC's regulatory proposal added an illustrative clause referring to discrepancies ''due to the GAAP treatment of previously-distributed royalties or for any other reason.'' [335] Just as the Office did not include the MLC's previously proposed language about interest, deductions, and adjustments in the NPRM, the Office did not include the DLC's language in the SNPRM and declines to include it in the final rule, as any discrepancy of any kind should be explained.[336] The DLC did not oppose this in its comments to the SNPRM.

The SNPRM further proposed that a clear and detailed explanation also be required if the royalties reported include use of an estimate permitted for computing accrued royalties in paragraph (c)(5)(i).[337] This would be required whether or not there is also a discrepancy between the total accrued royalty reported and the actual amount transferred, and should describe the basis for the total accrued royalty reported including any deviation from the total potential statutory royalty attributable to all unmatched usage reported under paragraph (c)(4)(i). With the Office having concluded that it should adopt a version of this SNPRM structure as final, this corresponding proposal is being adopted as well. It was not opposed (other than in connection with certain commenters' overall opposition to this proposed framework), and should be helpful to the MLC in processing cumulative statements of account that contain any such estimates, and will result in MLC-held records of how any such estimates were employed.

C. Period of Reporting

Next, the Office addresses an issue raised by MediaNet related to required information that may not be able to be located or recreated. The SNPRM solicited comments regarding whether the rule should include language addressing MediaNet's concern that it may be unable to provide pre-2013 usage data, as such data may be unavailable or inaccessible because it is not in the DMP's possession and may no longer be held by its former vendor.[338] In operation for nearly 20 years, MediaNet carries a potentially greater burden to report past unmatched usages than newer services.[339] MediaNet explained that it previously used vendors to maintain its royalty and usage data, but once those agreements were terminated ''the relevant data was not transferred to MediaNet,'' and it was unsure whether those vendors with whom it has terminated its relationships continued to maintain that data.[340] MediaNet requested regulatory language requiring provision of all available data, subject to an exception addressing the circumstance when such information relates to usage that is over five years old and was held by a third-party vendor who no longer has a business relationship with the DMP, and such vendor cannot or will not provide such historic information.[341] MediaNet explained that, without such an exemption, it ''may decline to take advantage of the limitation on liability, which may deprive copyright owners of additional accrued royalties.'' [342] MediaNet further suggested that such a regulation would be ''consistent with the overall statutory scheme,'' because the statute requires reporting to be pursuant to ''applicable regulations,'' and the relevant reporting regulations at the time required that documentation related to royalties and usages needed to be preserved for only five years.[343]

Commenter Jeff Price challenged MediaNet's assertion that royalty and usage information would not have been retained by MediaNet and also suggested that, even if this information was not retained, it could be recreated.[344] In Mr. Price's experience, DMPs who used vendors to match works and pay mechanical royalties engaged in a workflow that sent output and return files between the vendor and the DMP several times. A DMP would send sound recording data to the vendor who would try to match works, the vendor would reply by sending a file listing matched works and whether they were licensed, the DMP would then send usage and metadata inputs to the vendor, and the vendor would send back mechanical royalty calculations addressing the total time period, each publisher, and each individual work.[345] Mr. Price believes that, based on this workflow, ''some or all of the original elements necessary to calculate the mechanicals still exist.'' [346] Mr. Price also suggested that other data presumably residing with MediaNet concerning monthly revenue, monthly subscribers, eligible streams, and total streams for sound recordings could be used with other known royalty calculation inputs to ''possibly recreate the missing mechanical statements.'' [347]

The Office noticed this issue and requested public comment, but ''[g]iven the timing of MediaNet's request'' did not propose its own regulatory language and instead requested comments on MediaNet's proposal.[348] In response, only MediaNet addressed this issue. MediaNet affirmed that it is ''committed to ensuring that all creators are paid for the use of their works,'' but stated that it remained unclear ''whether such data exists, and can be reported to the MLC.'' [349] MediaNet did not comment on either Mr. Price's assertion that MediaNet may still have this royalty and usage data, or the feasibility of Mr. Price's suggested alternative solution of recreating the necessary reporting information, as discussed above.

The Office understands MediaNet's concern and hopes it is able to locate or recreate such data to take advantage of the limitation on liability, but must decline to promulgate its proposed rule. As an initial matter, MediaNet has not confirmed whether this information currently exists with its former vendors or can be recreated. The Office is reluctant to promulgate MediaNet's requested exemption without a showing confirming its necessity. Further, the request appears to depart from statutory requirements. The operative statutory language contemplates that to obtain the limitation on liability a DMP will report ''all of the information that would have been provided to the copyright owner'' to the MLC.[350] Based on the applicable regulations, such information would have included, for example, the number of phonorecords made during a reporting period, phonorecord identification information such as titles,

[332] *See* DLC NPRM Comment at 4–5, Add. 23; MLC NPRM Comment at 7–8; *see also* NPRM at 43522.

[333] DLC NPRM Comment at 4–5.

[334] SNPRM at 70549; *see* MLC SNPRM Comment App. A at v (not opposing this phrase).

[335] DLC NPRM Comment at Add. 23.

[336] *See* NPRM at 43522; SNPRM at 70549.

[337] SNPRM at 70549.

[338] *Id.* at 70547 (citing MediaNet *Ex Parte* Letter at 2–3 (Oct. 28, 2020)).

[339] *See* MediaNet *Ex Parte* Letter at 3 (Oct. 28, 2020).

[340] *Id.* at 2–3.

[341] *Id.* at 3.

[342] *Id.*

[343] *Id.* (citing 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa)).

[344] Jeff Price *Ex Parte* Letter at 1, 2, 10 (Nov. 23, 2020).

[345] *Id.* at 1–2.

[346] *Id.* at 1.

[347] *Id.* at 2–7.

[348] SNPRM at 70547.

[349] MediaNet SNPRM Comment at 2.

[350] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

ISRCs, catalog numbers, ISWCs, and UPCs, and, importantly, detailed information on how per-work royalty allocations for these works were calculated.[351] MediaNet's broad proposed exemption would deprive the MLC of all of this information.

The information-related reporting requirement is intended to facilitate the MLC in appropriately accounting for the previously unreported usage.[352] This information would allow the MLC to confirm that the appropriate royalties are being turned over, confirm which matched and unmatched works have been paid, pay for any matched works, and consider whether to make an eventual distribution of unclaimed accrued royalties by market share for this period.[353] Based on the above considerations, the Office declines MediaNet's proposed amendment.

D. Other Provisions and Additional Clarifications

In this section, the Office addresses additional matters raised in this rulemaking, including those relating to record retention requirements, harmless errors, certifications, and voluntary agreements between the MLC and a DMP to alter certain procedures.

Records of use. The SNPRM proposed to impose a ''records of use'' provision on DMPs for cumulative statements of account, modeled in part after the records of use provision that applies to DMPs under the reports of usage regulations.[354] A DMP would be required to ''keep and retain in [their] possession all records and documents necessary and appropriate to support fully the information set forth in [cumulative statements of account and/or statements of adjustment]'' for at least seven years after delivering the statement to the MLC.[355] Unlike the reports of usage records of use provision, the SNPRM did not include language allowing the MLC ''reasonable access'' to the DMPs' records or accompanying access limitation provisions.[356]

The Office received comments supporting its proposed records of use provision and no comments in opposition.[357] But the MLC asserted that ''the value of the provision is largely lost without a provision for reasonable access to the records,'' and proposed adding the following language:

> The mechanical licensing collective or its agent shall be entitled to reasonable access to records and documents described in this section, which shall be provided promptly and arranged for no later than 30 calendar days after the mechanical licensing collective's reasonable request, subject to any confidentiality to which they may be entitled.[358]

In response, the DLC disputed the MLC's needs for these records, stating that while these records may be relevant for copyright owners bringing related legal challenges, ''the MLC has no role in enforcing the accuracy of the cumulative statement of account—which is a feature of the limitation on liability, and *not* the blanket license.'' [359]

The Office appreciates the MLC's suggestion, but is not including its proposed access-related language. While the statute requires that the records of use provision that applies to reports of usage, contain an MLC-access provision, there is no such requirement for cumulative statement of account reporting.[360] The Office previously declined to promulgate access rules for pre-MMA mechanical license reporting, stating that ''we believe that rules governing access to business records . . . are beyond our authority to establish. In any event, judicial discovery procedures—and possible other alternatives—are available to copyright owners to secure such access.'' [361] The Office concludes that given the lack of congressional direction and the ability for litigants to secure access to these records via judicial order, it does not need to promulgate a ''reasonable access'' regulation.[362]

Activity or offering clarification. The DLC asked for a clarification to reflect that, when a DMP reports on historic activities and offerings as a part of a cumulative statement of account, such reporting ''is to be of service offerings *at the time of the usage,* and that there is no expectation to map old categories of offerings onto the most recent categories of offerings.'' [363] The Office confirms that it shares this understanding. In light of the DLC's request, it has clarified section 210.10(g) accordingly to expressly state that reporting requirements are related to the applicable activity or offering at the time of the usage.

Voluntary agreements to alter process. In the NPRM, the Office solicited comments ''regarding whether the rule should . . . permit the MLC and individual DMPs to enter into agreements to alter [the cumulative statement of account reporting] process'' and noted that, at that time, it was proposing ''a similar provision with respect to monthly reports of usage.'' [364] The Office subsequently adopted such a rule for monthly reports of usage.[365] The MLC supports including a similar provision for cumulative reporting, stating ''while the reporting required under the [NPRM] should be the baseline, every circumstance cannot be anticipated, and allowing the MLC the flexibility to address specific considerations attendant to a particular DMP is appropriate.'' [366]

The SNPRM proposed a provision modelled after that recently adopted in connection with monthly reports of usage, including clarification that certification procedures could not be altered by agreement and that any flexibility ''does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.'' [367] Non-substantive procedures, such as reporting formats, could be altered by agreement, ''provided that any such alteration does not materially prejudice copyright owners owed royalties required to be transferred to the MLC or for the DMP's eligibility for the 17 U.S.C. 115(d)(10) limitation on liability.'' [368]

Neither the MLC nor DLC directly addressed the SNPRM's proposal, although the MLC included this language in its proposed regulatory language and the DLC signaled general support for the Office's SNPRM.[369] An

[351] *See* 37 CFR 210.6(c)(3), 210.10(d), (e).

[352] In response to the Office's NOI, the MLC asked for even more information to support its matching efforts. NPRM at 43518–19 (citing MLC Reply NOI Comment App. D at 19; MLC *Ex Parte* Letter at 2 n.1 (June 17, 2020)).

[353] *See* 17 U.S.C. 115(d)(3)(E), (G), (J).

[354] SNPRM at 70547; 37 CFR 210.27(m) (reports of usage records of use provision).

[355] SNPRM at 70551 (''except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the statement containing the final adjustment of such input'').

[356] 37 CFR 210.27(m)(2).

[357] MLC SNPRM Comment at 14 n.6; Cas Martin SNPRM Comment at 2; *see also* MLC *Ex Parte* Letter at 2 (Oct. 5, 2020).

[358] MLC SNPRM Comment at App. xi.

[359] DLC *Ex Parte* Letter at 1–2 (Dec. 11, 2020).

[360] *See* 17 U.S.C. 115(d)(4)(A)(iii), (iv)(I).

[361] 43 FR 44511, 44515 (Sept. 28, 1978).

[362] Similarly, the record retention requirement under the non-blanket compulsory license does not have a ''reasonable access'' requirement. *See* 37 CFR 210.8.

[363] DLC SNPRM Comment at 13.

[364] NPRM at 43521–22 (citing 85 FR at 22518, 22546).

[365] 37 CFR 210.27(n).

[366] MLC NPRM Comment at 7.

[367] SNPRM at 70551.

[368] *Id.* at 70547, 70551.

[369] DLC SNPRM Comment at 1 (''DLC strongly supports the proposed rule noticed in the SNPRM.''); MLC SNPRM Comment at App. x.

individual commenter also indicated support for this provision.[370] The Office has incorporated this aspect of the SNPRM into the final rule.

Harmless errors. In the SNPRM, the Office asked parties whether it should adopt a harmless error provision ''similar to the provision adopted for reporting by significant nonblanket licensees'' and noted that pre-MMA regulations did contain a harmless error rule pertaining to monthly and annual statements of account.[371] The DLC supported this provision, and proposed alternate regulatory language based upon pre-MMA regulations governing monthly and annual statements of account: ''Errors in a Cumulative Statement of Account or Statement of Adjustment that do not materially prejudice the rights of the copyright owner shall be deemed harmless, and shall not render that statement of account invalid.'' [372] The DLC explained that cumulative, monthly, and annual statements of account are ''prepared using at least some of the same processes'' and ''include specifically the information that would have been included at the time of the use,'' in arguing that harmless errors should be treated in the same manner.[373] It suggested that the inclusion of an estimate and adjustment provision would not ''obviate the need for a harmless error provision'' as ''some harmless errors might not result from the use of an estimate, and/or might not be appropriate for adjustment.'' [374]

The Office accepts the DLC's suggestion to promulgate a harmless error rule for cumulative statements of account, based on the current harmless error regulations governing monthly and annual statements of account. As the Office previously noted in the context of the monthly and annual statement of account harmless error rule, ''[i]t would be unduly severe to treat . . . inconsequential mistakes as equal to errors that result in material prejudice to the copyright owner.'' [375]

Certification requirements. With respect to the proposed certification requirement for cumulative statements of account, which no party opposes, the DLC says its members ''have interpreted the reference to using 'processes and internal controls that were subject to an examination, *during the past year,* by a licensed certified public accountant,' to refer to the CPA examination that has happened for the 2019 annual statements of account, which were distributed to publishers earlier this calendar year, rather than to a *new* CPA certification related to the cumulative statement of account.'' [376] The Office cautions DMPs to consider the scope of the relevant CPA examination, and be sure that the processes and internal controls that were examined previously are the same processes and controls relevant to preparing the cumulative statement of account. If not, a DMP may need a separate examination for the processes and controls applicable to the cumulative statement of account, or it can use the alternative certification option that does not involve a CPA examination.

The DLC also requested changes to the signature requirements in provisions addressing certifications in cumulative statements of account. The statute requires a DMP to submit the certification that would have been provided to an identified copyright owner (*i.e.,* the pre-existing statement of account certification) as well as ''an additional certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the [statutory good-faith matching] requirements'' during the transition period.[377] The NPRM proposed ''a technical change to include the actual language for clarity'' and moved both required certifications into the same paragraph.[378] The DLC initially ''welcomed'' this clarification, calling it ''reasonable and appropriate.'' [379] Subsequently, however, the DLC proposed edits to both certification provisions.[380] It explained that the proposed regulation ''may unintentionally be read to limit the corporate personnel who can sign and certify the cumulative statement of account and the facts therein,'' as ''officer'' has a specific meaning under corporate law.[381]

The Office declines to adopt the DLC's proposed edits. It is not clear that the pre-existing statement of account certification, which is mirrored in the cumulative statement of account rule and was similarly just adopted as a requirement in connection with future reports of usage, has caused DMPs any issues since it was implemented years ago.[382] Further, the cumulative statement of account certification language for good-faith matching is dictated by statute, which references ''officer'' and not ''representative.'' Finally, the Office has not received additional input from other potentially interested parties, such as the MLC, confirming they also understand this to be a technical clarification. For these reasons, the Office believes that it is better to maintain consistency for cumulative statements of account certifications and respectfully declines the DLC's proposal.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Amend § 210.2 by revising paragraph (k) and removing paragraphs (l) through (o).

The revision reads as follows:

§ 210.2 Definitions.

* * * * *

(k) Any terms not otherwise defined in this section shall have the meanings set forth in 17 U.S.C. 115(e).

■ 3. Amend § 210.10 by revising paragraphs (b) introductory text, (b)(1), (b)(2) introductory text, and (b)(3)(i) and adding paragraphs (c) through (m) to read as follows:

§ 210.10 Statements required for limitation on liability for digital music providers for the transition period prior to the license availability date.

* * * * *

(b) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

[370] Cas Martin SNPRM Comment at 2–3.

[371] SNPRM at 70547 n.33; *see* 37 CFR 210.9.

[372] DLC *Ex Parte* Letter at 3 (Dec. 11, 2020).

[373] *Id.* at 2.

[374] *Id.*

[375] 79 FR 56190, 56205 (Sept. 18, 2014).

[376] DLC NPRM Comment at 5, 9.

[377] 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa).

[378] NPRM at 43520.

[379] DLC NPRM Comment at 2, 4.

[380] DLC SNPRM Comment at 15 (suggesting revision parallel requirements for submission of notices of license; quoting 37 CFR 210.24(c)).

[381] *Id.*

[382] 85 FR at 58152–53; *see* 37 CFR 210.16(f) (2015).

(1) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles, including those concerning derecognition of liabilities.

(2) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall, unless a voluntary license or other relevant agreement entered into prior to the time period specified in paragraph (b)(2)(i) of this section applies to such musical work (or share thereof)—

* * * * *

(3) * * *

(i) Not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective (as required by paragraph (i)(2) of this section and subject to paragraphs (c)(5) and (k) of this section), such payment to be accompanied by a cumulative statement of account that:

(A) Includes all of the information required by paragraphs (c) through (e) of this section covering the period starting from initial use of the work;

(B) Is delivered to the mechanical licensing collective as required by paragraph (i)(1) of this section; and

(C) Is certified as required by paragraph (j) of this section; and

* * * * *

(c) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be clearly and prominently identified as a ''Cumulative Statement of Account for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (months and years) covered by the cumulative statement of account.

(2) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s) (including as may be defined in part 385 of this title), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities. If the digital music provider has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the digital music provider in covered activities during the period identified in paragraph (c)(1) of this section and for which a copyright owner of such musical work (or share thereof) is not identified and located by the license availability date, a detailed cumulative statement, from which the mechanical licensing collective may separate reported information for each month and year for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) The total accrued royalty payable by the digital music provider for the period identified in paragraph (c)(1) of this section, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total accrued royalty payable broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title.

(i) Where a digital music provider has a reasonable good-faith belief that the total accrued royalties payable are less than the total of the amounts reported under paragraph (c)(4)(i) of this section, and the precise amount of such accrued royalties cannot be calculated at the time the cumulative statement of account is delivered to the mechanical licensing collective because of the unmatched status of relevant musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section, the total accrued royalties reported and transferred may make use of reasonable estimations, determined in accordance with GAAP and broken down by month and year and by each applicable activity or offering including as may be defined in part 385 of this title. Any such estimate shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section. In no case shall the failure to match a musical work by the license availability date be construed as prohibiting or limiting a digital music provider's entitlement to use such an estimate if the digital music provider has satisfied its obligations under 17 U.S.C. 115(d)(10)(B) to engage in required matching efforts.

(ii) A digital music provider reporting and transferring accrued royalties that make use of reasonable estimations must provide a description of any voluntary license or other agreement containing an appropriate release of royalty claims relied upon by the digital music provider in making its estimation that is sufficient for the mechanical licensing collective to engage in efforts to confirm uses of musical works subject to any such agreement. Such description shall be sufficient if it includes at least the following information:

(A) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, relevant to any such agreement. If such an agreement pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(B) The start and end dates of each covered period of time.

(C) Each applicable musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for each such musical work copyright owner or for an administrator or other representative who has entered into an applicable agreement on behalf of the relevant copyright owner.

(D) A satisfactory identification of any applicable catalog exclusions.

(E) At the digital music provider's option, and in lieu of providing the information listed in paragraph (c)(5)(ii)(D) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(F) A unique identifier for each such agreement.

(iii)(A) After receiving the information required by paragraph (c)(5)(ii) of this section, the mechanical licensing collective shall, among any other actions required of it, engage in efforts to confirm uses of musical works embodied in sound recordings reported under paragraph (c)(4)(ii) of this section that are subject to any identified agreement, and shall promptly notify relevant copyright owners of the digital music provider's reliance on such identified agreement(s).

(B)(*1*) A notified copyright owner may dispute whether a digital music provider has appropriately relied upon an identified agreement by delivering a notice of dispute to the mechanical licensing collective no later than one

year after being notified. A notice of dispute must describe the basis for the copyright owner's dispute with particularity and specify whether the copyright owner is disputing the digital music provider's reliance with respect to potential distributions based on matched usage or of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J), or both. The notice must contain a certification by the copyright owner that its dispute is reasonable and made in good faith. The mechanical licensing collective shall promptly provide the digital music provider with a copy of any notice of dispute it receives. Nothing in this paragraph (c)(5)(iii)(B)(*1*) shall be construed as prejudicing a copyright owner's right or ability to otherwise dispute a digital music provider's reliance on an identified agreement outside of this process.

(*2*) If the mechanical licensing collective receives a notice of dispute from an appropriate copyright owner in compliance with paragraph (c)(5)(iii)(B)(*1*) of this section, then at or around the point in time that the mechanical licensing collective would otherwise make a particular distribution to that copyright owner but for the digital music provider's reliance on the disputed agreement, the mechanical licensing collective shall deliver an invoice and/or response file to the digital music provider consistent with paragraph (h) of this section that includes the amount that would otherwise be distributed at that time (which shall include the interest that would have accrued on such amount had it been held by the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(3)(H)(ii) from the original date of transfer) and an explanation of how that amount was determined. Depending on the scope of the notice of dispute, this may include distributions based on matched usage and/or distributions of unclaimed accrued royalties under 17 U.S.C. 115(d)(3)(J). In the case of the latter, the relevant approximate date to deliver the invoice and/or response file to the digital music provider shall be the date on which the mechanical licensing collective provides the notice required under 17 U.S.C. 115(d)(3)(J)(iii)(II)(dd). Where a copyright owner delivers a notice of dispute after the relevant point in time has passed for a particular distribution, the mechanical licensing collective shall deliver the invoice and/or response file to the digital music provider promptly after receiving the notice of dispute. No later than 14 business days after receipt of the invoice and/or response file, the digital music provider must pay the invoiced amount.

(*3*) All amounts delivered to the mechanical licensing collective by a digital music provider pursuant to paragraph (c)(5)(iii)(B)(*2*) of this section shall be held by the mechanical licensing collective pending resolution of the dispute, in accordance with 17 U.S.C. 115(d)(3)(H)(ii)(I) without regard for whether or not the funds are in fact accrued royalties. The mechanical licensing collective shall not make a distribution of the funds (or any part thereof), treat the funds (or any part thereof) as an overpayment, or otherwise release the funds (or any part thereof), unless directed to do so by mutual agreement of the relevant parties or by order of an adjudicative body with appropriate authority. If the mechanical licensing collective has not been so directed within one year after the funds have been received from the digital music provider, and if there is no active dispute resolution occurring at that time, the mechanical licensing collective shall treat the funds as an overpayment which shall be handled in accordance with paragraph (k)(5) of this section.

(C) The mechanical licensing collective shall presume that a digital music provider has appropriately relied upon an identified agreement, except with respect to a relevant copyright owner who has delivered a valid notice of dispute for such agreement pursuant to paragraph (c)(5)(iii)(B)(*1*) of this section. Notwithstanding the preceding sentence, any resolution of a dispute shall be reflected in the mechanical licensing collective's ongoing administration activities.

(iv)(A) Subject to paragraph (c)(5)(iii) of this section, if the amount transferred to the mechanical licensing collective by a digital music provider with its cumulative statement of account is insufficient to cover any required distributions to copyright owners, the mechanical licensing collective shall deliver an invoice and/or response file to the digital music provider consistent with paragraph (h) of this section that includes the amount outstanding (which shall include the interest that would have accrued on such amount had it been held by the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(3)(H)(ii) from the original date of transfer) and the basis for the mechanical licensing collective's conclusion that such amount is due. No later than 14 business days after receipt of such notice, the digital music provider must pay the invoiced amount.

(B) In the event a digital music provider is found by an adjudicative body with appropriate authority to have erroneously, but not unreasonably or in bad faith, withheld accrued royalties, the digital music provider may remain in compliance with this section for purposes of retaining its limitation on liability if the digital music provider has otherwise satisfied the requirements for the limitation on liability described in 17 U.S.C. 115(d)(10) and this section and if the additional amount due is paid in accordance with a relevant order.

(v) Any overpayment of royalties based upon an estimate permitted by paragraph (c)(5)(i) of this section shall be handled in accordance with paragraph (k)(5) of this section.

(vi) Any underpayment of royalties shall be remedied by a digital music provider without regard for the adjusted statute of limitations described in 17 U.S.C. 115(d)(10)(C). By using an estimate permitted by either paragraph (c)(5)(i) or (d)(2) of this section, a digital music provider agrees to waive any statute-of-limitations-based defenses with respect to any asserted underpayment of royalties connected to the use of such an estimate.

(vii) Nothing in this section shall be construed as prejudicing a copyright owner's ability to challenge whether a digital music provider has satisfied the requirements for the limitation on liability.

(6) If the total accrued royalty reported under paragraph (c)(5) of this section does not reconcile with the royalties actually transferred to the mechanical licensing collective, or if the royalties reported employ an estimate as permitted under paragraph (c)(5)(i) of this section, a clear and detailed explanation of the difference and the basis for it.

(d) The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) A detailed and step-by-step accounting of the calculation of attributable royalties under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the digital music provider determined the royalty and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(2) Where computation of the attributable royalties depends on an input that is unable to be finally determined at the time the cumulative statement of account is delivered to the mechanical licensing collective and

where the reason the input cannot be finally determined is outside of the digital music provider's control (*e.g.,* the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the digital music provider. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined. A cumulative statement of account containing an estimate permitted by this paragraph (d)(2) should identify each input that has been estimated, and provide the reason(s) why such input(s) needed to be estimated and an explanation as to the basis for the estimate(s).

(3) All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the digital music provider at the time the cumulative statement of account is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) For each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section, the digital music provider shall provide the information referenced in § 210.6(c)(3) that would have been provided to the copyright owner had the digital music provider been serving Monthly Statements of Account as a compulsory licensee in accordance with this subpart on the copyright owner from initial use of the work, plus the unique identifier assigned by the digital music provider to the sound recording and a unique identifier assigned by the digital music provider to each individual usage line.

(f) The information required by paragraphs (c), (d), (e), (k), and (o) of this section requires intelligible, legible, and unambiguous statements in the cumulative statements of account, without incorporation of facts or information contained in other documents or records.

(g) References to part 385 of this title, as used in paragraphs (c), (d), and (k) of this section, refer to the rates and terms of royalty payments, including any defined activities or offerings, as in effect as to each particular reported use based on when the use occurred.

(h) If requested by a digital music provider, the mechanical licensing collective shall deliver an invoice and/or a response file to the digital music provider within a reasonable period of time after the cumulative statement of account and related royalties are received. The response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators.

(i)(1) To the extent practicable, each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section, and each supplemental metadata report delivered to the mechanical licensing collective under paragraph (o) of this section, shall be delivered in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among digital music providers. The mechanical licensing collective must offer an option that is accessible to smaller digital music providers that may not be reasonably capable of complying with the requirements of a sophisticated reporting or data standard or format. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than one reporting or data standard or format. A digital music provider may use an alternative reporting or data standard or format pursuant to an agreement with the mechanical licensing collective under paragraph (l) of this section, consent to which shall not be unreasonably withheld by the mechanical licensing collective.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A cumulative statement of account and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the cumulative statement of account to the payment.

(j) Each cumulative statement of account delivered to the mechanical licensing collective under paragraph (b)(3)(i) of this section shall be accompanied by:

(1) The name of the person who is signing and certifying the cumulative statement of account.

(2) A signature, which in the case of a digital music provider that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the digital music provider is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the cumulative statement of account.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have examined this cumulative statement of account, and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this cumulative statement of account on behalf of the digital music provider, (2) I have prepared or supervised the preparation of the data used by the digital music provider and/or its agent to generate this cumulative statement of account, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this cumulative statement of account was prepared by the digital music provider and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the digital music provider's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(6) A certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of 17 U.S.C. 115(d)(10)(B)(i) and (ii) but has not been successful in locating or identifying the copyright owner.

(k)(1) A digital music provider may adjust its previously delivered cumulative statement of account, including related royalty payments, by delivering to the mechanical licensing collective a statement of adjustment.

(2) A statement of adjustment shall be clearly and prominently identified as a ''Statement of Adjustment of a Cumulative Statement of Account.''

(3) A statement of adjustment shall include a clear statement of the following information:

(i) The previously delivered cumulative statement of account, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the previously delivered cumulative statement of account, including a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the digital music provider depends. Such description shall include the adjusted royalties payable and all information used to compute the adjusted royalties payable, in accordance with the requirements of this section and part 385 of this title, such that the mechanical licensing collective can provide a detailed and step-by-step accounting of the calculation of the adjustment under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the digital music provider determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the digital music provider shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the statement of adjustment or promptly after being notified by the mechanical licensing collective of the amount due. A statement of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the statement of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the digital music provider's account, or upon request, issue a refund within a reasonable period of time.

(6)(i) A statement of adjustment must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6)(ii) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same cumulative statement of account at different points in time, a separate 6-month period runs for each such triggering event. Where more than one scenario necessitates the same particular adjustment, the 6-month deadline to make the adjustment begins to run from the occurrence of the earliest triggering event.

(ii) A statement of adjustment may only be made:

(A) Except as otherwise provided for by paragraph (c)(5) of this section, where the digital music provider discovers, or is notified of by the mechanical licensing collective or a copyright owner, licensor, or author (or their respective representatives, including by an administrator or a collective management organization) of a relevant sound recording or musical work that is embodied in such a sound recording, an inaccuracy in the cumulative statement of account, or in the amounts of royalties owed, based on information that was not previously known to the digital music provider despite its good-faith efforts;

(B) When making an adjustment to a previously estimated input under paragraph (d)(2) of this section;

(C) Following an audit of a digital music provider that concludes after the cumulative statement of account is delivered and that has the result of affecting the computation of the royalties payable by the digital music provider (*e.g.,* as applicable, an audit by a sound recording copyright owner concerning the amount of applicable consideration paid for sound recording copyright rights); or

(D) In response to a change in applicable rates or terms under part 385 of this title.

(E) To ensure consistency with any adjustments made in an Annual Statement of Account generated under § 210.7 for the most recent fiscal year.

(7) A statement of adjustment must be certified in the same manner as a cumulative statement of account under paragraph (j) of this section.

(l)(1) Subject to the provisions of 17 U.S.C. 115, a digital music provider and the mechanical licensing collective may agree in writing to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties required to be transferred to the mechanical licensing collective for the digital music provider to be eligible for the limitation on liability described in 17 U.S.C. 115(d)(10). The procedures surrounding the certification requirements of paragraph (j) of this section may not be altered by agreement. This paragraph (l)(1) does not empower the mechanical licensing collective to agree to alter any substantive requirements described in this section, including but not limited to the required royalty payment and accounting information and sound recording and musical work information.

(2) The mechanical licensing collective shall maintain a current, free, and publicly accessible online list of all agreements made pursuant to paragraph (l)(1) of this section that includes the name of the digital music provider (and, if different, the trade or consumer-facing brand name(s) of the services(s), including any specific offering(s), through which the digital music provider engages, or has engaged at any time during the period identified in paragraph (c)(1) of this section, in covered activities) and the start and end dates of the agreement. Any such agreement shall be considered a record that a copyright owner may access in accordance with 17 U.S.C. 115(d)(3)(M)(ii). Where an agreement made pursuant to paragraph (l)(1) of this section is made pursuant to an agreement to administer a voluntary license or any other agreement, only those portions that vary or supplement the procedures described in this section and that pertain to the administration of a requesting copyright owner's musical works must be made available to that copyright owner.

(m) Each digital music provider shall, for a period of at least seven years from the date of delivery of a cumulative statement of account or statement of adjustment to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such statement (except that such records and documents that relate to an estimated input permitted under paragraph (d)(2) of this section must be kept and retained for a period of at least seven years from the date of delivery of the statement containing the final adjustment of such input).

(n) Errors in a cumulative statement of account or statement of adjustment that do not materially prejudice the rights of the copyright owner shall be deemed harmless, and shall not render that statement invalid.

(o)(1) By June 15, 2021, the digital music provider must submit a

supplemental metadata report that includes all of the information provided in the cumulative statement of account pursuant to paragraph (c) of this section, as well as, separately or together with such information, the following information for each sound recording embodying a musical work that was reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier assigned by the digital music provider, if any, including to the extent practicable, any code(s) that can be used to locate and listen to the sound recording through the digital music provider's public-facing service;

(D) Actual playing time measured from the sound recording audio file, where available; and

(E) To the extent acquired by the digital music provider in connection with its use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) International standard recording code(s) (ISRC);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) Universal product code(s) (UPC); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s); and

(*9*) Distributor(s).

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(A) Information concerning authorship of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s); and

(*2*) International standard name identifier(s) (ISNI) and interested parties information code(s) (IPI) for each such songwriter;

(B) International standard musical work code(s) (ISWC) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii)(A) For each track for which a share of a musical work has been matched and for which accrued royalties for such share have been paid, but for which one or more shares of the musical work remains unmatched and unpaid, the digital music provider must provide, for each usage line for such track, a reference to the specific unique identifier for the usage line reported under paragraph (e) of this section, and a clear identification of the percentage share(s) that have been matched and paid and the owner(s) of such matched and paid share(s) (including any unique party identifiers for such owner(s) that are known by the digital music provider).

(B) If, for a particular track, a digital music provider cannot provide a clear identification of the percentage share(s) that have been matched and paid and the owner(s) of such share(s) because this information is subject to a contractual confidentiality restriction or the conditions of paragraph (o)(1)(iii)(C) of this section apply with respect to such information, the digital music provider must provide alternate information for the track, namely, a clear identification of the total aggregate percentage share that has been matched and paid and the owner(s) of the aggregate matched and paid share (including any unique party identifiers for such owner(s) that are known by the digital music provider). If the digital music provider still cannot provide such alternate information because of the conditions of paragraph (o)(1)(iii)(C) of this section, the information required by this paragraph (o)(1)(iii)(B) may be omitted for the track from the supplemental metadata report. A digital music provider reporting under this paragraph (o)(1)(iii)(B) must deliver a certification to the mechanical licensing collective stating that the conditions of being permitted to report under this paragraph (o)(1)(iii)(B) apply with respect to the provision of alternate information or omission of percentage share(s) information entirely, as specified in the certification.

(C) The conditions referred to in paragraph (o)(1)(iii)(B) of this section are:

(*1*) The information is maintained only by a third-party vendor;

(*2*) The digital music provider does not have any contractual or other rights to access the information;

(*3*) The digital music provider is unable to compile the information from records in its possession using commercially reasonable efforts within the required reporting timeframe; and

(*4*) The vendor refuses to make the information available to the digital music provider on commercially reasonable terms.

(2) Any obligation under paragraph (o)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: LabelName and PLine. Where a digital music provider acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(3) As used in this paragraph (o), it is practicable to provide the enumerated information if:

(i) It belongs to a category of information expressly required to be reported by the enumerated list of information contained in § 210.6(c)(3);

(ii) It belongs to a category of information that has been reported, or is required to be reported, by the particular digital music provider to the mechanical licensing collective under the blanket license; or

(iii) It belongs to a category of information that is reported by the particular digital music provider to the mechanical licensing collective under a voluntary license or individual download license.

(4) The supplemental metadata report provided for in this paragraph (o) is not a condition for eligibility for the limitation on liability in 17 U.S.C. 115(d)(10), or a condition of the blanket license.

Dated: December 23, 2020.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–29190 Filed 1–7–21; 8:45 am]

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Part VI

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191 and 192

Pipeline Safety: Gas Pipeline Regulatory Reform; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191 and 192

[Docket No. PHMSA–2018–0046; Amdt Nos. 191–29; 192–128]

RIN 2137–AF36

Pipeline Safety: Gas Pipeline Regulatory Reform

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; withdrawal of enforcement discretion.

SUMMARY: PHMSA is amending the Federal Pipeline Safety Regulations to ease regulatory burdens on the construction, maintenance, and operation of gas transmission, distribution, and gathering pipeline systems without adversely affecting safety. The amendments in this rule are based on rulemaking petitions from stakeholders, and DOT and PHMSA initiatives to identify appropriate areas where regulations might be repealed, replaced, or modified, and PHMSA's review of public comments. PHMSA also, as of the effective date of this final rule, withdraws the March 29, 2019 ''Exercise of Enforcement Discretion Regarding Farm Taps'' and the unpublished October 27, 2015 letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels.

DATES: *Effective Date:* This rule is effective March 12, 2021.

Incorporation by reference date: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 12, 2021.

Voluntary compliance date: March 12, 2021.

Delayed compliance date: Compliance with the amendments adopted in the rule is required beginning October 1, 2021.

Enforcement discretion withdrawal date: The withdrawal of 84 FR 11253 (Mar. 26, 2019) is effective as of March 12, 2021.

FOR FURTHER INFORMATION CONTACT: Sayler Palabrica, Transportation Specialist, by telephone at 202–366–0559.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background
III. Analysis of Comments, GPAC Recommendations, and PHMSA's Response
IV. Availability of Standards Incorporated by Reference
V. Regulatory Analyses and Notices

I. Executive Summary

A. Purpose of This Deregulatory Action

PHMSA is amending the Federal Pipeline Safety Regulations (PSR) at 49 CFR parts 191 and 192 to ease regulatory burdens on the construction, operation, and maintenance of gas transmission, distribution, and gathering pipeline systems without adversely affecting safety. These amendments include regulatory relief actions identified by internal agency review, petitions for rulemaking, and public comments submitted in response to a Department of Transportation (DOT) regulatory reform notice entitled ''Notification of Regulatory Review.'' [1]

On June 9, 2020, PHMSA published a notice of proposed rulemaking (NPRM) to seek public comments on proposed changes to the PSR.[2] A summary of those proposed changes, and PHMSA's response to stakeholder feedback on the individual provisions, is provided below in section III (*Analysis of Comments, GPAC Recommendations, and PHMSA's Response*).

B. Summary of PSR Amendments

The final rule makes the following amendments to 49 CFR parts 191 and 192:

A. Revision of certain requirements (at §§ 191.11, 192.740, and 192.1003) pertaining to farm taps giving operators the choice of managing inspections of pressure regulators serving farm taps under either their distribution integrity management plan (DIMP) or by following the inspection requirements at § 192.740;

B. Revision of certain requirements (at §§ 192.1003, 192.1005 and 192.1015) pertaining to master meter systems to exempt operators of these simple pipeline facilities from DIMP requirements that had been designed with complex distribution systems in mind;

C. Revision of certain reporting requirements (at §§ 191.12 and 192.1009) to eliminate a dedicated report form for mechanical fitting failures (MFFs), and modify other required report forms to incorporate more information on MFFs;

D. Revision of the monetary threshold for incident reporting (at § 191.3) to update for inflation over the three decades since the current monetary threshold was established, and introduce a new appendix A to part 191 to provide for annual updates to that threshold to account for inflation;

E. Revision of § 192.465 to clarify that operators may remotely inspect rectifier stations for external corrosion;

F. Revision of atmospheric corrosion monitoring requirements (at §§ 192.481, 192.491, 192.1007, and 192.1015) both to align the inspection interval for atmospheric corrosion on gas distribution service pipelines with leakage survey requirements at § 192.723, and to clarify that consideration of corrosion risks under DIMP explicitly includes atmospheric corrosion;

G. Revision of requirements governing plastic pipe (at §§ 192.7, 192.121, 192.281, 192.285, and appendix B to part 192) to improve alignment with, and incorporate by reference, certain updated industry standards;

H. Revision of test requirements for pressure vessels at § 192.153 to align pressure test factor requirements with industry standards, and to clarify certain other pressure testing requirements;

I. Revision of the welding process requirement at § 192.229 to align better with welder requalification requirement at § 192.229(d)(2); and

J. Revision of language at § 192.507 to extend an existing authorization for pre-testing of fabricated units and short segments of steel pipe prior to installation on pipelines with high-stress operating conditions to pipelines operating at lower-stress operating conditions.

C. Costs and Benefits

In accordance with 49 U.S.C. 60102, Executive Order (E.O.) 12866,[3] and DOT regulations at § 5.13(e), PHMSA has prepared an assessment of the costs and benefits of this final rule as well as reasonable alternatives. The amendments promulgated in this final rule are deregulatory, with the intention and effect of reducing regulatory burdens, increasing flexibility, improving efficiency, and adding clarity to existing rules without adversely affecting safety. PHMSA expects the incremental cost savings to accrue on an ongoing annual basis. PHMSA used a 20-year analysis period for this final rule. PHMSA estimates the total quantified annualized cost savings to be approximately $129.8 million (at a discount rate of 7 percent) or approximately $132.5 million (at a discount rate of 3 percent). Table-1 presents the estimated total cost savings for the 20-year period and the estimated

[1] 82 FR 45750 (Oct. 2, 2017).

[2] 85 FR 35240.

[3] ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993).

annualized cost savings over the same period.

TABLE 1—TOTAL ESTIMATED DISCOUNTED COST SAVINGS

[2019 $ in millions]

Category	Estimated cost savings
Total (20 years; discounted at 7 percent)	$1,374.8
Total (20 years; discounted at 3 percent	1,971
Annualized (discounted at 7 percent)	129.8
Annualized (discounted at 3 percent)	132.5

PHMSA does not anticipate that the amendments will have an adverse impact on safety or a significant effect on the environment. The largest quantified cost savings are due to the PSR amendments related to farm taps and atmospheric corrosion discussed in sections III.A and III.F, respectively, of the preamble to this final rule. PHMSA expects other amendments to improve regulatory flexibility, clarity, and simplicity. Additional details regarding PHMSA's evaluation of the costs and benefits of this final rule are available in the Final Regulatory Impact Analysis (RIA) posted in the rulemaking docket.

II. Background

A. Regulatory Reform Executive Orders and Department Response

As explained at greater length in the NPRM,[4] DOT published a notice, ''Notification of Regulatory Review,'' on October 2, 2017,[5] requesting recommendations on existing DOT rules and other agency actions that could be eliminated without adversely affecting safety. DOT in particular solicited the public's assistance in identifying DOT regulations and other actions which eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; could be revised to use performance standards in lieu of design standards; or that potentially unnecessarily encumber energy production. After a 30-day comment period, DOT re-opened the comment period until December 1, 2017.[6] DOT received nearly 3,000 public comments. Approximately 30 pertained to the PSR.[7]

B. PHMSA Notice of Proposed Rulemaking

Consistent with DOT's regulatory reform efforts and informed by PSR-pertinent comments received in response to the DOT Notification of Regulatory Review discussed above, PHMSA's Office of Pipeline Safety (OPS) reviewed the PSR and identified unnecessary, outdated, and non-cost-justified regulatory requirements that could be repealed, replaced, or modified without adversely affecting safety. PHMSA also considered certain petitions for rulemaking and petitions for reconsideration of earlier PSR amendments.

On June 9, 2020, PHMSA published an NPRM[8] proposing several amendments to 49 CFR parts 191 and 192 to reduce regulatory burdens on operators of gas pipelines without adversely affecting safety. The comment period for the NPRM ended on August 10, 2020. PHMSA received 46 comments on the NPRM, including late-filed comments. PHMSA received comments from groups representing the regulated pipeline industry; groups representing various public interests, including environmental groups; State utility commissions and regulators; individual pipeline operators; and private citizens. PHMSA received late-filed comments from the National Association of State Pipeline Safety Representatives (NAPSR), the Gas Piping Technology Committee (GPTC), a coalition of several industry trade associations, and GPA Midstream.[9] PHMSA also had a conversation with a member of the Gas Pipeline Advisory Committee (GPAC) and representatives of the Pipeline Safety Trust (PST) after the end of the comment period; a summary of that meeting has been placed in the rulemaking docket. Consistent with §§ 5.13(i)(5) and 190.323, PHMSA considered the late-filed comments and materials because of their relevance to the rulemaking and the absence of additional expense or delay resulting from their consideration.

Some of the comments PHMSA received were beyond the scope of the amendments proposed in the NPRM. The issues raised in those comments may be the subject of other existing or future rulemaking proceedings.

The remaining comments reflect a wide variety of views on the merits of the proposed PSR amendments. PHMSA read and considered all the comments posted to the docket for this rulemaking. These comments and PHMSA's response to those comments are described in section III.

Contemporaneously with PHMSA's development of the NPRM, the President issued E.O. 13924, ''Regulatory Relief to Support Economic Recovery,''[10] directing Federal agencies to respond to the economic harm caused by the novel coronavirus by reviewing their regulations and considering taking appropriate action, consistent with applicable law, to temporarily or permanently rescind or modify those regulations to reduce regulatory burdens and thereby promote economic growth.[11] PHMSA understands the cost savings expected from this final rule to be consistent with E.O. 13924's mandate.

C. Gas Pipeline Advisory Committee Meeting

The Technical Pipeline Safety Standards Committee, commonly known as the Gas Pipeline Advisory Committee (GPAC; the committee), is an advisory committee mandated by statute (49 U.S.C. 60115) that advises PHMSA on proposed safety standards. The GPAC is one of two pipeline advisory committees that focus on technical safety standards that were established under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1–16). The GPAC consists of 15 members, with membership divided among Federal and State agencies, the natural gas industry,

[4] 85 FR 35241–42.

[5] 82 FR 45750.

[6] 82 FR 51178.

[7] Docket No. DOT–OST–2017–0069.

[8] 85 FR 35240.

[9] GPA, formerly the Gas Processors Association.

[10] 85 FR 31353 (May 22, 2020).

[11] E.O. 13924 at § 4.

and the public. The GPAC considers the ''technical feasibility, reasonableness, cost-effectiveness, and practicability'' of each proposed pipeline safety standard and provides PHMSA with recommended actions pertaining to those proposals.

The GPAC met in an online virtual meeting on October 7, 2020 to consider the regulatory proposals of the NPRM. The GPAC members discussed comments made on the NPRM. To assist the GPAC in its deliberations, PHMSA presented a description and summary of the proposals in the NPRM and the comments received on those issues. PHMSA also assisted the committee by fostering discussion, developing recommendations, and providing direction on which issues were most pressing. A transcript of the meeting and all presented materials is available in the docket for the rulemaking and on the web page PHMSA established for the meeting.[12]

The committee voted on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each of the NPRM's provisions. In many instances, the committee recommended changes that the committee found would make certain proposals more feasible, reasonable, cost-effective, or practicable. These balloted recommendations and the transcript for the meeting serve as the GPAC's report pursuant to 49 U.S.C. 60115. These recommendations are discussed in section III of the preamble to this final rule for each of the topics proposed in the NPRM.

III. Analysis of Comments, GPAC Recommendations, and PHMSA's Response

The proposals in the NPRM, substantive comments received, as well as the GPAC's recommendations are organized by topic below and are discussed in the appropriate section with PHMSA's response to and resolution of those comments.

Distribution Integrity Management Program (DIMP)

On December 4, 2009, PHMSA issued a final rule titled, ''Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines.''[13] The 2009 rule created 49 CFR part 192, subpart P, requiring gas distribution operators to develop and implement integrity management (IM) programs. The NPRM contained two proposed revisions to DIMP requirements to ease or eliminate regulatory burdens on certain gas distribution operators. The first revision is to allow operators of farm taps[14] connected to transmission or regulated gathering lines the option of managing maintenance of pressure regulating devices under either § 192.740 or their DIMP in accordance with subpart P. As part of this amendment, PHMSA also proposed to exempt farm taps originating from unregulated gathering and production pipelines from DIMP, § 192.740, and incident and annual reporting requirements in part 191. Second, the NPRM included a proposal to revise §§ 192.1003 and 192.1015 to exempt master meter operators from DIMP due to their simplicity. Master meter systems that serve fewer than 100 customers from a single source are currently required to comply with a simplified set of DIMP requirements detailed in § 192.1015.

A. Farm Taps (Sections 191.11, 192.740, 192.1003)

1. PHMSA's Proposal

In the NPRM, PHMSA proposed to revise §§ 192.740 and 192.1003 to give operators the choice to manage inspections of pressure regulators serving farm taps under either their DIMP or by following the inspection requirements at § 192.740.

On January 23, 2017, PHMSA published a final rule that added § 192.740, ''Pressure regulating, limiting, and overpressure protection—Individual service lines directly connected to production, gathering, or transmission pipelines.''[15] Section 192.740 includes maintenance requirements for regulators and overpressure protection equipment for an individual service line that originates from a transmission, gathering, or production pipeline (*i.e.,* a farm tap). Currently, such devices must be inspected and tested at least once every 3 calendar years, with intervals not to exceed 39 months. The 2017 rule also revised the DIMP applicability regulations at § 192.1003 to exclude farm taps from DIMP requirements. The change was intended to create uniform compliance requirements for farm taps, address over-pressurization risks, and decrease the burden of meeting the DIMP requirements for transmission and gathering line operators who otherwise do not operate distribution assets. However, PHMSA had not considered that some farm taps are operated by local distribution companies rather than the operator of the transmission, gathering or production line itself. Operators who historically had included farm taps in their DIMP found it burdensome to remove those facilities from their plan and reevaluate the risks under a new, prescriptive program.

DOT received a comment in response to the Notification of Regulatory Review from the American Gas Association (AGA), the American Petroleum Institute (API), and Interstate Natural Gas Association of America (INGAA) (collectively, ''the Associations''), which recommended that PHMSA revise §§ 192.740 and 192.1003 to allow operators the flexibility to address the maintenance of farm taps under either of these regulatory requirements. After considering those comments, the NPRM proposed to revise §§ 192.740 and 192.1003 to exempt farm taps originating from transmission lines and regulated gathering lines from § 192.740 if they are included in a DIMP under subpart P. This provides operators the choice to manage the safety of farm tap regulators under either DIMP or the § 192.740 inspection requirement.

Finally, the NPRM included a proposal to exempt farm tap service lines connected to unregulated gathering or production pipelines from annual reporting (§ 191.11), farm tap regulator maintenance (§ 192.740), and DIMP (part 192, subpart P). Any portion of a farm tap that meets the definition of a service pipeline at § 192.3 must still comply with all other requirements in parts 191 and 192 applicable to service pipelines, even if the source of the service pipeline is not regulated by PHMSA. For example, an entity that operates a service line connected to a production pipeline must have an operator identification number in accordance with § 191.22 and must submit gas distribution incident reports for incidents that occur on the service line (§ 191.9). While the operator's production pipeline is exempt from part 191 (see § 191.1(b)(4)), any facility that meets the definition of a service line is a regulated distribution pipeline and therefore does not fall within the exemption for unregulated gathering and production pipelines.

2. Summary of Public Comments

Several commenters suggested PHMSA should simplify how farm tap requirements are presented in the PSR. The American Association of Laboratory

[12] *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=151&nocache=4862.*

[13] 74 FR 63905.

[14] A ''farm tap'' is the common name for a pipeline directly connected to a gas transmission, production, or gathering pipeline that provides gas to a customer. The term farm tap is not defined in the PSR; however, portions of a farm tap upstream of either the outlet of the customer's meter or the connection to a customer's piping, whichever is further downstream, may be a service line regulated under part 192. See § 192.3 (definition of ''service line'').

[15] 82 FR 7972.

Accreditation (A2LA) recommend adding a provision requiring that those entities conducting inspections achieve and maintain ISO/IEC 17020 (Conformity Assessment-Requirements for the Operation of Various Types of Bodies Performing Inspection) accreditation. The FreedomWorks Foundation (FreedomWorks) commented that the proposed changes in the NPRM would especially benefit smaller operations burdened by the high cost of compliance upon startup. PST commented the proposed PSR amendments appear to demonstrate an equivalent level of safety and they do not oppose this change. One company provided an editorial suggestion that the last word in proposed § 192.740(c)(3) should be ''or'' to clarify that this section (§ 192.740) does not apply if any one of the listed conditions apply.

Several commenters commented on farm tap-related terms and definitions proposed in § 192.740. Sander Resources suggested there were at least two significant definitional issues contained within the proposed rule that confused farm tap operators. The first relates to ''unregulated . . . gathering.'' Sander Resources commented that, technically, there is no such thing as ''unregulated gathering.'' All gathering lines are subject to the jurisdiction of PHMSA, but some are exempted from the requirements of part 192 as specified in § 192.9. Thus, this reference could be interpreted to mean that all gathering lines are still subject to the requirements of § 192.740 or § 192.1003 and related provisions, which could encompass much of part 192. They recommended that PHMSA clarify what it means to be ''unregulated,'' possibly through a reference to whether a line is subject to regulation under § 192.9. The Gas Piping Technology Committee (GPTC) similarly suggested that PHMSA clarify that regulated and unregulated gathering lines are as determined in § 192.8.

Sander Resources (on behalf of the Independent Petroleum Association of America, or IPAA) also raised a concern related to the definition of ''service line'' and, in particular, language in the NPRM's preamble suggesting that the part 192-regulated ''service line'' portion of a farm tap would begin at the ''first aboveground point where downstream piping can be isolated from source piping (*e.g.,* a valve or regulator inlet).'' AGA, API, the American Public Gas Association (APGA), and INGAA (collectively, AGA *et al.*) jointly submitted a similar comment recommending against PHMSA defining the ''service line'' portion of a farm tap in the proposed amendment to § 192.740. They commented it is neither practicable nor necessary for safety to define a uniform starting point for the service line on every farm tap directly connected to a transmission line. Their preferred approach would be to incorporate a distribution center definition that allows farm tap piping to be classified as a distribution center and explicitly allow operators to designate piping as transmission, even if the pipeline could be classified as distribution under the existing § 192.3. Rather than defining where the ''service line'' starts for farm taps under part 192, TC Energy commented PHMSA should revise § 192.740 to apply to ''pipelines'' serving farm tap customers instead of ''service lines,'' and eliminate the description of the source of supply to the farm tap customer. TC Energy believes that these changes would maintain the intended protections to farm tap customers and address industry concerns. A private citizen similarly commented that, in addition to these clarifications, PHMSA should clarify the definitions for transmission lines and distribution centers.

GPA Midstream stated that they did not support the NPRM preamble statement that, on a farm tap, the boundary between source piping and the distribution service lines is the first aboveground isolation point downstream from the source piping. They stated that there is no legal basis for using that point to delineate where a source production, gathering, or transmission line ends and a gas distribution service line under part 192 begins in a farm tap configuration. GPA Midstream urged PHMSA to acknowledge in the final rule that an operator may exercise reasonable discretion in determining where source piping ends and distribution service line piping, if any, begins in farm tap configurations. The Independent Oil and Gas Association of West Virginia (IOGAWV) commented PHMSA should not attempt to use its authority to change private contracts by transferring the cost of complying with the PSR to producers and unregulated gathering line operators. IOGAWV and the Ohio Oil and Gas Association (OOGA) stated PHMSA should take this opportunity to exempt farm taps from the PSR. IPAA urged PHMSA to recognize the significant difference between privately-owned farm taps, governed by contract or statute, and true distribution systems. GPA Midstream reiterated concerns with the definition of the start of a service line and the applicability of part 192 to farm taps connected to production lines and unregulated gathering lines in supplemental comments submitted after the GPAC meeting.

The GPAC voted unanimously in favor of the PSR amendments proposed in the NPRM, provided that PHMSA remove § 192.740(c)(4), thus eliminating language implying where a service line starts on a farm tap.

3. PHMSA Response

The final rule adopts the amendments with respect to farm taps as proposed in the NPRM, but revises the proposed § 192.740 as discussed below. PHMSA determined that compliance with the pressure regulator inspection requirements in § 192.740 or compliance with DIMP provide an equivalent level of safety. DIMP does not include specific, prescriptive inspection requirements for pressure regulating devices; however, operators are required by § 192.1007 to evaluate risks due to equipment failure under DIMP, which includes pressure regulating devices. Accordingly, farm tap operators must consider overpressure risk due to regulator failure in their DIMP, especially if the source pipeline pressure is very high. While § 192.740 is focused on pressure regulator maintenance, DIMP is a broader safety program that requires operators identify, evaluate, rank, and mitigate a wide range of risks to pipeline safety. Either requirement provides safety to farm tap customers by reducing the probability of a regulator system malfunction and, in the case of DIMP, incidents caused by other threats such as excavation damage and corrosion. Therefore, this change provides greater flexibility for operators of these farm taps while still requiring that operators evaluate all equipment to protect against failures and protect human health and the physical environment.

This proposed amendment was intended to provide flexibility for farm tap operators. It was not designed to resolve more general definitional questions surrounding the topic of farm taps. Therefore, PHMSA agrees with the suggestion to remove the proposed § 192.740(c)(4) from the final rule, which implied where the source piping on a farm tap ends and distribution, transmission, or customer piping begins. PHMSA believes that this change resolves most of the concerns about definitional changes raised by commenters. To the extent that there are remaining questions surrounding farm taps following this rulemaking, PHMSA will use ongoing efforts such as the proposed Farm Taps Frequently Asked

Questions (FAQs);[16] the remaining rulemaking projects associated with the Safety of Gas Transmission and Gas Gathering Pipelines NPRM;[17] and, if necessary, additional rulemaking and guidance. While the comment from TC Energy sidesteps these definitional issues, and has the benefit of extending protection to farm taps that operate at greater than 20 percent of specified minimum yield strength (SMYS) (and are therefore classified as transmission lines rather than service lines pursuant to the definition of a transmission line in § 192.3), it requires defining an additional term (''farm tap customer'') which was not made available for public comment in the NPRM or discussed by other comments in the rulemaking docket.

While this final rule does not define the boundaries of that portion of a farm tap that is regulated as a service line under part 192, the fact that a farm tap may include a regulated service line remains unchanged. Therefore, PHMSA disagrees with comments that the NPRM's characterization of portions of farm taps as jurisdictional service lines creates ''entirely new'' legal obligations for operators of service lines who also operate non-jurisdictional production lines and rural gathering lines that are not subject to safety regulation under part 192. Removing farm taps connected to production lines and unregulated gathering lines from the scope of the entire PSR, as suggested by some commenters, would be a consequential change from longstanding regulatory application and is beyond the scope of this final rule.

PHMSA and its predecessor agencies have been explicit and consistent with respect to the applicability of the part 192 regulations to distribution service lines in farm tap applications since the earliest years of Federal gas pipeline safety oversight. The Office of Pipeline Safety revised the definition of a service line in § 192.3 to clarify the point at which a service line ends and customer piping begins in an NPRM entitled, ''Minimum Federal Safety Standards for Transportation of Natural and Other Gas by Pipeline: Definition of Service Line,'' published on April 10, 1971.[18] On April 10, 1973, PHMSA finalized the proposal and defined the downstream end of a service line as the customer meter or connection to customer piping, whichever is further downstream.[19] This boundary stands with minor clarifications to this day at § 192.3. PHMSA formulated the definition of ''service line'' to address service lines in farm tap applications and other situations where no meter is present. PHMSA's predecessor agency, the Research and Special Programs Administration, again acknowledged the regulated status of service lines in farm tap applications in a final rule titled, ''Pipeline Safety: Customer-Owned Service Lines'' issued on August 14, 1995.[20] Finally, providing gas to farm tap customers is not a defined gathering or production function in either § 192.3 or in API Recommended Practice (RP) 80 (incorporated by reference in § 192.7). While production pipelines and some gathering pipelines are not subject to safety regulation under part 192, the distribution of national gas to customers is subject to PHMSA jurisdiction (49 U.S.C. 60101(a)(21)(i)) and the applicability of part 192 (§§ 192.1(a), 192.3) regardless of other activities in which an operator may also be engaged.

Regarding operators' concerns about their responsibility for customer-owned piping that they do not own or have access to, PHMSA reiterates that the final rule imposes no new requirements on operators of service lines in farm tap applications. Section 192.3 provides that a service line ends at the connection to customer-owned piping, or the outlet of the meter, whichever is further downstream. In the preamble to the 1995 customer-owned service line rule described above, PHMSA explained that that the PSR applies to the distribution of gas up to the end of a pipeline operator's service line.[21] In an earlier interpretation, PHMSA also noted that customer piping downstream of the end of a service line as defined in § 192.3 is not subject to part 192, provided the gas is for the customer's own use.[22] Therefore, the PSR does not require the source pipeline operator to maintain customer-owned piping downstream of the customer meter as defined in § 192.3. If there is no customer meter, then the service line terminates at the connection to customer-owned piping. Some operators do maintain customer piping voluntarily or as required by State, local, or contractual requirements. If an operator of a service line does not maintain the customer's piping under such arrangement, then the customer notification requirements in § 192.16 may apply.

PHMSA agrees with certain comments to clarify language in § 192.740. In the final rule, PHMSA has replaced the term ''unregulated gathering line'' with a gathering line other than a regulated gathering line as determined in § 192.8. In other words, a gathering line as determined in accordance with § 192.8 and API RP 80, but excluding a Type A or Type B regulated gathering line as defined in § 192.8. In addition, the exceptions in paragraph (c) are now separated by an ''or'' in the final rule.

Lastly, because the PSR revisions adopted in this final rule obviate the need for its March 29, 2019 ''Exercise of Enforcement Discretion Regarding Farm Taps,''[23] PHMSA withdraws that document as of the effective date of this final rule.

B. Master Meter Operators (Sections 192.1003, 192.1005, 192.1015)

1. PHMSA's Proposal

In the NPRM, PHMSA proposed to revise §§ 192.1003, 192.1005, and 192.1015 to exempt master meter operators from DIMP requirements. A ''master meter system'' is defined at § 191.3 as a pipeline system for distributing gas where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. Examples of master meter systems include owners of apartment complexes or mobile home parks who provide or sell gas to tenants. Unlike most gas distribution operators, delivering gas is typically not a master meter operator's primary business.

When DIMP requirements were first proposed in 2008,[24] PHMSA recognized that master meter systems tend to be operated by small entities with simple systems compared to normal gas distribution operators. Section 192.1015 was intended to provide a simplified set of DIMP requirements that master meter operators could easily implement and that would enhance safety. However, PHMSA has determined that Section 192.1015 requirements are neither easily implemented nor do they enhance safety. Master meter operators have struggled to implement the relatively simple master meter systems DIMP requirements that were designed for

[16] 85 FR 21820 (Apr. 20, 2020).

[17] RINs 2137–AF39 (Pipeline Safety: Safety of Gas Gathering Pipelines) and 2137–AF38 (Pipeline Safety: Safety of Gas Transmission Pipelines, Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments), associated with PHMSA, ''Notice of Proposed Rulemaking: ''Pipeline Safety—Safety of Gas Transmission and Gathering Pipelines,'' 81 FR 20721 (Apr. 8, 2016).

[18] 36 FR 9667.

[19] 38 FR 9083.

[20] 60 FR 41821.

[21] 60 FR 41821.

[22] PHMSA Interpretation #PI–73–0110 (June 6, 1973), *https://cms7.phmsa.dot.gov/regulations/title49/interp/PI-73-0110.*

[23] 84 FR 11253.

[24] PHMSA, ''Notice of Proposed Rulemaking: Integrity Management Program for Gas Distribution Pipelines,'' 73 FR 36015 (June 25, 2008) (DIMP NPRM).

complex gas distribution systems. In addition, PHMSA determined that there is no safety benefit from applying even that limited set of DIMP requirements to master meter systems, as compliance with other applicable pipeline safety regulations in part 192 provides robust assurance of public safety. The applicable part 192 requirements that PHMSA considered include, but are not limited to, operations and maintenance requirements at subpart L and subpart M, continuing surveillance requirements at § 192.613, and the failure investigation requirement at § 192.617.

2. Summary of Public Comments

Several commenters generally supported exempting master meter operators from the DIMP requirements in part 192. These commenters (including the National Propane Gas Association (NPGA), the National Association of Pipeline Safety Representatives (NAPSR), AmeriGas, and Superior Plus Propane (SPP)) agreed with PHMSA's characterization of master meter systems as generally small, simple systems that see little benefit from DIMP compliance. These commenters agreed that compliance with existing subparts A through N of part 192 is sufficient to ensure the safety of small, simple master meter systems. They asserted that the current requirement of subpart P to create a DIMP, even using the SHRIMP tool,[25] consumes significant additional time and resources with little or no safety benefit, noting that the result of the process for master meter systems is typically a determination that there is no need for additional mitigating actions on any portion of the pipeline system. As a result, the commenters stated that the time and resources expended to comply with the DIMP requirements have no meaningful safety benefits for such systems. The PST commented that they do not oppose this change, but urged PHMSA and its State partners to ensure that master meter operators are managing the integrity risks to their systems outside the context of a DIMP.

PHMSA also received comments concerning similar DIMP requirements for small liquefied petroleum gas (LPG) distribution pipeline systems. A ''small LPG operator'' is defined in § 192.1001 as a liquefied petroleum gas distribution system that serves fewer than 100 customers from a single source. Small LPG operators are currently required to comply with the same DIMP requirements as master meter systems. Several commenters (including NPGA, NAPSR, AmeriGas, and SPP) commented that jurisdictional propane pipeline systems are like master meter systems and therefore small LPG operators should be exempt from the DIMP requirements as well. They commented that small LPG systems are comparable to master meter systems in size and application. Like master meter systems, the commenters claimed the majority of small LPG pipeline systems are single-property systems that occupy a small overall footprint in size, generally operate at a single operating pressure, and have no equipment other than pipe, meters, regulators, and valves. They commented that small LPG systems typically serve 25 customers or less, and facilities such as those at RV parks or strip malls can have as few as three customers; very few small LPG systems serve more than 100 customers. One anonymous commenter associated with an LPG system stated that the DIMP process is lengthy and unnecessary, and that in their experience, many of the prompts on the DIMP form[26] do not make sense given the layout of a small LPG utility. NAPSR stated that many of these smaller systems identify only third-party damage as a major threat to the system, and a DIMP requires a considerable amount of work for a very small amount of safety benefit.

Commenters representing LPG suppliers (including AmeriGas, SPP, and NPGA) noted that with regard to the PSR, the regulated entity is the entity that owns the pipeline and receives the operator ID issued by PHMSA for that pipeline system. They stated that in many cases, the LPG supplier does not operate the pipeline and their primary business is to transport gas by delivery truck, not pipelines. They further stated that most are contractors to the entity that owns the pipeline and the pipeline operator ID for the system. They stated that many of these master meter operators use contractors for service, but those contractors are not the operators under part 192. These commenters agreed that the other part 192 requirements continue to apply to provide adequate requirements for small LPG systems in the absence of DIMP requirements. They also stated that in addition to the requirements in part 192 applicable to all gas distribution pipelines, § 192.11 requires LPG distribution systems to comply with a National Fire Protection Association (NFPA) standard, NFPA 58 (LP-Gas Code) or NFPA 59 (Utility LP-Gas Plant Code), which contains comparable and supplemental provisions that address safety. They asserted that the additional requirements of DIMP do not add a measure of safety beyond the provisions in part 192 and NFPA 58.

AmeriGas and NPGA estimated that extending the NPRM's proposed DIMP exemptions for master meters to small LPG systems could result in $1.12 million in annualized cost savings; this estimate was calculated by applying the cost estimates in the RIA to an estimate of the number of small LPG operators in *Safety Regulation for Small LPG Distribution Systems,* a report published in 2018 by the Transportation Research Board (TRB).[27] The commenters asserted that these additional savings would further PHMSA's goal of reducing regulatory impact burdens. The commenters also stated that these estimated savings to the industry would allow small LPG operators to devote more of their resources in other areas of safety.

NAPSR suggested that small distribution utilities with 100 or fewer customers should also be exempted from the DIMP requirements, stating that many master meter systems, small distribution systems and small LPG systems typically have no threats beyond the minimum threats listed in § 192.1015(b)(2).

The GPAC voted unanimously in favor of PHMSA's proposed amendment with respect to the applicability of DIMP requirements to master meter systems. The GPAC did not recommend changes to DIMP requirements for small LPG systems or small distribution systems.

3. PHMSA Response

The final rule revises §§ 192.1003, 192.1005, and 192.1015 to eliminate DIMP requirements for master meter systems as proposed in the NPRM. Through inspections, PHMSA and its State partners have seen that master meter operators have had significant difficulties implementing these simplified DIMP requirements effectively. PHMSA's State-Federal DIMP team has noted that a significant amount of State inspection and operator maintenance effort was being used to improve DIMP compliance among master meter operators. Despite these

[25] The ''Simple, Handy, Risk-based Integrity Management Plan'' tool published by the APGA Security and Integrity Foundation.

[26] PHMSA Gas Distribution Integrity Assessment Question Set, *available at https://www.phmsa.dot.gov/forms/phmsa-gas-distribution-ia-question-set-pdf.*

[27] TRB, *Transportation Research Board Special Report 327: Safety Regulation for Small LPG Distribution Systems* (2018), *https://www.nap.edu/catalog/25245/safety-regulation-for-small-lpg-distribution-systems.*

efforts, inspection data voluntarily submitted by some States shows that approximately half of master meter operators inspected between 2014 and 2017 did not have an acceptable DIMP in place before the compliance deadline of August 2, 2011, and for any given requirement 10–20% of master meter operators were not in compliance. PHMSA believes that this effort may be better used to implement other part 192 safety requirements effectively that master meter system operators will remain obliged to follow.

Even when properly implemented, DIMP principles that are effective for larger operators do not have the same value for comparatively simple master meter systems within a limited geographical area. The DIMP NPRM noted that master meter systems often include only one type of pipe, a single operating pressure, and no equipment other than pipe, meters, regulators, and valves. For these small and simple systems, a comprehensive management system like DIMP is not required to integrate data and information to identify risk mitigation strategies and actions. PHMSA's experience indicates that the analysis and documentation requirements of DIMP have had little safety benefit for this type of operator. And, anecdotally, PHMSA and State enforcement personnel have advised that focusing on more fundamental risk mitigation activities (particularly those required by §§ 192.605 (*Procedural manual for operations, maintenance, and emergencies*), 192.613 (*Continuing surveillance*), and 192.617 (*Investigations of failures*)) yields more safety benefits than implementing a DIMP for this class of operators. Due to the implementation issues identified by PHMSA and State inspectors, PHMSA expects that exempting master meter operators from subpart P would result in cost savings for master meter operators without negatively impacting safety. Considering the burden on finite State inspection resources, implementation difficulties, and the limited safety benefits of DIMP compliance for master meter systems described above, PHMSA believes there could even be potential safety benefits because operators and inspectors can prioritize more pertinent compliance activities specific to master meter systems.

PHMSA appreciates the comments regarding the applicability of DIMP towards small LPG operators and acknowledges that many small LPG systems have configurations like master meter systems. However, PHMSA believes that the decision about whether to extend the DIMP exception to such facilities or to all distribution systems with fewer than 100 customers would benefit from additional safety analysis and notice and comment procedures prior to further consideration. In 2018, the TRB published a report on Federal safety standard for small LPG systems. The TRB's recommendations focused on clarifying the definition of a ''public place'' and improving State inspection programs. While the TRB suggested that a PHMSA-supervised State waiver process could be appropriate, it did not recommend exempting all small LPG systems from DIMP or any other requirement. PHMSA will continue to evaluate the issue of DIMP requirements for small LPG systems and, if appropriate, propose changes in a future rulemaking giving due consideration to the public comments on the NPRM, the recommendations of the GPAC, and the TRB report. For similar reasons, PHMSA has also not adopted suggestions from commenters to exempt other distribution operators with fewer than 100 customers.

Reporting and Information Collections

C. Mechanical Fitting Failure Reporting (Sections 191.12, 192.1009)

1. PHMSA's Proposal

On February 1, 2011, PHMSA issued the final rule, ''Pipeline Safety: Mechanical Fitting Failure Reporting Requirements'' [28] adding §§ 191.12, 192.1001, and 192.1009 to the PSR. Section 191.12 sets forth the requirement for operators to report mechanical fitting failures (MFFs) through DOT Form PHMSA F–7100.1–2 (MFF report form). Section 192.1001 defines a ''mechanical fitting.'' Section 192.1009 requires distribution pipeline operators to submit a MFF report to PHMSA almost every time there is a release from a mechanical joint, the majority of which are low-consequence or no-consequence events that do not meet the definition of an incident at § 191.3. These requirements expanded an earlier requirement established in the December 4, 2009 DIMP final rule that was limited to mechanical couplings used to join plastic pipe.[29] The DIMP final rule adopted the MFF report requirement as a result of investigations of incidents caused by poorly designed or improperly installed mechanical joints throughout the pipeline industry. PHMSA initially sought to collect these data in 2011 to determine the frequency of mechanical joint failures and identify the most common characteristics of those failures.[30] The 2009 DIMP final rule was part of a broader effort by PHMSA and the gas distribution pipeline industry to identify potential safety issues with plastic gas pipelines.

Like the Gas Distribution Incident Report form,[31] the MFF report form requires operators submit information on the design and installation of the failed fitting and the apparent cause of the failure. The MFF report form also includes manufacturing information; however, this is generally not known by the operator and therefore is reported as ''unknown.'' MFF reports are required for any failure of a mechanical joint other than those that result in a ''non-hazardous leak,'' as opposed to Gas Distribution Incident Reports, which are required only for events that meet the criteria for reportable ''incidents'' in § 191.3. Operators report any ''hazardous leak'' as that term is defined at § 192.1001. The criteria for a ''hazardous leak'' does not depend on an outcome severity threshold. Approximately 15,000 MFF reports are submitted to PHMSA each year, compared to approximately 100 Gas Distribution Incident Reports due to all causes. PHMSA publishes a report on the information collected and its analysis of the information received annually, which is available online.[32]

PHMSA determined that further collection of MFF reports has limited value, and proposed to remove §§ 191.12 and 192.1009, eliminating the requirement for operators to submit MFF reports through DOT Form PHMSA F–7100.1–2. PHMSA understands from analyzing MFF report forms received over the last decade that the purposes of this reporting requirement have been realized: PHMSA's analysis of data from MFF reports confirmed its expectations regarding MFF characteristics and causes, and pipeline operators have become much more sensitive to MFFs.

PHMSA considered that operators would still be required to submit incident reports via a modified version of the Gas Distribution Incident Report form (which would include most of the information on the MFF report form) for releases from mechanical fittings that meet the definition of an incident at § 191.3. Part G5–5 of the Gas Distribution Incident Report form currently requires operators to identify the MFF report number for incidents involving an MFF; PHMSA therefore proposed to replace this cross-reference

[28] 76 FR 5494.

[29] 74 FR 63905.

[30] 76 FR 5495.

[31] DOT Form PHMSA F 7100.1.

[32] *https://www.phmsa.dot.gov/pipeline/gas-distribution-integrity-management/dimp-performance-measures-data-analysis-procedure-report.*

with the fitting, manufacturer, and failure information that is currently collected on the MFF report form. PHMSA also proposed to revise the Gas Distribution Annual Report form [33] to include a count of hazardous leaks involving a mechanical joint failure. This issue was raised in comments submitted in response to the DOT Notification of Regulatory Review from the Associations, the Gas Piping Technology Committee (GPTC), and the West Virginia Oil and Natural Gas Association (WVONGA), which identified the MFF reporting requirement as an unnecessary and burdensome information collection.

2. Summary of Public Comments

Several commenters (including AmeriGas, NPGA, SPP, Dresser Natural Gas Solutions, the Norton McMurray Manufacturing Company (NORMAC), Oleksa and Associates, the Plastics Pipe Institute (PPI), and a private citizen) supported eliminating the MFF reporting requirement. Dresser contended that PHMSA has found these data do not provide meaningful trends related to risk of pipeline leaks. PPI stated that the removal of this regulatory reporting burden reduces the unnecessary focus on mechanical fittings as a potential source of incidents. NORMAC agreed that MFF reporting has not provided statistically significant trends or information upon which operators or regulators can act.

Several commenters (including AmeriGas, SPP, and NPGA) expressed concerns regarding PHMSA's proposal to modify the Gas Distribution Annual Report form to collect data on the number of mechanical joint failures. Those commenters opposed including a count of leaks involving mechanical joints on the Gas Distribution Annual Report form, noting that if limited value was derived from independent MFF reporting, it is reasonable to conclude that there would be limited value in tracking and reporting the number of MFFs on revised Gas Distribution Annual and Incident Report forms. NORMAC commented that part C of the current Gas Distribution Annual Report form requires each operator to report the total number of leaks and how many were classified as hazardous based upon the cause of the leak. The instructions provided for completion of part C describe each classification of cause in detail in terms of what is being requested of an operator. NORMAC noted that modifying the Gas Distribution Annual Report form as proposed will lead the user to jump to the conclusion that any leak involving a mechanical joint arises from the mechanical fitting being ''faulty,'' when the leak may be caused by improper installation by the operator and should therefore be coded as caused by ''Incorrect Operation.'' GPTC commented that reporting leaks caused by mechanical joint failure would repeat reporting of leaks caused by ''pipe, weld, or joint failure'' and potentially be confusing for operators. They further commented that the leak information is intended to be general in nature and not intended to capture the ''laboratory analysis'' for eliminated leaks.

Regarding the proposed changes to Gas Distribution Incident Report form, NORMAC expressed concerns with the NPRM's proposal to incorporate existing data fields in the current MFF report within part G (Apparent Cause), sub-cause G5 (Pipe, Weld, or Joint Failure) of a revised Gas Distribution Incident Report form. NORMAC noted that the cause of a failure may not be due to Pipe, Weld, or Joint Failure. Specifically, they noted that fittings that fail due to improper installation are required to be categorized under the ''Incorrect Operation'' cause. NORMAC also mentioned that Question 12 under sub-cause G5 (Pipe, Weld, or Joint Failure) duplicate what sub-cause G7 (Incorrect Operation) is asking. NORMAC stated that requiring respondents to answer the same question under two categories will lead to confusion and make effective analysis of the resulting database difficult. NORMAC submitted text revisions to sub-cause G5 of the Gas Distribution Incident Report form and associated instructions.

Dresser raised similar concerns with both the Gas Distribution Annual Report and the Gas Distribution Incident Report forms, in addition to noting that there could be confusion concerning the difference between a mechanical fitting and a mechanical joint. Dresser noted that the existing categories support the reporting of pipeline failures where mechanical fittings may be involved under the existing categories of ''Weld Pipe or Joint Failure'' or ''Incorrect Operation'' depending on the causal factors being a manufacturing or design defect for the former or a deficiency in the field installation practice or improper application for the latter. NORMAC also supported addressing the distinction between ''mechanical fitting'' and ''joint'' to ensure that the regulatory oversight activity focus on joints, the making of joints, and the qualifying of joining procedures.

Theresa Pugh Consulting commented that PHMSA should revise the Gas Distribution Incident Report form to include whether industrial and power sector customers were notified of a curtailment in gas supply following an incident and the duration of such disruption. The commenter stated the form should allow the operator to state if gas supply was maintained by re-directing natural gas at full contracted capacity to the customer through reverse flow or through alternative parties. The commenter noted that the power and industrial customers would benefit from a way to determine during contract negotiations whether the company they wish to purchase gas from has a sound and reliable safety program, but acknowledged challenges with ensuring that such information is not in a format that could be used by competitors to reverse engineer operational information about industrial customers such as plastics manufacturing plants. The commenter recommended that PHMSA should expand rather than shrink the reporting measures on its reporting forms.

NORMAC commented that burden on operators can be drastically reduced beyond what the proposed rulemaking proposes by also eliminating the portion of Plastic Pipe Database Collection (PPDC) reporting conducted by the American Gas Association that deals with mechanical joints. NORMAC commented that the PPDC is nearly identical to the MFF and has also not shown useful trends. NORMAC also asserted that recording and reporting mechanical joint leaks through PPDC is not as effective as addressing the problem directly within each operator's IM program. NORMAC suggested that PHMSA propose the discontinuation of this reporting effort in its role as PPDC chair.

PST opposed eliminating the MFF report requirement. They questioned whether this would prevent PHMSA from becoming aware of thousands of MFFs per year, many of which result in hazardous and potentially explosive leaks, others of which result in non-explosive but hazardous leaks of methane into the atmosphere. The commenter stated these circumstances would also not typically be reported as a safety-related condition, because of the many exemptions and exceptions to the safety-related condition reports listed in § 191.23(b). PST asserted the detailed information on MFFs is currently gathered so that PHMSA can identify any patterns among those failures, either by geography or failure type or any other common parameter. Limiting the detailed reporting in the MFF report to reportable incidents eliminates another source of

[33] DOT Form PHMSA F 7100.1–1.

information of leading indicators of problems common among operators, one that nets information on 15,000 fitting failures each year.

The GPAC voted 13–2 in favor of PHMSA's proposed amendment to eliminate the MFF reporting requirement. PST and the Environmental Defense Fund (EDF) voted against the proposed amendment. During the GPAC discussions, PST reiterated its reservations regarding reducing the availability to PHMSA and other safety regulators of information on hazardous leaks. PST also opined that eliminating MFF reporting may reduce operators' incentives to improve mechanical fitting performance. EDF, meanwhile, contended that the MFF report data being eliminated could prove helpful to Federal and State environmental regulators and public service commissions in evaluating the significance of methane emissions from service line couplings.

3. PHMSA Response

In the final rule, PHMSA is adopting the amendments to MFF reporting requirements at §§ 191.12 and 192.1001 as proposed in the NPRM. PHMSA is also retaining the proposed requirement to include a count of MFFs on the Gas Distribution Annual Report form and revision of the Gas Distribution Incident Report form to include information from the MFF report for incidents involving a failure of a mechanical joint.

PHMSA's 2018 analysis of MFF data reports obtained to date confirm PHMSA's expectations regarding the frequency and characteristics (including material, type, location, and vintage of fittings) of MFFs when it began this information collection activity under the DIMP final rule.[34] The 2018 analysis further notes that the MFF reports submitted in the preceding year show similar trends to the previous 5 years, and that all changes were within the expected variance. These findings mirror the conclusions of PHMSA's earlier, 2016 analysis of the MFF reports submitted in the then-preceding 5 years (2011–2015).[35] Because MFF report data reviewed in 2018 and 2016 confirmed PHMSA's expectations regarding the frequency and characteristics of mechanical joint failure without yielding new statistically significant causal or predictive insights, PHMSA has determined that additional information collection via a dedicated MFF report form is unnecessary.

PHMSA further notes improvements in fitting design, operator joining practices, and Federal safety requirements since the introduction of the MFF reporting requirement have improved the safety of mechanical fittings on newer installations. PHMSA's 2018 analysis of MFF report data reached a similar conclusion, noting that many operator DIMPs are sensitive to the risk of MFF following the introduction of the MFF reporting requirement. However, PHMSA's 2018 analysis notes that the number of operators submitting MFF reports has stayed approximately the same for the last several years—suggesting that any action-forcing benefit hypothesized has been realized and that the benefits from continuing a dedicated MFF reporting requirement may be negligible.

The modifications to other reports adopted in this final rule will help PHMSA ensure continued availability of information needed to provide effective regulatory oversight of MFFs. Leaks from mechanical joints are already aggregated within the broader categories on the existing Gas Distribution Annual Report form. The revised Gas Distribution Annual Report form requires reporting the number of leaks involving mechanical joint failures in addition to the existing, aggregated categories. This change is expected to provide sufficient information to track the safety performance of mechanical joints over time, among operators, or across the industry. These data are expected to provide operators, PHMSA, and State inspectors sufficient information to identify if action is needed under DIMP or other elements of operator programs for compliance with part 192 requirements.

PHMSA is also revising the Gas Distribution Annual Report form to identify the number of leaks involving a mechanical joint failure as a separate line item from the count of leaks by cause. However, to address the potential confusion raised by commenters, PHMSA will revise the proposed part C of the Gas Distribution Annual Report form to clarify that operators should report the number of hazardous leaks ''involving'' a mechanical joint failure, rather than ''caused'' by a mechanical joint failure. This aligns with the language in the current MFF report requirement and is clearer. PHMSA will further clarify in the form instructions that the count of leaks involving a mechanical joint failure is separate and in addition to the leaks by cause. Operators should continue to report all leaks by cause in the table in part C of the Gas Distribution Annual Report form as they have been doing previously, while the new count at the end of part C consists of a count of hazardous leaks involving the failure of a mechanical joint regardless of whether the leak was caused by equipment failure, incorrect operation/installation, or other causes. Likewise, on the Gas Distribution Incident Report form, operators should continue to report incidents involving a failure of a mechanical joint that was caused by improper installation under the ''incorrect operation'' cause under section G7 of the Gas Distribution Incident Report form. The revised Gas Distribution Incident Report form will not require operators to submit design and manufacturing information about incidents involving mechanical joints that were caused by incorrect operation rather than material, weld, or equipment failure.

PHMSA appreciates the concerns raised by commenters and members of the GPAC about reducing the data available to PHMSA and other stakeholders through changes in reporting requirements proposed in the NPRM and adopted in this final rule. PHMSA agrees that access to quality safety-related information is critical to implementation of an effective regulatory and enforcement program. However, these safety programs benefit from the flexibility both to create targeted information collection activities to address safety issues and to remove those information collection activities that are no longer necessary or have not proven useful. Here, PHMSA has determined that its original purpose for introducing a dedicated MFF reporting requirement has been satisfied. Although PHMSA could posit new justifications (*e.g.,* use by environmental regulators and utility commissions in calibrating regulatory oversight of service line couplings) for this dedicated reporting requirement, it declines to do so in this rulemaking. Nevertheless, PHMSA submits that Federal and State regulators' oversight activities may continue to benefit from nearly a decade of historical, granular data obtained from MFF reports,[36] in addition to the operator-specific MFF data that PHMSA will collect in the Gas

[34] PHMSA, *Analysis of Data from Required Reporting of Mechanical Fitting Failures that Result in a Hazardous Leak (§ 192.1009)* at 47–48 (Jul. 4, 2018), *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/technical-resources/pipeline/gas-distribution-integrity-management/66046/mffr-data-analysis-procedure-2017-data-report-final-07-04-2018.pdf.*

[35] PHMSA, *Analysis of Data from Required Reporting of Mechanical Fitting Failures that Result in a Hazardous Leaks* (§ 192.1009) (Oct. 15, 2016).

[36] PHMSA makes such raw data available on its website at *https://www.phmsa.dot.gov/data-and-statistics/pipeline/mechanical-fitting-failure-data-gas-distribution-operators.*

Distribution Annual and Incident Report forms modified by this final rule.

Replacing the full MFF report with a count of MFFs on the Gas Distribution Annual Report results in a reduction in reporting burden for each event but without a significant loss of useful information to operators and PHMSA. Although the revised requirements eliminate the detailed information on each mechanical fitting failure, this information has not yielded meaningful new causal or predictive insights regarding leaks involving mechanical joints. On the other hand, the general count of leaks involving a mechanical joint failure as required in the revised Gas Distribution Annual Report is not burdensome to compile yet provides information on the relative safety performance of mechanical joints in general. This information remains valuable to PHMSA and State agencies for safety performance monitoring and for prioritizing inspections. PHMSA has determined that incident reporting requirements via a revised Gas Distribution Incident Report form and the revision to the Gas Distribution Annual Report form to include a count of hazardous leaks involving a mechanical joint failure is sufficient to identify the total number of hazardous leaks involving mechanical joint failures and identify trends over time and among States or operators.

Nor does this change absolve operators of other safety requirements that apply when leaks at MFFs are discovered. PHMSA requires that gas pipeline operators have procedures for investigating failures under § 192.617 to determine the causes of the failure and minimize the possibility of a recurrence. PHMSA also requires operators repair hazardous leaks promptly under § 192.703. These requirements apply regardless of whether the failure results in a reportable leak or incident. Finally, operators are required to consider leak history under the continuing surveillance requirements at § 192.613 and under their DIMP (§ 192.1007(b), (d), and (e)). PHMSA accordingly finds that the PSR change adopted in this final rule eliminates an unnecessary reporting burden without an adverse impact on safety.

Many of the comments received pertained to related topics on the Gas Distribution Incident and Annual Report forms and are not directly related to the reporting of mechanical joint failures. PHMSA will consider these comments during periodic updates and renewals of these information collections pursuant to the Paperwork Reduction Act. PHMSA does not have authority over voluntary information collection organized by other, non-governmental entities and therefore the comment related to data collected by the AGA through the PPDC is outside the scope of the NPRM. However, PHMSA will consider raising with other members of the PPDC whether its reporting protocols for MFFs should be modified.

D. Monetary Threshold for Incident Reporting (Section 191.3, New Appendix A to Part 191)

1. PHMSA's Proposal

On May 3, 1984, PHMSA's predecessor agency, the Research and Special Programs Administration, added a definition for an ''incident'' at § 191.3.[37] The definition provides criteria that requires operators to report specific events to PHMSA. The 1984 definition of an incident consists of a release of gas that, among other things, results in estimated property damage of $50,000 or more. That monetary threshold includes losses to the operator and third parties but excludes the cost of any lost gas. Today, over 30 years later, operators must still notify the National Response Center (§ 191.5) and submit an incident report to PHMSA (§§ 191.9 and 191.15) for any release that results in estimated property damage to the operator or third parties of $50,000 or more.

Multiple comments submitted in response to the DOT Notification of Regulatory Review addressed the $50,000 monetary damage threshold for reporting gas pipeline incidents. The Associations, GPTC, and GPA Midstream submitted comments recommending an increase in the monetary damage threshold for reporting gas pipeline incidents. Based on the average annual Consumer Price Index (CPI) from the Bureau of Labor Statistics of the U.S. Department of Labor, $50,000 in 1984 is $122,000 in 2019 dollars.[38] The current damage threshold requires incidents that would not have been reported in 1984 to be reported to PHMSA due to inflation in property, equipment, and repair costs.

PHMSA proposed in the NPRM to raise the reporting threshold for incidents that result in property damage to $122,000, consistent with inflation since 1984. The property damage criterion will continue to include losses to the operator and others but exclude the cost of lost gas. PHMSA did not propose any changes to the other criteria in the § 191.3 definition of an incident. The NPRM stated that PHMSA intended to base any finalized version of this provision on the price level at the time of publication of a final rule. PHMSA also requested comment on whether the level of safety information needed from property damage-only incident reporting should be updated to align with inflation, and the extent to which retaining a de facto annually-decreasing threshold after inflation would provide beneficial information on contributing risk factors and incident trends.

The NPRM also stated that PHMSA intends to update the monetary damage threshold on a regular basis in the future, potentially biennially. Future updates would be based on the same formula used for this adjustment:

$$T_n = T_p \times \frac{CPI_n}{CPI_p}$$

Where T_n is the revised damage threshold, T_p is the previous damage threshold, CPI_n is the average CPI–U for the preceding calendar year, and CPI_p is the average CPI–U used for the previous damage threshold. PHMSA could subsequently update the monetary damage threshold in accordance with this formula either through notice and comment rulemaking, a direct final rule, notice on the PHMSA public website, or other means. This method is similar to the method that the Federal Railroad Administration (FRA) implemented to update the criteria for reporting accidents/incidents at 49 CFR 225.19 and appendix B to part 225.[39]

2. Summary of Public Comments

Several commenters (including AGA *et al.,* AmeriGas, the Arkansas Independent Producers and Royalty Owners (AIPRO), GPA Midstream, NPGA, Paiute, the GPTC and SPP) expressed support for PHMSA's proposal to update the threshold for property damage in the definition of an incident to account for inflation. AGA, API, APGA, GPA Midstream, and INGAA reiterated their support for this proposal in supplemental comments submitted after the GPAC meeting. AGA *et al.* also supported revising the initial property damage threshold to reflect inflation at the time of final rule publication. AGA *et al.* stated that the cost of repairing or remediating incident damage in today's environment is far greater than it was in 1984, and that even with the inflation adjustment, more minor events will still be reported

[37] 49 FR 18960.

[38] This analysis is based on the CPI for All Urban Consumers (CPI–U) from the Bureau of Labor Statistics, accessible at *https://data.bls.gov/cgi-bin/cpicalc.pl.*

[39] 85 FR 79130 (Dec. 9, 2020) (updating FRA's monetary threshold for railroad incident reporting requirements by way of annual notices published on FRA's website).

as an incident than would have been in 1984. They asserted that this results in a distorted view of pipeline safety performance, since reportable incidents are often used as a performance metric for the natural gas industry. AGA *et al.* also stated that the increase in the reporting threshold will reduce the number of calls made to the National Response Center (NRC) for minor events that are easily remediated by the operator, and reduce the potential of having to report minor incidents that unnecessarily tie up resources of both the producer and PHMSA. FreedomWorks stated that adjusting the threshold for inflation is simply good housekeeping, adding that it should have been indexed to inflation when the threshold was originally established. This commenter stated their support for including this amendment in the proposed rule while noting that eventually eliminating the property damage criterion entirely would be ideal. Paiute and Southwest also supported the proposed change, noting that it would directly reduce the regulatory burden on them. Southwest further stated that they analyzed the details of the § 191.3 reports their company has made since 2010 where the only reporting criteria met was exceeding the $50,000 estimated property damage threshold and determined that only 9 percent of this subset of reported incidents would have met the revised proposed estimated property damage threshold of $122,000.

TC Energy supported changing the incident definition to adjust the amount of monetary damage to align with inflation, and recommended a monetary damage threshold of $250,000, which they stated would accurately reflect repair costs for minor incidents. They stated that while the proposed threshold of $122,000 may take inflation into account, it will continue to result in several minor incidents being considered reportable due to the cost to respond based on labor, repair materials, and permitting.

AGA *et al.* also supported updating the reporting threshold every 2 years to account for inflation, noting that periodic updates will provide certainty and avoid a repeat of the current situation where the current threshold does not account for over 3 decades of inflation. AGA *et al.* further supported implementing the biennial periodic updates via notice on the PHMSA website, stating that conducting biennial rulemakings to update the threshold seems unnecessarily burdensome for both PHMSA and stakeholders. They asserted that the current NPRM provides adequate notice and opportunity for comment on the proposed method to update the threshold periodically. They recommended that PHMSA revise § 191.3 to clarify in the final rule the agency's intended process for periodically updating the threshold. FreedomWorks recommended that PHMSA mandate a biennial update in the final rule. NPGA agreed with periodic modifications to the threshold, suggesting annual updates by means of a direct final rule published in the **Federal Register**. TC Energy, on the other hand, commented that biennial updates may prove burdensome, but supported incorporating whatever process PHMSA settles on for periodically updating the property damage threshold into the PSR.

NAPSR suggested that PHMSA use the language ''$50,000 or more as measured in 1984 dollars adjusted for inflation,'' which would prevent the need to amend the PSR every year. They further suggested that PHMSA could announce the reporting threshold annually as is done with random drug testing rates, and civil penalties as found in 49 CFR 190, or by simply updating the incident report forms and instructions every year to reflect the recalculated reporting threshold. However, NAPSR also noted that the historical data collected by PHMSA using the prior criteria may result in skewed statistical incident results until several years of collection using the new formula, if adopted, is completed. NAPSR suggested that PHMSA first study the effects of changing the reportable criteria dollar amount and how they plan to reconcile any new data to provide meaningful information to the State programs and to the public. They also suggested that PHMSA consider how such data will relate to any required cost benefit analysis related to future pipeline safety regulations and whether any change to the dollar reporting criteria could affect the ability to promulgate effective regulations.

Two commenters opposed changing the monetary threshold for incident reporting from $50,000 to $122,000. PST commented that PHMSA should be seeking to obtain more information about pipeline failures, not less. They asserted that PHMSA can only make regulatory decisions about design, manufacture or operating conditions that they know cause problems, and if they are told about fewer problems, they will not be able to determine whether they need to regulate certain safety issues. They further stated that if PHMSA is determined to re-define the term ''incident,'' it should undertake a comprehensive look at that definition, and not merely adjust the property damage criteria. They asserted that making incremental, sequential adjustments to the definition will disrupt and frustrate trend analyses, recommending that PHMSA identify, analyze, and consider all potential changes at once. They stated that reducing the number of incidents reported provides PHMSA less safety data, and saves operators very little money, while potentially misleading the public about the improvement in the number of reported incidents that occur in future years. PST further stated that PHMSA and the industry have all committed to pursuing a goal of zero incidents, and that PHMSA should not facilitate that goal by defining reportable incidents away.

Theresa Pugh Consulting also opposed changing the monetary threshold for incident reporting. They stated that since 1984, the United States has become more densely populated such that natural gas pipelines and compressor stations could cause ''partial damage to $50,000 in property that merits reporting to PHMSA.'' While the commenter recognized there is a regulatory cost associated with this reporting, they asserted that it is the cost of doing business in a critical, necessary and dangerous business. The commenter asserted that property damage is still important if it is valued at greater than $50,000, noting that a damaged or lost $50,000 structure or capital equipment can be a major business investment even if it might seem less significant to a multimillion-dollar pipeline project.

One commenter recommended that while PHMSA is addressing the monetary damage limits in the definition of incident in § 191.3, it should also address the issue of how operators determine what constitutes a ''significant event'' under item (iii) of the definition. The commenter stated that the failure of an operator to evaluate their system and define what is significant for their personnel leads to confusion and can cause delayed reporting, or even non-reporting, of incidents.

The GPAC voted 11–2 in favor of PHMSA's proposed amendment to the definition of an incident provided that PHMSA adopted an updated property damage criterion commensurate with the CPI at the time of final rule publication. The GPAC further recommended regular administrative updates using procedures like those proposed by the Federal Railroad

Administration for part 225.[40] Two members voted against the proposed amendments.

3. PHMSA Response

PHMSA agrees with comments supporting the adoption of an up-to-date property damage threshold in the final rule. The most recent complete calendar year is 2019. Therefore, the property damage criterion following the effective date of this final rule is set to $122,000 consistent with CPI inflation between 1984 and 2019.

PHMSA also agrees that it is appropriate to perform updates in the future to account for inflation via a pre-established formula. To this end, PHMSA has incorporated the formula described in the preamble to the NPRM into a new appendix A to part 191. In the future, annual updates to the property damage criterion will be calculated based on this formula and posted to PHMSA's website such that they will become effective July 1 of each year. The revision to the incident definition has no direct safety impact, better reflects the intent of the original property damage criterion, and only impacts reports of releases without significant safety or environmental consequences. Whether a release is classified as an incident has no effect on an operator's regulatory obligation to repair hazardous leaks promptly (§ 192.703) and establish and follow procedures for responding to gas pipeline emergencies (§ 192.615) and investigating failures (§ 192.617). None of the repair criteria in part 192 depend on whether a leak or defect results in a reportable incident.

PHMSA disagrees that changing the property damage criterion adversely affects trend analysis. In fact, a static property damage threshold decreases in real value time. PHMSA already addresses this issue when performing and presenting trend analysis of ''significant'' incidents. PHMSA's analyses of ''serious incidents'' include only incidents that result in reported deaths or injuries and are not affected by inflation because the ''serious'' threshold criteria do not include a property damage criterion. In contrast, PHMSA uses the term ''significant incidents'' to mean those with (1) reported deaths or injuries, or (2) $50,000 or more in total costs, *measured in 1984 dollars.* Additional information on these trend analyses is available on PHMSA's web pages for National Pipeline Performance Measures [41] and Pipeline Incidents, 20 Year Trends.[42] PHMSA currently uses inflation data published by the Bureau of Economic Analysis, the Government Printing Office, and the Energy Information Administration in calculating inflation adjustments for ''significant incidents.'' Following the effective date of the final rule, PHMSA will no longer employ those tools in adjusting the ''significant incident'' property damage threshold for inflation, but will instead use the Bureau of Labor Statistics CPI.

Regarding comments from Theresa Pugh Consulting, PHMSA did not propose to create a new incident definition criterion for releases or pressure drops that disrupt supply to downstream consumers and others indirectly impacted by gas pipeline failures, therefore these suggestions are outside the scope of the NPRM. PHMSA acknowledges that property damage exceeding $50,000 can have a significant effect on third parties affected by the release and notes that it understands that some States have lower incident reporting thresholds to address just that concern.

PHMSA disagrees with comments from TC Energy and FreedomWorks suggesting more radical changes to the property damage criterion. PHMSA does not believe that an arbitrarily higher damage threshold or eliminating the reporting entirely would be appropriate. Even if repair costs may have risen faster than inflation, TC Energy has not provided a convincing rationale for why $250,000 represents current repair costs for incidents across the industry. In addition, while a simple inflation adjustment is consistent with how PHMSA currently uses incident data, a significant change to the incident definition beyond a simple inflation adjustment would affect the ability of PHMSA and other data users to track incident trends as alluded to by other commenters.

PHMSA is deferring for a future rulemaking consideration of the other amendments to the incident reporting criteria at § 191.3 that were suggested by comments received in the rulemaking docket. Further evaluation of those proposals would be helpful.

Corrosion Control

Virtually all hazardous liquid and most natural gas transmission pipelines in service today are made of steel. Metallic pipelines, when not protected, react with the surrounding environment and can deteriorate over time due to corrosion. Under certain conditions, unprotected metal can corrode, causing gas leaks that can threaten public safety. To guard against this, subpart I of part 192 of the PSR requires, with some exceptions, cathodic protection and protective coatings to mitigate corrosion risks on pipelines. Cathodic protection works like a battery, running an electrical current across the buried pipeline using devices called rectifiers. The electrical current prevents the metal surface of the pipe from reacting with its environment. If the current is sufficient, cathodic protection can control corrosion threats.

Subpart I of part 192 establishes requirements for corrosion control and remediation for natural gas pipelines. This subpart also establishes inspection intervals for testing and repairing systems as necessary to bring them into compliance. PHMSA proposed two amendments related to corrosion control: first, to clarify that cathodic protection rectifiers can be inspected remotely and second, to revise the requirements for assessing atmospheric corrosion on distribution service pipelines.

E. External Corrosion Control: Monitoring (Section 192.465)

1. PHMSA's Proposal

In the NPRM, PHMSA proposed to revise § 192.465(b), ''External corrosion control: Monitoring,'' to clarify that operators may monitor rectifier stations remotely. Rectifiers are devices that direct an electrical current on a pipeline to prevent external corrosion. Section 192.465(b) requires inspection of rectifiers on gas pipelines at intervals not exceeding two and a half months, to ensure that they are working correctly. Advances in technology make it possible to monitor the proper operation of these electrical systems remotely, but it is not clear in the regulations if this is permissible. PHMSA proposed to revise § 192.465(b) to clarify that operators may inspect rectifier stations directly onsite or by way of remote monitoring technologies. The NPRM also clarified that, at a minimum, such an inspection consists of recording amperage and voltage measurements. PHMSA also proposed to require operators physically inspect rectifier stations that are being monitored remotely whenever they conduct a cathodic protection test pursuant to § 192.465(a). For pipelines, other than separately protected service lines or separately protected short sections of transmission lines or mains,

[40] As noted earlier, FRA finalized that proposal in December 2020.

[41] *https://www.phmsa.dot.gov/data-and-statistics/pipeline/national-pipeline-performance-measures.*

[42] *https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-20-year-trends.*

§ 192.465(a) requires physical inspection once each calendar year.

2. Summary of Public Comments

Several commenters (including AGA *et al.* and TC Energy) supported PHMSA's proposal allowing remote inspection of impressed current cathodic protection sources. PST stated that they do not oppose allowing the remote inspection of rectifier stations provided the proposed addition of a requirement that remotely inspected rectifier stations be physically inspected once a year is retained. AGA *et al.* and TC Energy recommended that PHMSA clarify that operators must physically inspect remotely inspected rectifiers at the cathodic protection test frequency required in § 192.465(a) and that the rectifier inspection need not necessarily occur at the exact same time as the cathodic protection testing. They indicated that the currently-proposed wording of § 192.465(b)(2) could be interpreted to require a redundant physical inspection of the same rectifier every time each of the pipeline segments influenced by that rectifier is tested, or even multiple times per segment if the testing occurs over multiple days. AGA *et al.* suggested specific revisions to the proposed § 192.465(b)(2).

Four commenters (NPGA, AmeriGas, SPP, and a private citizen) suggested changes to the proposed physical inspection interval. They commented that if rectifier inspection can be done remotely and it is performed at intervals no greater than two and a half months, PHMSA should consider allowing an operator to extend the physical inspection interval for rectifiers on distribution lines beyond once per year, provided the results of remote inspections are properly documented. The commenters claimed that documentation of the results will indicate if, or when, physical inspection of the rectifiers is needed, but did not provide a specific timeline.

One private citizen expressed opposition to the proposed amendment. The commenter requested more frequent inspection of rectifiers, and suggested that the proposed change does not align with industry policies. The commenter noted that corrosion is one of the main causes of pipeline failures and suggested that a physical inspection is already required within the rectifier checks required in § 192.465(b). Based on this interpretation of § 192.465(b), the commenter argued that PHMSA was effectively extending the required interval to perform physical inspections of rectifiers and other devices from six times a calendar year to once per calendar year.

The GPAC voted unanimously in favor of PHMSA's proposal with respect to external corrosion monitoring provided that PHMSA clarify that the physical inspection of a remotely inspected rectifier is expected to occur annually rather than exactly when cathodic protection surveys occur.

3. PHMSA Response

PHMSA has adopted the proposed amendments to § 192.465 with minor revisions to the physical inspection requirements. The amendments clarify that remote inspection is permitted by the PSR. PHMSA's corrosion enforcement guidance contains numerous interpretations clarifying that § 192.465(b) does not specify a particular technology, but rather permits any technology that provides reliable data, including ''electronic data collection and the subsequent broadcast of this data to operators.'' [43] PHMSA expects that the data obtained from remote inspection of rectifiers will not adversely affect the quality and quantity of information available on their function, and does not expect the PSR amendments to § 192.465(b) to have an adverse impact on safety.

PHMSA agrees with comments to specify that the physical inspection should occur annually rather than exactly when a cathodic protection survey is performed under § 192.456(a). This change better reflects PHMSA's intent for operators to perform an annual physical inspection. This change has no impact on the intended frequency of inspections, but provides more flexibility to operators and avoids situations where inspections would have been required more frequently than intended.

PHMSA disagrees with the comment that § 192.465(b) already requires physical inspection during each rectifier inspection and that PHMSA's proposal would lengthen the intervals for physical inspection. While some operators may conduct a physical inspection with each of their rectifier checks, § 192.465(b) currently does not require them to do so.

PHMSA does not adopt a longer physical inspection interval for distribution pipelines as suggested in comments from LPG distribution system operators and suppliers. These comments did not present an alternative timeline that would have been appropriate for distribution operators, and PHMSA believes that operators have ample opportunities to perform an annual physical inspection during other inspection activities.

F. Atmospheric Corrosion: Monitoring (Sections 192.481, 192.491, 192.1007, 192.1015)

1. PHMSA's Proposal

PHMSA proposed to revise § 192.481 to establish a separate atmospheric corrosion inspection interval for gas distribution service pipelines. Currently, all onshore gas pipelines that are exposed to the atmosphere must be inspected for atmospheric corrosion once every 3 years, with intervals not to exceed 39 months. This includes facilities that are installed aboveground, in underground vaults, or inside buildings. PHMSA proposed a maximum inspection interval for service lines of once every 5 calendar years, with intervals not to exceed 63 months, unless atmospheric corrosion was identified on the last inspection. If an operator identifies atmospheric corrosion on a service line during an inspection, then the required interval for the subsequent inspection would remain once every 3 years, with intervals not to exceed 39 months. If no atmospheric corrosion is identified on a subsequent inspection, then operators would be permitted to return to using the 5-year inspection interval. PHMSA also proposed to revise §§ 192.1007(b) and 192.1015(b)(2) to clarify that consideration of corrosion risks under DIMP explicitly includes atmospheric corrosion. PHMSA did not propose any changes to the inspection requirement for other facilities, including distribution mains. PHMSA's proposed change was informed by its understanding that there has not been a history of incidents caused by atmospheric corrosion on distribution service lines since at least 1986 [44] and therefore does not anticipate a decrease in safety from these PSR revisions.

2. Summary of Public Comments

Several commenters (including Oleksa and Associates, FreedomWorks, and AGA *et al.*) expressed support for establishing a separate atmospheric corrosion inspection interval for gas distribution service pipelines. FreedomWorks stated that the changes would reduce the costs for both

[43] See, *e.g.,* PHMSA Pipeline Enforcement Guidance: Part 192 Corrosion Enforcement Guidance (2015), available at *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Corrosion_Enforcement_Guidance_Part192_12_7_2015.pdf* (citing PHMSA Interpretation #PI–ZZ–080 (Aug. 19, 1991)).

[44] 1986 is the earliest year available in the ''Pipeline Incident Flagged Files'' dataset. *https://www.phmsa.dot.gov/data-and-statistics/pipeline/pipeline-incident-flagged-files.*

operators and inspectors. AGA *et al.* supported revising § 192.481 to align the inspections intervals for atmospheric corrosion with those of leak surveys required by § 192.723. AGA *et al.* asserted that the NPRM's proposed PSR revisions would reduce regulatory burdens while enhancing pipeline safety in that the resources saved from such alignment could be reallocated to other pipeline safety activities and asset improvement projects.

Some commenters (including SPP, NPGA, and AmeriGas) supported the extension of the inspection interval to 5 years for service lines, but recommended that if documented action were taken to remediate the coating as specified in § 192.479, then the inspection interval should remain at 5 years. The commenters stated that there is not a need to drop down to 3 years if remediation occurs.

AGA *et al.* and GPTC agreed that the existing 3-year interval when corrosion is identified is not necessary to manage atmospheric corrosion risks if the service line is replaced or remediated, especially considering existing DIMP requirements, and the proposed requirement to consider atmospheric corrosion risks under DIMP included in the NPRM. They agreed with PHMSA's assessment that there is expectation for operators of service lines in high-corrosion environments to consider atmospheric corrosion in their evaluation of risks under DIMP and conduct atmospheric corrosion inspections more frequently than the minimum requirements in § 192.481. AGA *et al.,* therefore, recommended a prescriptive remediation requirement in lieu of a shortened inspection cycle. They stated that by remediating through recoating or replacement, operators can continue to keep all service pipelines on a 5-year inspection cycle. They provided specific regulatory text revisions in their comment. AGA *et al.* also requested that PHMSA remove the word ''evaluate'' from § 192.481(a). They noted that PHMSA did not provide justification for adding the requirement to evaluate under § 192.481(a). INGAA, AGA, APGA, API, and GPA Midstream submitted supplemental comments after the GPAC meeting arguing that the 3-year inspection interval when corrosion has been identified would negate any cost savings from the proposed revisions to § 192.481.

Similarly, NAPSR commented that if atmospheric corrosion is found that corrosion should be remediated rather than be subject to a shorter inspection interval. NAPSR argued this would be more reliable from a safety perspective than establishing a shorter inspection interval. Alternatively, NAPSR recommended that PHMSA consider revising both §§ 192.481 and 192.723 to require a shorter, perhaps 3- or 4-year, residential leak survey requirement and require that operators complete their atmospheric corrosion survey at the same interval. NAPSR argued this would provide for greater safety regarding leak surveys, while making it more practical to combine compliance intervals for two operation and maintenance categories. NAPSR further commented that any change to the atmospheric corrosion control inspection interval should be accompanied by a change to the record keeping requirements in § 192.491. NAPSR recommended that operators be required to retain records for the previous two inspection cycles.

A2LA recommended that PHMSA implement a risk-based approach to determine permissible inspection intervals rather than the 3-year or 5-year intervals described in the NPRM. A2LA stated the risk-based approach can then account for considerations such as the age of the pipeline, climate, geologic conditions, use, and maintenance history. They agreed with the proposed rulemaking that the maximum inspection interval for service lines should be 5 calendar years, with intervals not to exceed 63 months.

Two gas distribution operators and an industry organization commented that it is unclear whether, if corrosion was identified, a 3-year inspection interval would be required for the entirety of the distribution system or just at the location or address where the corrosion exists. They recommended that PHMSA consider clarifying that the 3-year inspection interval applies to ''only such areas as corrosion was identified.''

PST commented that they are unable to support changes in monitoring frequency because corrosion continues to cause many incidents. They commented that corrosion-related incidents indicate that more prescriptive corrosion monitoring regulations might be warranted. However, they noted that they do not strongly oppose this change, as PHMSA indicates it has no recent records of incidents caused by atmospheric corrosion on distribution service lines.

The GPAC voted twice on this amendment. First, the GPAC voted 7–5 in favor of the proposed rule with respect to atmospheric corrosion, provided that PHMSA amend § 192.491(c) to clarify that an operator must retain records of the last two atmospheric corrosion inspections to use the 5-year inspection interval. This vote recommended retaining the proposed requirement to inspect lines where corrosion was identified on the last inspection within 3-years, and did not incorporate the remediation alternative to a 3-year inspection that was suggested by some commenters.

Second, the GPAC voted 10–2 in favor of the proposed rule with respect to atmospheric corrosion if PHMSA adopted a 5-year cycle rather than a 3-year cycle when atmospheric corrosion is found, provided that the operator has evaluated and remediated the facility and there is no evidence of systemic atmospheric corrosion due to the environment or similar factors.

3. PHMSA Response

After considering the public comments and the GPAC recommendations, the final rule adopts the amendment with respect to atmospheric corrosion inspection of service lines as proposed with minor clarification to recordkeeping requirements in § 192.491(c). Alignment of atmospheric corrosion inspection intervals with those for leakage surveys in § 192.723 will allow greater scheduling flexibility for operators and decreased costs arising from less frequent atmospheric inspections. As stated in the NPRM, PHSMA is unaware of any pipeline incidents arising from atmospheric corrosion on a service line. In addition, PHMSA has approved State waivers in the past that have allowed certain operators to perform both atmospheric corrosion and leakage surveys on a 4-year interval outside of business districts and subject to certain conditions. The most recent of these was for North Western Energy in South Dakota, issued March 2, 2019.[45] PHMSA has not observed an increase in leaks or incidents from this and other State waivers. For these reasons, PHMSA finds that a longer atmospheric corrosion inspection interval is supported in areas with low observed atmospheric corrosion risk.

The final rule applies the new 5-year inspection interval to distribution service lines. Although PHMSA acknowledges that operators have reported atmospheric corrosion incidents on distribution mains, PHMSA understands the design and operational characteristics of service lines make them less susceptible to atmospheric corrosion induced failure. Compared to distribution mains, service lines tend to have smaller diameters,

[45] Additional information on these historical examples is available in the rulemaking docket and the docket for the South Dakota State waiver (PHMSA–2019–0052).

have lower flow rates, and are constructed with thicker walls relative to the outside diameter of the pipeline. They can therefore endure more atmospheric corrosion induced metal loss before operating stresses would compromise pipeline integrity. In addition, aboveground distribution facilities other than service lines (*i.e.* mains) must be inspected more frequently under part 192, providing ample opportunity for operators to note and correct any corrosion issues.

PHMSA recognizes that not all environments face the same atmospheric corrosion risks. However, based on inspection results and field experience, PHMSA determined that establishing a maximum inspection interval is necessary to ensure that distribution facilities are adequately inspected for atmospheric corrosion sufficiently frequently so that it can be remediated before it leads to a failure. An open-ended reference to DIMP, as suggested in the Associations' comment on the DOT Notification of Regulatory Reform, would not provide this safeguard. The proposed maximum interval of 5 years was supported in public comments and will allow operators of gas distribution pipelines with low atmospheric corrosion risks to realize cost savings from less-frequent inspections and the ability to schedule corrosion inspections and leakage surveys under § 192.723(b)(2) concurrently. PHMSA was not persuaded that there is significant benefit to allowing atmospheric corrosion inspection intervals longer than the maximum leakage survey interval as described by some commenters. Inspecting the aboveground portion of a service line is not a significant additional burden when operators are already walking the service line to perform leakage surveys.

The proposed revisions to §§ 192.1007(b) and 192.1015(b)(2) to evaluate atmospheric corrosion risks under DIMP and the shorter inspection interval for pipelines with observed corrosion will also ensure that operators of service pipelines with atmospheric corrosion threats take appropriate action to maintain the integrity of those pipelines.

Those revisions clarify that consideration of corrosion under DIMP must include consideration of atmospheric corrosion risks. When evaluating atmospheric corrosion risks under DIMP, PHMSA expects operators to evaluate environmental risk factors and the operating history of the service lines. Environmental risk factors for atmospheric corrosion include proximity to coasts, atmospheric moisture, salinity, and corrosive pollution. Relevant operational risks include a history of leaks, incidents, and evidence of atmospheric corrosion on previous inspections. PHMSA expects operators of distribution lines with higher risks due to atmospheric corrosion threats to take mitigative action, such as more frequent inspection or maintenance activities, as part of their DIMPs and accurately and completely document such actions.

The final rule does not adopt proposals (by commenters and GPAC) for remediation as an alternative to the NPRM's approach of shorter inspection intervals following observation of atmospheric corrosion. While commenters suggested a ''prescriptive'' remediation requirement, the regulatory language suggested in comments from the Associations neither defines what constitutes an adequate repair of atmospheric corrosion (other than replacement), nor how their proposal differs from existing part 192 requirements for remediation and repair of atmospheric corrosion and other conditions that could reduce the pipeline's integrity. Based on the GPAC discussion, remediation as discussed by commenters consists of removing corrosion with a wire brush and repainting the facility pursuant to the existing § 192.479 requirements. These actions are already required by existing § 192.481, through reference to § 192.479, which requires an operator to clean and suitably coat pipelines exposed to the atmosphere, and § 192.703 requires operators to replace, repair, or remove pipeline segments that become unsafe and promptly repair all hazardous leaks. In addition, finding atmospheric corrosion is an indication that a corrosive environment may exist. Inspection of such service lines within 3 years protects against this risk. Any remediation alternative requires careful consideration of what constitutes adequate remediation because corrosion has already been identified on the pipeline.

PHMSA also declines to NAPSR's alternative approach of aligning atmospheric corrosion inspection and leaky survey frequencies by revising § 192.723 to require more frequent leak surveys. PHMSA is unaware of record evidence supporting a need for shortened leak survey intervals, even as PHMSA finds that the absence of incidents resulting from atmospheric corrosion support extending the inspection interval as provided by this final rule. In addition, more frequent leak inspection surveys under § 192.723 will likely entail significant operator costs without record evidence of a corresponding safety benefit.

PHMSA is not persuaded by arguments raised by GPAC members and comments submitted after the GPAC meeting that reverting to a 3-year inspection interval for a distribution service line after atmospheric corrosion has been observed makes the amendment technically impracticable or economically infeasible. A 3-year inspection interval is the current requirement that has been in place for decades. Based on cost estimates provided by industry comments, PHMSA determined in the RIA that significant cost savings for the NPRM's proposed revisions to atmospheric corrosion monitoring requirements stem from reduced inspection frequency in the absence of observed atmospheric corrosion. If, however, the operator observes atmospheric corrosion and remediates it as required in part 192, then an operator should rarely observe atmospheric corrosion during the 3-year inspection following remediation, after which they may return to a 5-year inspection interval and continue to enjoy cost savings into the future. An operator can easily keep atmospheric corrosion and leakage surveys in sync by performing the next leakage survey within 3 years and then continuing every 5 years on subsequent inspections provided no corrosion is identified in the future. If the operator is unable to use the 5-year inspection interval effectively because they repeatedly observe atmospheric corrosion, then the rule is working as intended to protect the public in areas with high rates of atmospheric corrosion.

Finally, consistent with the recommendations of the GPAC and comments received in the rulemaking docket, the final rule revises the corrosion control recordkeeping requirements in § 192.491(c) to clarify that an operator must retain records of the two most recent atmospheric corrosion inspections in order to use the 5-year inspection interval for facility distribution service line. This change ensures that operators can provide adequate documentation that corrosion was not identified on a service line that is being inspected on a 5-year interval.

ASTM and ASME Standards Incorporated by Reference

G. Plastic Pipe (Sections 192.7, 192.121, 192.281, 192.285, Appendix B to Part 192)

1. PHMSA's Proposal

The NPRM proposed to update §§ 192.7, 192.121 and appendix B to part 192 to incorporate by reference the

2018a edition of the ASTM International (ASTM, formerly the American Society for Testing and Materials) document, ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings'' (ASTM D2513–18a).[46] ASTM D2513 specifies the design requirements of Polyethylene (PE) pipe and fittings. These improvements include more specific testing requirements for measuring resistance to ultraviolet exposure and clarifying the applicability of the document to all PE fuel gas piping. Consistent with the updated ASTM standard, PHMSA also proposed to raise the diameter limit for using a design factor of 0.4 on PE pipe from 12 inches to 24 inches and add corresponding entries for those sizes to the PE minimum wall thickness table at § 192.121(c)(2)(iv). PPI, representing manufacturers of plastic pipe and components, and a citizen commenter submitted comments in response to the DOT Notification of Regulatory Review addressing this issue. PHMSA reviewed ASTM D2513–18a and determined that PE pipe with diameters up to 24 inches that are manufactured in accordance with the standard and the design and construction requirements in part 192 are acceptable for use in gas pipeline systems. PHMSA also determined that the other safety improvements since the 2012ae1 edition merit incorporation by reference in the PSR as their incorporation would not have an adverse impact on safety, while improving regulatory clarity and alignment with consensus industry practices.

Currently, PHMSA incorporates by reference ASTM D2513–12ae1 into item I, appendix B to part 192. While Table 2 (Outside Diameters and Tolerances for Plastic Pipe) of ASTM D2513–12ae1 includes outside diameter specifications for pipe sizes up to 24-inch nominal diameter, Table 4 (Wall Thicknesses and Tolerances for Plastic Pipe) only includes wall thickness specifications for pipe sizes up to 12-inch nominal diameter. Because ASTM D2513 is the listed specification for PE plastic pipe in appendix B to part 192, and § 192.121(c)(2)(iv) mirrored the published wall thicknesses and tolerances in Table 4 of ASTM D2513–12ae, part 192 does not currently allow use of a 0.4 design factor for PE pipe diameters above 12 inches. Now that the ASTM D2513–18a includes in its Table 4 wall thicknesses for diameters through 24 inches, the corresponding table in § 192.121(c)(2)(iv) can be updated as well.

In the NPRM, PHMSA also proposed to modify requirements for joining procedures in §§ 192.281 and 192.285 to allow operators additional flexibility when developing such procedures and to improve safety. Specifically, PHMSA proposed to incorporate by reference the 2019 edition of ASTM F2620, ''Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings'' and revise §§ 192.281 and 192.285 to clarify that procedures that are demonstrated to provide an equivalent or superior level of safety as ASTM F2620 are acceptable. This amendment addresses concerns raised by a petition for reconsideration submitted by AGA on August 23, 2019[47] in response to the final rule entitled ''Pipeline Safety: Plastic Pipe Rule'' issued on November 20, 2018.[48]

In the Plastic Pipe Rule, PHMSA amended §§ 192.281 and 192.285 to require that PE heat-fusion joining procedures meet the requirements of the 2012 edition of ASTM F2620. Heat fusion is a common method for joining plastic pipe and components. In heat fusion, a worker prepares the surfaces of the pipe or fittings being joined, heats the surfaces using a heating element, and then presses the pipe or fittings together with sufficient force for the molten material to mix and fuse as it cools. ASTM F2620 describes procedures for making socket fusion, butt fusion, and saddle fusion joints. The document contains requirements for the selection, preparation, and maintenance of joining equipment; preparing surfaces for joining; specified heating temperatures and times; joining forces; and cooling procedures. The standard also includes considerations for joining in cold weather and criteria for evaluating the quality of fusion joints.

AGA raised concerns that §§ 192.281 and 192.285 could be interpreted to require operators to requalify safe procedures that had been qualified in the past in accordance with § 192.283. AGA commented that many operators use heat fusion procedures published by PPI, such as PPI TR–33 and PPI TR–41. While PHMSA noted in the preamble of the Plastic Pipe Rule that PHMSA would find a joining method acceptable if ''an operator can demonstrate the differences are sound and provide equivalent or better safety compared to ASTM F2620,'' AGA raised concerns that the regulatory text itself does not necessarily provide this flexibility, and suggested PHMSA explicitly allow the use of other qualified procedures, such as PPI TR–33 and PPI TR–41.

In the NPRM, PHMSA proposed to revise §§ 192.281 and 192.285 to achieve the flexibility sought in the Plastic Pipe Rule. Specifically, PHMSA proposed to revise § 192.281(c) to allow an alternative written procedure to ASTM F2620, provided that the operator can demonstrate that it provides an equivalent or superior level of safety and has been proven by test or experience to produce strong, gastight joints. In other words, the procedure produces joints that do not allow gas to leak, are at least as strong as the pipe being joined, are designed to handle the expected environment and the internal and external loads, and have been validated by formal testing in accordance with § 192.283 and applicable standards incorporated by reference or through several years of operational experience without leaks or failures.

As described in the preamble to the Plastic Pipe Rule, for operators to demonstrate compliance, PHMSA expects operators to document the differences from ASTM F2620 and demonstrate how the alternate procedures provide an equivalent or superior level of safety. Similarly, PHMSA proposed to revise § 192.285(b)(2)(i) to allow other written procedures that have been proven by test or experience to produce strong, gastight joints. If the operator's procedures are found to be lacking in any way—such as changes to surface preparation, heating temperatures, fusion pressures, cooling times that lack a technical justification demonstrating an equivalent or superior level of safety—they would be unacceptable and would not comply with the PSR.

PHMSA also proposed to incorporate by reference the 2019 edition of ASTM F2620. The updated edition of the standard clarifies the relationship between ASTM F2620 and the certain PPI documents referenced in AGA's petition within a new Note 1 in section 1.2. That Note identifies parameters and procedures in F2620 that were developed and validated using PPI TR–33 (butt fusion) PPI TR–41 (saddle fusion), thereby facilitating operators' ability to referencing those PPI documents in developing their technical justification for use of an alternative procedures under § 192.285(b)(2)(i). In addition, the 2019 edition of ASTM F2620 includes several incremental improvements on the 2012 edition to safety and editorial clarity. These improvements include a new section 6.4 that requires additional precautions

[46] ASTM International, ASTM D2513–18a—''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings'' (Aug. 1, 2018).

[47] Docket Number PHMSA–2019–0200. *https://www.regulations.gov/docket?D=PHMSA-2019-0200.*

[48] 83 FR 58694.

during pipe cutting to prevent the introduction of contaminants that can weaken the joint and a new section X4.2 that references the required test method for qualifying plastic pipe joiners in § 192.285. Further, the 2019 edition revises the recommended precautions for preventing or removing contamination during pipe cutting in section X1.7.1 to clarify that any soap is a contaminant and that contamination may be introduced during cutting, and to require cleaning of the outer and inner surface of the pipe in addition to the end. These changes are expected to reduce potential issues caused by inadequate surface preparation, which has been a factor in past incidents.[49]

PHMSA also proposed to clarify § 192.285 in response to questions PHMSA has received following publication of the Plastic Pipe Rule. First, PHMSA proposed to remove references to testing in relation to ASTM F2620 to clarify that only visual inspection in accordance with that standard is required. Several stakeholders asked what specific testing is required in ASTM F2620. While ASTM F2620 describes testing in a non-mandatory appendix of the standard, it does not require specific testing. Clarifying that operators must visually inspect specimen joints in accordance with ASTM F2620 avoids confusion about whether non-mandatory testing described in ASTM F2620 is required by § 192.285(b)(2)(i). PHMSA also proposed to clarify that testing in accordance with § 192.283(a) is still required for PE heat fusion joints. The current text could be read to require only visual inspection in accordance with ASTM F2620 for PE heat fusion joints. The changes in this rule clarify PHMSA's intent to require that such joints be tested in accordance with § 192.283(a) and visually inspected in accordance with ASTM F2620. Additional testing in accordance with the appendix of ASTM F2620 is optional.

In addition to the matters raised above, PHMSA proposed correcting amendments to address the following:

Design Pressure for Plastic Pipe

In § 192.121(a), PHMSA proposed the words ''design formula'' be replaced with the words ''design pressure,'' which is more accurate.

Minimum Wall Thickness for 1″ CTS Pipe

In the minimum wall thickness tables for PE (§ 192.121(c)(2)(iv)), polyamide 11 (PA–11) (§ 192.121(d)(2)(iv)), and polyamide 12 (PA–12) (§ 192.121(e)(4)) pipe, PHMSA proposed that the minimum wall thickness for standard dimension ratio (SDR) 11, 1″ copper tubing size (CTS) pipe is corrected to be 0.101 inches rather than 0.119 inches. The former, 0.101 inches, most closely corresponds to SDR 11, 1″ CTS pipe in the standards incorporated by reference for the design of PE (ASTM D2513), PA–11 (ASTM F2945),[50] and PA–12 (ASTM F2785)[51] plastic pipe and fittings.

Qualifying Joining Procedures

In § 192.283(a)(3), ''no more than 25% elongation'' is corrected to read ''no less than 25% elongation.'' PHMSA proposed to clarify that the test required by this section is a tensile test. Tensile testing is a measure of a material's resistance to pulling forces. The revisions to § 192.283(a)(3) made in the Plastic Pipe Rule inadvertently removed the word ''tensile,'' though tensile strength was still alluded to implicitly because elongation is a measure of tensile strength. Reinserting the word tensile clarifies this relationship.

Dates

In § 192.121(c)(2) and (e), PHMSA proposed to clarify that PE pipe and PA–12 pipe respectively produced on or after January 22, 2019 may use a DF of 0.40 rather than 0.32, subject to applicable restrictions in those paragraphs.

Corrections to 192.7

PHMSA proposed editorial amendments to § 192.7(a) to meet incorporation by reference requirements of the Office of the Federal Register and a revision to update the address for API.

2. Summary of Public Comments

ASTM D2513 and PE Pipe Diameter

Several commenters provided their support, with no additional comments, for the proposed amendments in the NPRM.

AIPRO submitted comments supporting the incorporation by reference of the 2018a edition of ASTM D2513 and conforming revisions to § 192.121. Similarly, PPI stated their support to increase the allowable dimensions for PE pipe using a 0.40 design factor up through 24 inches along with the corresponding minimum wall thicknesses in Table 1 to paragraph § 192.121(c)(2)(iv). PPI stated that the revisions are consistent with dimensions provided in ASTM D2513–18a and enables the increased use of larger diameter PE in gas distribution, transmission, and gathering systems.

PPI provided suggested regulatory text revisions for § 192.121(a) to permit an operator to allow an operator to operate a plastic pipe at a temperature up to 180 °F, provided that the hydrostatic design basis (HDB) is established at that temperature. PPI noted that a survey of AGA members indicated that local distribution companies desire to use plastic pipe at higher operating temperatures providing them with more application options, and that use of these higher performance plastic materials results in increased long-term performance of the piping system and a safer gas system.

GPA Midstream supported incorporating by reference updated editions of standards and believes that the latest editions should be adopted wherever possible. GPA Midstream stated that relying on obsolete or outdated editions of IBR standards creates unnecessary compliance burdens, discourages innovation, and adversely affects the standards development process. GPA Midstream noted that a significant number of the IBR standards have undergone multiple revisions without being updated to a newer or more recent edition. GPA Midstream requested that PHMSA place a renewed emphasis on the timeliness of the incorporation by reference process, particularly in cases where a prior edition of a standard is already incorporated by reference. In such cases, PHMSA should commit to adopting the latest edition of the standard or providing an explanation for not doing so within 1 year of publication.

ASTM F2620 and Joining Requirements

AGA *et al.* supported the changes proposed to §§ 192.281 and 192.285. They commented that the proposed revisions in the NPRM aligned with AGA's petition for reconsideration of the Plastic Pipe Rule, and allow operators to use alternate procedures to join PE which are equivalent or more stringent than the heat fusion procedure detailed in the 2012 edition of ASTM F2620.

PPI supported PHMSA's proposed revision to §§ 192.281(c) and 192.285 providing for alternative written heat fusion procedures that provide an equivalent or superior level of safety.

[49] National Transportation Safety Board, ''Safety Through Reliable Fusion Joints,'' SA–047 (June 2015), *https://www.ntsb.gov/safety/safety-alerts/Documents/SA_047.pdf.*

[50] ASTM F2945–12a ''Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings'' (Nov. 27, 2012).

[51] ASTM F2785–12, ''Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings'' (Aug. 1, 2012).

PPI also suggested incorporating PPI–TR–33, ''Generic Butt Fusion Joining Procedure for Field Joining Polyethylene Pipe'' and TR–41, ''Generic Saddle Fusion Joining Procedure for Polyethylene Gas Piping'' into § 192.281(c) in addition to ASTM F2620. PPI explained that these additions would help clarify the language and account for proven procedures that have been successfully used in industry for many years. A2LA suggested that PHMSA also incorporate by reference ISO/IEC 17025, ''General Requirements for the Competence of Testing and Calibration Laboratories'' and require alternative written procedures be validated by laboratories certified in accordance with that document. A2LA commented that ISO/IEC 17025 recommends that a testing laboratory uses consensus methods and has procedures for the selection of methods, and verify that a testing laboratory can properly perform methods by ensuring that it can achieve the required performance and maintain records of the verification. Regarding PHMSA expecting operators to document the differences from ASTM F2620 and demonstrate how the alternate procedures provide an equivalent or superior level of safety, A2LA recommended that the organizations conducting the inspections and testing be accredited, in accordance with the relevant ISO/IEC standards include requirements for impartiality.

Southwest Gas Corporation (Southwest) raised concerns with the addition of the language ''or superior'' in the proposed language of both §§ 192.281 and 192.285. Southwest believes that this language ''or superior'' implies an increased performance standard not defined in either ASTM F2620 or part 192. Southwest requested that PHMSA consider removing the language ''or superior'' from the proposed revisions to both § 192.281(c) and § 192.285(b)(2)(i) and provided its preferred regulatory text.

1-Inch CTS Pipe

The Associations and NAPSR commented that operators commonly use 1-inch CTS pipe with a wall thickness of 0.099 inches, rather than 0.101 inches in the proposed rule. Both wall thickness specifications are listed as options in Table 3 of ASTM D2513. NAPSR requested clarification of whether operators are required to use a design factor of 0.32 for PE pipe with a minimum wall thickness of 0.099-inch, and if thicker pipe is required to use a 0.40 design factor. The Associations raised concerns about the impact to operators and manufacturers who have an inventory of 0.099-inch wall thickness PE pipe and suggested that PHMSA correct the proposed amendments to the minimum wall thickness table at § 192.121(c)(2)(iv) to reference 0.099-inch thick, 1-inch CTS pipe that is commonly in use.

Qualifying Joining Procedures

PPI supported correcting § 192.283(a)(3), and allowing visual inspection in accordance with established written procedures in § 192.285(b)(2)(i).

GPAC Recommendation

The GPAC voted unanimously in favor of PHMSA's proposed amendment with respect to plastic pipe requirements, provided PHMSA correct the minimum wall thickness tables to specify a 0.099-inch wall thickness for 1-inch CTS plastic pipe as recommended in the written comments from the Associations and NAPSR.

3. PHMSA Response

Based on the comments, the final rule adopts the plastic pipe amendments as proposed except for a change to the minimum wall thickness required to use plastic pipe with a size of 1-inch CTS with a design factor of 0.40 rather than 0.32. The final rule incorporates the 0.099-inch minimum wall thickness for 1-inch CTS plastic pipe.

PHMSA expects that the incorporation of updated industry standards pertaining to plastic pipe design will not adversely affect safety. The updated standards incorporated by reference in this final rule reflect the benefit of testing, lessons learned, and operational best practices from the increasingly widespread use of plastic pipe in gas transmission, distribution and gathering applications. Significantly, those updated industry standards reflect a greater comfort within industry regarding the safety of the use in those applications of larger-diameter plastic piping when subject to rigorous design standards. Based on its review of those standards and the administrative record in this rulemaking, PHMSA is similarly satisfied that their incorporation within the PSR will not have a detrimental impact on safety. PHMSA has provided a discussion of the changes in the updated editions of ASTM D2513 and ASTM F2620 in the summary of the proposed changes in section III.G.1 above.

ASTM D2513 and PE Pipe Diameter

The final rule incorporates by reference the 2018a edition of ASTM D2513 and allows the use of a 0.40 design factor for PE pipe produced on or after the effective date of the rule with a maximum diameter of 24 inches as proposed in the NPRM. PHMSA proposed no changes to the design pressure formula for PE pipe at § 192.121(c)(2), and therefore declines to adopt the design factor change for PE piping suggested by PPI without the benefit of further technical evaluation and public comment. Similarly, PHMSA may consider allowing an operator to more directly establish a HDB rating at 180 °F within the design pressure formula at § 192.121(a) in a future rulemaking after further review of the safety effects of such a change. PHMSA notes that § 192.121(a) allows an operator to interpolate the design pressure down from 180 °F, meaning they could use a pipe with an HDB rating at 180 °F but have to use a formula to determine the design pressure at a lower temperature listed in § 192.121(a). PHMSA cautions users that not all PE compounds are rated at 180 °F.

Regarding the GPA Midstream comment concerning other documents that are currently incorporated into part 192, PHMSA periodically issues rules updating the standards that are incorporated by reference, provided the 2018 edition of ASTM D2513 has been evaluated and its incorporation determined consistent with PHMSA's safety mission. More recent versions of this and other standards incorporated by reference, including those related to plastic pipe and components, that were not included in the NPRM may be considered for updates in other rulemaking proceedings.

ASTM F2620 and Joining Requirements

The final rule also adopts the clarifications to joining requirements as proposed with minor editorial revisions. PHMSA did not propose in the NPRM to incorporate by reference PPI TR–33, PPI TR–41, or ISO/IEC 17025, and therefore declines to incorporate them by reference without the benefit of additional public comment and technical evaluation. However, PHMSA understands that many of the procedures in TR–33 and TR–41 are similar or identical to the procedures specified in the 2019 edition of ASTM F2620. There are, however, still some differences such as heating temperatures. If an operator can demonstrate that their alternative procedure based on those documents provides an equivalent or superior level of safety compared with ASTM F2620, it would be acceptable under the amendments adopted in this final rule.

PHMSA disagrees with comments that including the phrase ''or superior'' imposes new requirements or adds uncertainty to the changes in §§ 192.281 and 192.285. An operator need only demonstrate that their alternative procedure provides an equivalent level of safety; the addition of the term ''or superior'' exists to ensure that a procedure with requirements that may be more conservative than ASTM F2620 is also acceptable. PHMSA has revised the regulatory language at § 192.281 proposed in the NPRM to clarify that the operator need only demonstrate that the alternative procedure provides an equivalent or superior level of safety rather than demonstrate the alternative procedure is itself superior.

1-Inch CTS Pipe

PHMSA agrees with commenters that 0.099 is an acceptable minimum wall thickness specification. While 0.101 inches more closely corresponds to SDR 11, both 0.099-inch and 0.101-inch wall thickness for 1-inch CTS pipe are technically SDR 11 specifications. In addition, the two specifications are within allowable tolerances of each other in the ASTM codes. Therefore, PHMSA does not have a safety concern with using a 0.40 design factor with 0.099-inch wall thickness for 1-inch CTS plastic pipe and recognizes that it is in common use.

H. Test Requirements for Pressure Vessels (Section 192.153)

1. PHMSA's Proposal

Section 192.153 defines design requirements for prefabricated units and pressure vessels (hereafter referred to as pressure vessels) fabricated by welding. In particular, § 192.153(a) requires that operators establish the design pressure of components fabricated by welding whose strength cannot be determined to establish the design pressure of those components in accordance with section VIII, division 1 of the 2007 edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPVC) which is incorporated by reference in § 192.7.[52] Section 192.153(b) requires operators to design, construct, and test prefabricated units that use plate and longitudinal seams in accordance with either ASME BPVC section I, section VIII, division 1, or section VIII, division 2. In addition, § 192.505(b) requires operators to pressure test compressor station, regulator station, and measuring stations to Class 3 location test requirements; for pipelines installed after November 11, 1970, this represents a required test factor of at least 1.5 times the maximum allowable operating pressure (MAOP).[53]

On March 11, 2015, PHMSA published a final rule titled, ''Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations.''[54] The final rule created a new § 192.153(e), which clarified that pressure vessels subject to § 192.505(b) must be pressure tested to at least 1.5 times the MAOP of the pipeline. INGAA subsequently submitted a petition for reconsideration of the Miscellaneous Rule concerning the revision to § 192.153.[55] The petitioner argued that PHMSA lacked technical justification for a 1.5 times MAOP test factor versus the 1.3 times the Maximum Allowable Working Pressure (MAWP)[56] test factor permitted in the ASME BPVC since the 2001 edition and all subsequent editions of the standard. PHMSA had incorporated by reference the 2001 edition of the ASME BPVC into part 192 effective July 14, 2004, and the divergence between the required test factor in § 192.505(b) and section VIII, division 1 of ASME BPVC persisted until the Miscellaneous Rule became effective in 2015.[57]

PHMSA, meanwhile, had commissioned a report by the Oak Ridge National Laboratory (ORNL) on the safety equivalence between the 1992 edition and the 2015 edition of the ASME BPVC. PHMSA understands that most pressure vessels in pipeline service are designed to ASME section VIII, division 1. For hydrostatic pressure tests, the 1992 edition of section VIII division 1 of the ASME BPVC provides for a hydrostatic pressure test factor of 1.5 times MAWP, while the 2001 and all subsequent editions provide for a hydrostatic pressure test factor of 1.3 times MAWP. The ORNL report found that these different editions of ASME BPVC section VIII, division 1 maintain safety through the design and fabrication of pressure vessels and hydrostatic pressure test, notwithstanding the difference in their hydrostatic pressure test factors of 1.3 and 1.5. A copy of this report is available in the docket.

In the NPRM, PHMSA proposed to revise the test requirements for the pressure vessels described in § 192.153. First, PHMSA proposed to revise § 192.153(e) to require a pressure test factor of at least 1.3 times the MAOP for all pressure vessels installed since July 14, 2004, provided the component has been tested in accordance with the ASME BPVC, as required by existing § 192.153(b). Consistent with this change and the requirements in the ASME BPVC, PHMSA also proposed to exempt vessels installed after July 14, 2004 from the strength testing requirement at §§ 192.505(b) and 192.619(a)(2), which require a test factor of 1.5 times the MAOP. The test requirements for any pressure vessel with an MAOP established under the alternative MAOP requirements at § 192.620 would remain unchanged.

Second, PHMSA proposed a new § 192.153(e)(2) that would exempt pressure vessels installed after July 14, 2004 but before the effective date of the final rule from testing duration requirements at §§ 192.505(c), (d) and 192.507. In contrast, pressure vessels installed on or after the effective date of the final rule would be subject to the long-standing pressure test duration requirements in subpart J.

Third, PHMSA proposed § 192.153(e)(3)(ii) to accept, subject to certain conditions, a pre-installation pressure test by the component manufacturer for pressure vessels installed after the effective date of the final rule but which have not previously been used in service. PHMSA proposed to accept those manufacturer pressure tests for the purposes of meeting the pressure testing and MAOP requirements in part 192 provided the operator conducts and documents an inspection certifying that the pressure vessel has not been damaged during transport and installation into the pipeline. If the inspection reveals that the pressure vessel has been damaged, the component would have to be remediated consistent with the ASME BPVC and part 192. A pressure vessel used prior to installation on a pipeline facility would have to be pressure tested again, consistent with the existing requirement at § 192.503(a).

2. Summary of Public Comments

AGA *et al.* generally supported the PSR amendments proposed in the NPRM but suggested substantive revisions to the requirements for accepting a manufacturer's test of a pressure vessel. AGA *et al.* emphasized that the NPRM's integration of ASME

[52] ASME Boiler & Pressure Vessel Code, 2007 edition (July 1, 2007).

[53] Section 192.619(a)(2) requires a test pressure of at least 1.5 times the MAOP in a Class 3 or Class 4 location for pipelines installed after November 11, 1970.

[54] 80 FR 12762 (Miscellaneous Rule).

[55] Docket No. PHMSA–2018–0046–0055.

[56] MAWP is the design pressure in the ASME BPVC. The test factors in the ASME BPVC refer to the MAWP and are used to substantiate the design pressure of the vessel. Because the design pressure of a pressure vessel (the MAWP) must be equal to or greater than the MAOP of the pipeline, the PSR uses the more demanding MAOP metric.

[57] PHMSA, ''Pipeline Safety: Periodic Updates to Pipeline Safety Regulations,'' 80 FR 12762 (June 14, 2004).

BPVC requirements within its proposed PSR revisions leverages an internationally recognized standard of safety applied by several Federal regulators in their oversight activities. AGA *et al.* agreed with the NPRM's approach of allowing operators to rely on a manufacturer's pressure test accompanied by a visual inspection for newly-manufactured vessels, but requested PHMSA extend this authorization to relocations of existing components as well.

AGA *et al.* noted that retesting ASME pressure vessels is not required by the ASME BPVC—but if an operator voluntarily undertook retesting, the ASME BPVC would require oversight by an authorized inspector. They concluded that retesting is therefore unnecessary and can lead to costs and operational disruptions because most operators do not have an authorized inspector on staff to oversee that retesting. They further commented that PHMSA should not require pressure vessels be pressure tested or inspected after installation or in situ, because in many cases it may be impracticable or unsafe to do so, especially for pressure vessels used in compressor stations. Finally, AGA *et al.* submitted comments opposing the NPRM's proposed requirement that pressure vessels that have been used prior to being installed or relocated must be retested in place in accordance with Subpart J. They commented that retesting relocated vessels is not required by the ASME BPVC, and that inspection rather than pressure testing is the appropriate method to confirm the integrity of previously-used, relocated pressure vessels.

PST opposed the proposed revisions to § 192.153, contending that PHMSA lacked sufficient technical justification for the proposed changes. PST argued that the ORNL report does not support PHMSA's conclusion that safety would not be adversely affected by NPRM's proposed reduction of the pressure test factor at § 192.153(e). PST asserted that the ORNL report did not conclude that components designed and fabricated under the 2015 edition of the ASME BPVC standards and tested to its lower (1.3 times MAWP) hydrostatic pressure test factor were necessarily as safe as those designed and fabricated to the higher hydrostatic pressure test factor (1.5 times MAWP) in the current text of §§ 192.153(e) and 192.505(b) (which were based on the test factors from the 1998 and prior editions of the ASME BPVC). Rather, PST characterizes the hydrostatic pressure test factor as only ''one of [several] changes between [the] two editions'' (1992 and 2015) compared by the ORNL report that would need to be evaluated to determine the safety impact of the NPRM's revisions to § 192.153 compared to the current PSR. PST also noted that the NPRM proposed applying the lower test factor in the 2015 ASME BPVC not only to components installed since the 2015 edition, but also components installed over the previous decade. Lastly, PST alleged that the NPRM's proposed reduction in the test factor at § 192.153(e) violates the prohibition in 49 U.S.C. 60104(b) on retroactive application of design standards insofar as it purports to impose new design, installation, construction, and testing standards on previously-installed components. PST representatives reiterated their concerns in a conversation with PHMSA personnel after the GPAC meeting.

The GPAC members voted 11–2 in favor of PHMSA's proposed amendments with respect to test requirements for pressure vessels provided that PHMSA make the following changes:

- Clarify in the NPRM's § 192.153(e)(3) that testing or inspection of a pressure vessel must take place after being placed on its supports at its installation location, but may occur prior to tie-in with station piping.
- Clarify in the NPRM's § 192.153(e)(3) that relocated vessels must meet current design and construction requirements, be retested by the operator, and be inspected as described in the previous recommendation, to ensure there are no injurious defects.
- Clarify in a new § 192.153(e)(4) that the retesting requirements applicable to pressure vessels do not apply to those pressure vessels that are used for temporary maintenance and repair activities, such as portable launcher or receivers, temporary odorant tanks, blow down equipment, and other similar equipment, but they must be inspected for safety and integrity prior to usage.

Two GPAC members representing EDF and PST voted against the proposed amendments, expressing concern that the retroactivity prohibition at 49 U.S.C. 60104(b) prohibits PHMSA from applying a revised test factor to existing pressure vessels. During the meeting, PHMSA committed to the GPAC members that it would consider the application of 49 U.S.C. 60104(b)'s prohibition to the changes proposed in the NPRM.

INGAA, AGA, APGA, API, and GPA Midstream submitted joint supplemental comments after the GPAC Meeting supporting the GPAC recommendation and asserting that the proposed PSR amendments did not violate the 49 U.S.C. 60104(b) retroactivity prohibition. GPA Midstream separately submitted supplemental comments on that statutory retroactivity prohibition, explaining by reference to its legislative history, contemporaneous DOT interpretation of the relevant statutory language, and subsequent PHMSA interpretations of the same that 49 U.S.C. 60104(b) prohibits only generically-applicable, retroactive standards imposing new compliance burdens on relevant pipelines. Here, in contrast, GPA Midstream contended the NPRM's proposed revisions to § 192.153(e) would relieve regulatory burdens and operators would have to take no action to be in full compliance with the amended § 192.153(e).

3. PHMSA Response

After considering the comments and the GPAC, PHMSA is adopting the proposed testing requirements for pressure vessels subject to certain amendments to the proposed rule with respect to test requirements for pressure vessels in § 192.153. The final rule adopts the revision to § 192.153(e)(1), which specifies that a prefabricated unit or pressure vessel that is installed after July 13, 2004 is not subject to the strength testing requirements at §§ 192.505(b) provided it has been tested in accordance with § 192.153(a) or (b) and with a test factor of at least 1.3 times the intended MAOP, consistent with the hydrostatic pressure test factors in section VIII, division 1 of the ASME BPVC. The final rule also adds a footnote to table 1 to the § 192.619(a)(2)(ii) MAOP requirements specifying that the factor for establishing the MAOP of a prefabricated unit or pressure vessel installed after July 14, 2004 is 1.3 times the MAOP. These changes ensure that an operator of a pressure vessel designed and hydrostatically tested in accordance with section VIII, division 1 of the ASME BPVC since the incorporation by reference of the 2001 edition of that document is compliant with the PSR. This allows an operator of a pressure vessel designed and hydrostatically tested in accordance with section VIII, division 1 of the ASME BPVC to operate it at an MAOP equal to its design pressure in most instances. PHMSA notes that if the pressure vessel is tested at factor lower than 1.3 times the MAWP under a pneumatic test or under section VIII division 2 of the ASME BPVC, the MAOP of the pipeline must be

established such that the test pressure is 1.3 times the MAOP or greater.

PHMSA understands the administrative record shows that this rulemaking's revision of the pressure test factors at § 192.153 does not adversely affect the safety of pressure vessels designed, constructed, and tested in accordance with the 2001 and subsequent editions of the ASME BPVC, and designed, tested, constructed, and operated in accordance with the PSR. PHMSA therefore disagrees with PST's assertion that the ORNL report does not contribute to the technical justification for that change. PST is correct to note that the ORNL report compares the 1992 and 2015 editions of the ASME BPVC, and that other changes have taken place within the intervening editions of that standard (including the 2007 version currently incorporated by reference in the PSR). However, the ORNL report did not provide only a top-level statement of safety equivalence between the 1992 and 2015 editions of the ASME BPVC; it also evaluated the contributions to that ultimate conclusion from each of the material elements of the 1992 and 2015 editions ASME BPVC—including the effects of a reduction in the hydrostatic pressure test factor in ASME BPVC section VIII, division 1 from 1.5 times the MAWP to 1.3 times the MAWP.[58]

The ORNL report predicated its top-level conclusion of safety equivalence across the 1992 and 2015 editions of the BPVC section VIII, division 1, notwithstanding their different hydrostatic pressure test factors, in part on certain shared features. The most important of those features was that both editions' hydrostatic pressure test factors yield hydrostatic pressure testing limits that ensure primary membrane stresses remain at or below plastic collapse stress limits for a pressure vessel, thereby reducing the risk of permanent distortion that would result in rejection of the pressure vessel at qualification. Other features shared between the 1992 and 2015 editions of BPVC section VIII, division 1 contributing to ORNL's safety equivalence finding include the following: Pressure testing by an authorized inspector at qualification verifying leak-tight integrity and the absence of gross deformations and anomalies indicative of design errors, material defects, or weld defects; pressure testing after fabrication verifying leak-tight integrity and the absence of gross deformations and anomalies indicative of design errors, material defects, or weld defects; and overpressure protection in the event of design basis heat exposure ensuring that maximum overpressure does not exceed 1.3 MAWP.

Each of the features listed above are also shared by the 2007 edition of the BPVC section VIII, section 1 incorporated by reference in the PSR, notwithstanding any other differences between that edition and the 1992 and 2015 editions evaluated in the ORNL report. Like the 1992 and 2015 editions, the various design requirements of the 2007 edition of the ASME BPVC ensure that plastic stresses on a pressure vessel remain at or below plastic collapse stress limits to avoid permanent distortion. And like the 1992 and 2015 editions, the 2007 edition backstops that design basis by qualified inspections to identify defects, post-fabrication pressure testing, and overpressure protection from a design basis heat exposure. Insofar as ORNL determined that these shared features contributed to its top-level conclusion of safety equivalence between the 1992 and 2015 editions of the ASME BPVC, PHMSA understands them to support its conclusion in this final rule that that a lower (1.3) test factor will not adversely affect safety.

PHMSA also submits that other elements of this final rule and the PSR's comprehensive safety regime support the conclusion that lowering the test factor to 1.3 will not adversely affect safety. The applicability of the ASME BPVC in the PSR is limited to the design, testing and fabrication of pressure vessels. On the other hand, the PSR applies additional requirements throughout the lifecycle of a pressure vessel to ensure its continued integrity and safe operation. These requirements pertain to construction (subpart G), corrosion control (subpart I), testing (subpart J), operation (subpart L), maintenance (subpart M), and integrity management (subparts O and P) standards. Further, even with respect to design and installation standards that are the focus of ASME BPVC section VIII, division 1, PSR requirements provide additional assurance that stresses remain within safe limits. For example, § 192.201(a)(2)(i) requires overpressure protection devices be set to discharge at 1.1 times MAOP or at a pressure producing a hoop stress of 75 percent of SMYS, whichever is lower—a requirement that is more conservative than analogous overpressure specifications in the ASME BPVC referenced in the ORNL report. Similarly, the ASME BPVC does not specify a minimum pressure test duration. In contrast, the PSR at subpart J requires a minimum pressure test durations of 8 hours (§ 192.505(c)), 4 hours (§ 192.505(d)), 1 hour (§ 192.507(c)), or with a procedure sufficient to ensure discovery of all potentially hazardous leaks (§ 192.509).

PHMSA further notes that exemption in this final rule from subpart J's minimum pressure duration requirements are consistent with that conclusion. Prior to the changes adopted by this final rule, if an operator tested a pressure vessel to 1.3 times the MAOP consistent with section VIII, division 1 of the ASME BPVC rather than 1.5 times the MAOP, it would not comply with the PSR. An operator of such a vessel would need to reduce the MAOP of the pressure vessel such that the test pressure is 1.3 times the reduced MAOP, retest the vessel to 1.5 times the MAOP, or replace the pressure vessel entirely. Likewise, a pressure vessel that was not tested for a duration specified in subpart J would need to be retested or replaced to remain in compliance. While retesting or replacing existing pressure vessels with a longer test duration or higher test factor could conceivably decrease the risk of an overpressure event causing a vessel failure on affected pipelines, PHMSA understands any such safety benefit could be speculative; incident reports indicate that pressure vessel failure has not been an issue on existing vessels in-service.

This is further supported by the conclusions of the ORNL report with respect to the hydrostatic pressure testing limits described above. Further, any potential safety benefit from retesting or replacing pressure vessels already in service would need to be weighed against new safety risks that may emerge from such activity. And here PHMSA understands that re-testing and replacing in-service pressure vessels in pipeline facilities can entail its own safety hazards for operator personnel due to the mass, volume, and installation location of a typical pressure vessel compared with other types of pipeline facilities. Specifically, retesting or replacement of a pressure vessel requires purging of gas, disconnection from local piping, and likely removal from service and reinstallation. The pipeline facilities involved in such efforts may be very heavy and large, which increases hazards to operator personnel when the pressure vessel or other equipment is removed from its installation location and prepared for testing. The layout of compressor stations and other facilities may exacerbate these safety risks if there

[58] ORNL report at Table 9.2 (summarizing Section 7.1.2.1 of the ORNL report on the safety contribution of hydrostatic test factors in different editions of ASME BPVC section VIII, division 1).

is limited space to safely remove the pressure vessel or to maneuver lifting equipment. Each of these steps therefore introduces certain safety risks to operator personnel performing the work that PHMSA believes could outweigh any marginal, speculative safety benefit from re-testing and replacement of previously-installed pressure vessels. Lastly, as pointed out by multiple comments submitted on the NPRM, such re-testing and replacement of existing pipe could entail significant costs and operational disruptions that similarly militate in favor of the exemption in the final rule.

Finally, PHMSA notes that the ASME BPVC does not specify minimum test duration requirements and part 192 does not currently require post-installation inspection of pressure vessels. The final rule's PSR amendment clarifying that these requirements apply to new, replaced, relocated, or otherwise changed pressure vessels installed after the effective date of the final rule are expected to result in an increased level of safety.

The final rule retains the proposed requirement to inspect pre-tested pressure vessels after being placed at the vessel's installation location on its support structure in § 192.153(e)(3). However, consistent with the GPAC's recommendations, the final rule clarifies that those inspections may occur prior to the pressure vessel tie-in on-site with the pipeline. PHMSA appreciates comments that testing vessels after they have been tied-in to station piping may be problematic depending on what or how it is being connected. But one of the risks of transporting pressure vessels and other large components is damage to the vessel including vessel outlets or its support structure while it is being moved within the facility itself. Many of the considerations raised by commenters that may complicate an inspection likewise raise the likelihood of potential damage during installation. For example, it would be unusual for a pressure vessel to be completely inaccessible in a typical compressor station configuration. In addition, since the § 192.153(e)(3) requirement applies to new, replaced, and relocated vessels, operators can ensure access during initial design, construction, and testing stages. The final rule also clarifies that operators must visually inspect the steel structure for damage including, at a minimum: Inlets, outlets, and lifting points. If damage is found, the pressure vessel must be non-destructively tested, re-pressure tested, or remediated in accordance with part 192 and ASME BPVC requirements. Test, inspection, and repair records must be kept for the operational life of the pressure vessel. These clarifying revisions to § 192.153(e)(3) are designed to enhance safety, address the most significant concerns operators had with post-installation inspection, and help ensure that damage incurred during movements within the facility are detected and remediated before the pressure vessel is put into service.

PHMSA has also, consistent with the GPAC's recommendations, clarified when testing and inspection under § 192.153(e)(3) is required. The final rule clarifies that any pressure vessel that is temporarily or permanently installed in a pipeline facility must be inspected for damage as described above unless it has been pressure tested on its supports at its installation location. This includes pressure vessels that are pressure tested by the operator prior to installation when a post-installation pressure test is impracticable (§§ 192.505(d) and 192.507(d) in the final rule) and to pressure vessels where a manufacturer's pressure test is used under § 192.153(e)(4) in the final rule. This change is consistent with pretesting authorizations under § 192.507(d) in the final rule or § 192.505(d) in existing part 192. It preserves the flexibility provided under those authorizations while the post-installation inspection ensures that pre-tested components are not damaged after being tested by the manufacturer or the operator.

The final rule also clarifies design, testing, and inspection requirements for pressure vessels that are relocated. Consistent with the GPAC's recommendations, PHMSA is adding a new § 192.153(e)(6) that clarifies testing and inspection requirements for relocating an existing pressure vessel that has previously been used in service for permanent installation at a new location in a pipeline facility. An operator must have documentation that a relocated pressure vessel meets the design, construction, and testing requirements in place at the time of relocation and pressure test the pressure vessel. If a pre-installation pressure test is performed, the operator must inspect the pressure vessel after installation.

The final rule does not adopt suggestions from commenters to accept a manufacturer's initial pressure test for all relocated pressure vessels. PHMSA did not propose specific changes to the initial pressure testing requirements for relocated, existing pressure vessels. Rather, the requirements in the final rule for permanently relocated vessels complement existing part 192 requirements for relocation of existing facilities with the addition of a new, general requirement in § 192.153(e)(3) to inspect pressure vessels that are not pressure tested in place. Using a manufacturer's initial pressure test of an existing vessel raises safety concerns because the vessel could have been subject to corrosion, fatigue, external force damage, and other threats to the vessel's integrity during its prior operational life or during transportation to the new facility.

The GPAC's discussion noted that operators commonly use such temporary devices for temporary launchers and receivers for integrity assessments and to reduce methane emissions during blowdowns (natural gas is predominately methane, a greenhouse gas). PHMSA did not intend to impair the use of pressure vessels that are relocated temporarily in order to perform maintenance, repair, or emergency-response-related tasks. To prevent this unintended result, PHMSA is incorporating a new § 192.153(e)(4)(ii) to allow the use of a manufacturer's initial test of a pressure vessel temporarily installed in a pipeline facility to complete a testing, integrity assessment, repair, odorization, or emergency response-related task, including noise or pollution abatement. This revision addresses temporary and mobile pressure vessels that were discussed during the GPAC meeting, including portable launcher or receivers, temporary odorant tanks, mobile blow down equipment, and other similar equipment. This change reduces barriers to using temporary equipment to perform integrity assessment, maintenance, and pollution mitigation-related tasks (provided the equipment meets the MAOP, design, and inspection requirements in part 192) and thereby is expected to result in greater efficiency for operators and safety and environmental benefits associated with encouraging inspections and repairs. These devices are subject to the new general requirement in § 192.153(e)(3)(ii) to inspect pressure vessels that are not pressure tested in place after installation. Reducing regulatory burdens associated with performing maintenance, repair, emergency response, and pollution abatement tasks could result in safety and environmental benefits by making such actions more attractive to operators.

To prevents misuse of this flexibility, a pressure vessel that is installed under § 192.153(e)(4)(ii) must be removed when the task it is associated with is completed. Operators should define the procedures for employing temporary or mobile pressure vessels in their written procedure manuals. The final rule

requires operators to submit a notification to PHMSA and applicable State pipeline safety authorities in accordance with § 192.18 if a temporary pressure vessel must be left in place for longer than 30 days; however, PHMSA does not reference this section in § 192.18(c) and therefore the objection process and advance notice requirements do not apply. Likewise, § 192.153(e)(5) clarifies that an operator is not required to pressure test a pressure vessel that is temporarily removed from a facility to perform a maintenance task and later re-installed at the same location. However, the re-installed pressure vessel must be inspected in accordance with § 192.153(e)(3)(ii) after it is re-installed. Generally, PHMSA does not consider small movements within the same location (*e.g.* within a compressor station) with no other operational changes as a relocation, however the operator should inspect the vessel for damage after installation.

PHMSA has considered the comments by PST and members of the GPAC regarding the nonapplication requirement and finds the revisions to 49 CFR 192.153(e) are not inconsistent with 49 U.S.C. 60104(b). Section 60104(b) provides that a ''design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.'' Under the revised § 192.153, operators of existing pressure vessels that meet minimum testing requirements will not be required to take any additional action to comply. While the revised section requires that components be pressure tested with a test factor of at least 1.3 times MAOP, the current § 192.153(e) already required such testing at even higher pressures; in other words, a pressure vessel compliant with the existing § 192.153(e) would also be compliant with § 192.153(e) as revised by this final rule. The revisions to the PSR, therefore, cannot be said to impose a new standard on existing facilities in conflict with 49 U.S.C. 60104(b).

In addition, as described in the preamble to the NPRM, the amendment to 49 CFR 192.153(e) responds to a petition for reconsideration of the Miscellaneous Rule.[59] This final rule addresses the issues raised by the petition challenging the addition of § 192.153(e) in the Miscellaneous Rule pursuant to the reconsideration procedures in part 190. The petition for reconsideration of the Miscellaneous Rule argues PHMSA's modifications to § 192.153 were not merely clarifications regarding the required testing standard for pressure vessels as PHMSA stated in the Miscellaneous Rule, but rather were departures from the testing standard for pressure vessels in the ASME BPVC standard that was incorporated in the regulations at the time. PHMSA maintains that the Miscellaneous Rule merely clarified the required testing standard for pressure vessels, but understands there was ambiguity in the regulations regarding the testing standard for pressure vessels before the Miscellaneous Rule was passed and that the Miscellaneous Rule codified a higher testing standard than many operators reasonably believed was compliant with the regulations at the time. Also, based on the discussion above, PHMSA was able to verify that the provisions in the final rule will not adversely affect safety. PHMSA is therefore allowing pressure vessels tested in accordance with the 1.3 test factor after 2004 to continue operating without retesting in order not to penalize conduct some operators believed complied with the PSR at the time.

Lastly, because PHMSA understands the PSR revisions in this final rule obviate the need for its unpublished October 27, 2015 letter to INGAA announcing a stay of enforcement pertaining to certain pressure vessels in violation of §§ 192.153(e) and 192.505(b), it withdraws that document as of the effective date of this final rule. This letter is also available in the docket for this final rule.

I. Welding Process Requirement (Section 192.229)

1. PHMSA's Proposal

Section 192.229(b) currently bars welders from welding with a welding process if they have not engaged in welding with that same process within the previous six months. GPTC submitted a petition for rulemaking requesting PHMSA revise § 192.229(b) to allow welders to demonstrate they have engaged in welding with a welding process at least twice each calendar year, but at intervals not exceeding 7½ months, provided the welds were tested and found acceptable in accordance with API Standard (Std) 1104.[60] API Std 1104 is the primary standard for welding steel piping and for testing welds on steel pipelines, and covers the requirements for welding and nondestructive testing of pipeline welds. API Std 1104 is used within part 192 requirements for qualifying welders, welding procedures, and welding operators, and interpreting the results of non-destructive tests.

GPTC also noted that the 6-month frequency requirement for the welding process requirement at § 192.229(b) is different than other requirements in § 192.229(c)(1) and (d)(2) governing welder requalification frequency. Those welder requalification requirements demand requalification within the preceding 7½ months, but at least twice each calendar year. GPTC pointed out that this discrepancy between welder process requirements and welder requalification requirements obliged operators either to maintain alternative recordkeeping procedures for the process requirement or perform welds to comply with both the process requirement and the requalification requirements on a 6-month interval. In other words, if a welder wishes to use the same weld to comply with both requirements, they are unable to benefit from the more flexible welder requalification requirements at § 192.229(c)(1) and (d)(2).

PHMSA proposed in the NPRM to revise § 192.229(b) to specify that welders or welding operators may not weld with a particular welding process unless they have engaged in welding with that process within the preceding 7½ months and the welds were tested and found acceptable in accordance with API Std 1104. This change would provide operators some flexibility in scheduling welding activities to maintain welder requalification. PHMSA agrees with GPTC that the proposed revision is more consistent with § 192.229(d)(2). This is potentially beneficial for welders who weld relatively infrequently. PHMSA does not anticipate a decrease in safety, as a 7½-month interval is already permitted for requalification under § 192.229(d)(2)(i), and the change will only affect welders who are not welding throughout the year.

2. Summary of Public Comments

AmeriGas, AIPRO, FreedomWorks, NPGA, Oleksa and Associates, and SPP supported the proposed requalification scheduling for welders. Oleksa and Associates stated that there will be no negative impact on pipeline safety. FreedomWorks stated that the changes would allow welders, many of whom are self-employed freelancers, greater flexibility in their trade. AIPRO commented that the changes would establish regulatory expectations and create more scheduling opportunity for vendors to perform the welding tests and for companies to comply with the standard. The GPAC voted unanimously

[59] Available in docket No. PHMSA–2010–0026 and the docket for this final rule.

[60] Docket No. PHMSA–2014–0015.

in favor of PHMSA's proposed amendments regarding the welding process requirement.

3. PHMSA Response

Based on the comments and the GPAC recommendations, PHMSA has adopted this amendment as proposed. This change will streamline compliance and recordkeeping activities related to § 192.229(b) and will not have a detrimental impact on safety.

J. Pre-Test Applicability (Section 192.507)

1. PHMSA's Proposal

Section 192.505(d) permits operators to test fabricated units and short segments of pipe prior to installation on steel pipelines operated at a hoop stress of 30 percent or more of SMYS if a post-installation test is not practicable. PHMSA proposed in the NPRM to add a new paragraph (d) to § 192.507 to extend this authorization to steel pipelines operated at a hoop stress less than 30 percent of SMYS and at or above 100 psig.[61]

The NPRM's proposed revision is in response to a petition for rulemaking submitted by GPTC for PHMSA to relocate the pre-installation strength testing requirement at § 192.505(d) to the general test requirements in § 192.503 to permit broader application of this authorization. GPTC argued this change would permit operators to use pre-tested pipe and fabricated units in applications outside of higher stress transmission pipelines. GPTC further asserted that as this provision is currently applicable only to higher-stress pipelines operating at a hoop stress at or greater than 30 percent of SMYS, extending the broader pre-testing provision to lower-stress pipelines would not increase pipeline safety risks. Rather, GPTC predicted this proposed change will provide greater flexibility and efficiency for operators of lower-stress pipelines, especially during maintenance activities.

Instead of adding pre-testing provisions to the general requirements at § 192.503 as suggested by the GPTC petition, PHMSA proposed in the NPRM to add § 192.507(d) to permit pre-testing on steel pipelines operating at a hoop stress less than 30 percent of SMYS and at or above 100 psig. The proposal did not extend pre-testing provisions to pipelines operating below 100 psig (§ 192.509), service lines (§ 192.511), or plastic pipelines (§ 192.513). Individual components, excluding short segments of pipe, may still be installed on those facilities with a pre-installation test pursuant to § 192.503(e). PHMSA requested comments on whether it is appropriate to extend pre-testing provisions to such facilities, and solicited proposed requirements that should apply if pre-testing provisions are extended to such facilities.

2. Summary of Public Comments

AmeriGas, NPGA, and SPP supported the proposed changes to § 192.507 to allow operators to extend the authorization for pre-testing fabricated assemblies to include steel pipelines that operate at a hoop stress less than 30 percent of SMYS and at or above 100 psig. Similarly, PST commented that they did not object to extending the pre-testing provisions to lower stress pipelines as proposed in the NPRM.

AGA *et al.,* National Fuel, and Oleksa and Associates recommended that PHMSA consider extending the pre-testing allowance to other pipelines that also pose less of a safety risk. Specifically, they recommended that PHMSA extend the allowance for pre-tested short segments of pipe and fabricated units to steel pipelines that operate at pressures less than 100 psig (§ 192.509), plastic pipelines (§ 192.511), and service lines (§ 192.513) to provide clarity and consistency within the regulations. These commenters suggested the addition of enabling regulatory text. Oleksa and Associates agreed with these commenters, stating that the rationale that applies to permitting pre-tested pipe on steel pipelines operating at a stress less than 30 percent of SMYS and at or above 100 psig applies in the same way to pipelines operating below 100 psig, service lines, and plastic pipelines. They suggested that the simplest way to accomplish this is to modify the wording in § 192.503.

Similarly, NAPSR opposed the proposed revision unless it is revised to allow the use of pre-tested pipe for main repairs under 100 psig. Specifically, NAPSR commented that it may be impracticable to pressure test Type B gathering lines and mains post-installation. They commented that if pre-tested pipe is allowed for systems that operate above 100 psig and above 30 percent SMYS, then pre-tested pipe should also be allowed for all pipe that operates below 100 psig and low stress pipe. NAPSR believes that most operators use pre-tested pipe for main and Type B gathering line repairs as a standard practice; that pipe is soap tested and visually inspected for leaks after installation. They stated that the proposed change in the NPRM could unnecessarily restrict operators from safely and quickly repairing damages, and that distribution operators could potentially experience prolonged outages (especially in cold weather) and increased repair times and cost if pre-tested pipe is not allowed.

AGA *et al.* commented that in 2019, distribution system operators reported 84,608 leaks caused by excavation damage on their Gas Distribution Annual Reports. Assuming each excavation damage related leak required a pressure test, and assuming a cost of $200 per post-installation pressure test, they stated that the cost would be nearly $17 million annually to pressure test pipe replaced due to excavation damage alone. National Fuel's comment included a similar calculation and estimated $8.8 million in cost savings if pre-tested pipe is allowed for such repairs. These commenters asserted that the use of pre-tested pipe would significantly reduce these costs as operators could pre-test full joints or coils of pipe for use on multiple short segment replacements and repairs without compromising safety.

National Fuel commented that extending pre-testing to distribution lines would allow the use of pre-tested pipe for short segment replacements for leak repairs, excavation damage repairs and replacement of visually questionable welds or plastic fusion joints. They noted that without this change operators are required to test short replacement segments in place, which is inefficient, time consuming, and often results in extended shutdown durations and inconvenience to customers. They further stated that based on current regulatory language, an excavation damage repair that involves replacement of two feet of plastic distribution main requires that the operator: (1) Fuse end caps on each end of the replacement segment, (2) pressure test the pipe in place for the required duration, (3) remove the end caps, (4) tie-in the replacement segment by electrofusion or coupling, and (5) purge, gas and soap test the joints. They stated that allowing the use of pre-tested pipe would significantly reduce the repair time and costs to complete the repair and would still result in a pipe segment that is both strength tested and leak tested to ensure an equal level of safety while limiting interruptions to customers.

AGA *et al.* recommended that PHMSA remove the term ''hydrostatic'' from the test requirements for short segments of pipe and pre-fabricated units from § 192.507 because natural gas, inert gas, and air are also allowable test media for pipelines operating at a

[61] ''Pounds per square inch gauge'' refers to internal pressure relative to outside atmospheric pressure.

hoop stress less than 30 percent of SMYS under § 192.503(c).

The GPAC voted unanimously in favor of PHMSA's proposed PSR amendments regarding the welding process requirement but recommended removing the word ''hydrostatic'' from the proposed § 192.507(d).

3. PHMSA Response

Based on the comments received and the recommendation of the GPAC, the final rule adopts the amendments related to pre-testing fabricated assemblies and short segments of pipe as proposed in the NPRM, except that PHMSA has removed the term ''hydrostatic'' from the new § 192.507(d). PHMSA agrees that removing the term ''hydrostatic'' is appropriate since other test media other than water are approved for use in that new section.

The final rule does not extend the authorization in § 192.507 (as revised) for pre-tested segments of pipe and fabricated assemblies beyond steel pipe with an MAOP producing a hoop stress less than 30 percent of SMYS but at or above 100 psig. Operators must still perform leak tests after installing fabricated units and short segments of pipe installed on such pipelines. The remaining categories in subpart J (metallic pipe with an MAOP less than 100 psig, plastic pipe, and service lines) generally represent distribution lines rather than transmission lines. It is not clear that there is adequate safety justification for extending the pre-testing allowance to these categories of lines due to the proximity of such facilities to customers and the differences in design, construction, inspection, and testing requirements for such facilities compared with higher-pressure transmission lines. For example, welds on higher-pressure metallic lines require inspection with non-destructive testing techniques under § 192.241, while plastic pipe joints and welds on lower-pressure metallic lines can be visually inspected instead. The leak tests required for lower-pressure lines in subpart J are, therefore, necessary to ensure the leak-tight integrity of welds and joints on such lines. Commenters did not suggest alternative inspection requirements or other conditions for using pre-tested pipe and fabricated units on such pipelines. PHMSA therefore determined that additional analysis is necessary to consider the safety effects of extending the pre-testing allowance to such facilities, and what, if any, additional conditions may be necessary. The GPAC voted unanimously in favor of this recommended approach. PHMSA may consider this issue in future rulemaking.

PHMSA notes that §§ 192.509, 192.511, and 192.513 require only a leak test. NAPSR presented a scenario where, for a replacement repair, an operator installed pre-tested pipe and then performed a leak test after installation. The leak test described in this scenario meets the post-installation leak test requirement in § 192.509, provided that the operator's test procedure ensures the discovery of all potentially hazardous leaks.

IV. Availability of Standards Incorporated by Reference

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 80 standards and specifications developed and published by standard development organizations (SDO). In general, SDOs update and revise their published standards every 2 to 5 years to reflect modern technology and best technical practices.

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; NTTAA) directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards whenever possible. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. In addition, the Office of Management and Budget (OMB) issued Circular A–119 [62] to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by Federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA.

Accordingly, PHMSA is responsible for determining, via petitions or otherwise, which currently referenced standards should be updated, revised, or removed, and which standards should be added to the PSR. Pursuant to 49 U.S.C. 60102(p), PHMSA may not issue a regulation that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge. Revisions to materials incorporated by reference in the PSR are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials. The Office of the Federal Register issued a rulemaking on November 7, 2014, that revised 1 CFR 51.5 to require that agencies detail in the preamble of an NPRM the ways the materials it proposes to incorporate by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties.[63]

To meet these obligations for this rulemaking, PHMSA negotiated agreements with API and ASTM to provide viewable copies of standards incorporated by reference in the pipeline safety regulations available to the public at no cost. API Std 1104 is available at *https://www.api.org/products-and-services/standards/rights-and-usage-policy#tab-ibr-reading-room* and is discussed in greater detail in section I.1 of this preamble. The ASTM standards are available at *https://www.astm.org/READINGLIBRARY/* and are discussed in greater detail in section G.1 of this preamble. PHMSA will also provide individual members of the public temporary access to any standard that is incorporated by reference. Requests for access can be sent to the following email address: *phmsaphpstandards@dot.gov.* PHMSA also notes that standards incorporated by reference in the PSR can be obtained from the organization developing each standard. Section 192.7 provides the contact information for each of those standard-developing organizations.

V. Regulatory Analyses and Notices

A. Legal Authority for This Rulemaking

This rule is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101, *et seq.*). Section 60102(a) authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Further, § 60102(l) of the Federal Pipeline Safety Law states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as a part of the pipeline safety regulations. The Secretary has delegated the authority in § 60102 to the

[62] OMB, Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' (Jan. 27, 2016). Circular A–119 and revisions thereto are available at *https://www.whitehouse.gov/omb/information-for-agencies/circulars/.*

[63] 79 FR 66278.

Administrator of PHMSA in 49 CFR 1.97.

B. Executive Order 12866 and DOT Rulemaking Procedures

E.O. 12866, ''Regulatory Planning and Review,'' [64] requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' E.O. 12866 and DOT regulations governing rulemaking procedures at 49 CFR part 5 require that PHMSA submit ''significant regulatory actions'' to OMB for review. This rule is considered significant under § 3(f) of E.O. 12866, and was reviewed by OMB. It is also significant under the DOT's rulemaking procedures at 49 CFR part 5.

Similarly, DOT regulations at § 5.5(f)-(g) require that regulations issued by PHMSA and other DOT Operating Administrations ''should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety'' and should generally ''not be issued unless their benefits are expected to exceed their costs.''

E.O. 12866 and DOT implementing regulations at 49 CFR 5.5(i) also require PHMSA to provide a meaningful opportunity for public participation, which also reinforces requirements for notice and comment under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*). Therefore, in the NPRM, PHMSA sought public comment on its proposed revisions to the PSR and the preliminary cost and cost savings analyses in the Preliminary RIA, as well as any information that could assist in quantifying the benefits of this rulemaking. Those comments are addressed in this final rule, and additional discussion about the economic impacts of the final rule are provided within the final RIA posted in the rulemaking docket.

PHMSA estimated that this final rule would have economic benefits to the public and the regulated community by reducing unnecessary cost burdens without increasing risks to public safety or the environment. PHMSA estimates that the final rule will result in annualized cost savings of approximately $129.8 million per year, based on a 7 percent discount rate. Most of the quantified cost savings in the final rule are from the revisions to farm tap requirements and the revised atmospheric corrosion reassessment interval for distribution service lines. The final RIA in the rulemaking docket analyzes these economic impacts in detail.

C. Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Cost''

This final rule is an E.O. 13771 [65] deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis within the RIA in the rulemaking docket.

D. Executive Order 13132—''Federalism''

PHMSA analyzed this final rule in accordance with E.O. 13132.[66] E.O. 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not impose a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule also does not impose substantial direct compliance costs on State and local governments.

The final rule could have preemptive effect because the Federal Pipeline Safety Law, specifically 49 U.S.C. 60104(c), prohibits certain State safety regulation of interstate pipelines. Under the Federal Pipeline Safety Law, States may augment pipeline safety requirements for intrastate pipelines regulated by PHMSA but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate. In this instance, the preemptive effect of the final rule is limited to the minimum level necessary to achieve the objectives of the Federal Pipeline Safety Law under which the final rule is promulgated. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

E. Executive Order 13175—''Consultation and Coordination With Indian Tribal Governments''

PHMSA analyzed this final rule in accordance with the principles and criteria in E.O. 13175 [67] and DOT Order 5301.1, ''Department of Transportation Programs, Polices, and Procedures Affecting American Indians, Alaska Natives, and Tribes.'' E.O. 13175 requires agencies to assure meaningful and timely input from Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or the relationship and distribution of power between the Federal Government and Tribes. PHMSA assessed the impact of the final rule on Indian Tribal communities and determined that it would not significantly or uniquely affect Tribal communities or Indian Tribal governments. Therefore, the funding and consultation requirements of E.O. 13175 do not apply. PHMSA received no comments to the effect that this rulemaking would have Tribal implications.

F. Executive Order 13211—''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

E.O. 13211 [68] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under E.O. 13211, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that: (1)(i) Is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

This final rule is not a ''significant energy action'' under E.O. 13211. It is not likely to have a significant adverse effect on supply, distribution, or energy use; rather, it is expected to reduce regulatory burdens on the natural gas pipeline sector without adversely affecting safety. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

G. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as implemented by E.O. 13272, ''Proper Consideration of Small Entities in Agency

[64] 58 FR 51735; Oct. 4, 1993.

[65] 82 FR 9339 (Feb. 3, 2017).

[66] 64 FR 43255 (Aug. 10, 1999).

[67] 65 FR 67249 (Nov. 6, 2000).

[68] 66 FR 28355 (May 22, 2001).

Rulemaking,'' [69] and § 5.13(f) of DOT regulations, requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for any final rule subject to notice-and-comment rulemaking under the Administrative Procedure Act unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities.

PHMSA has determined that the cost-savings in the final rule may result in significant economic impacts on a substantial number of small entities. These impacts on regulated entities are beneficial. PHMSA has included a FRFA within the final RIA posted in the docket for this rulemaking.

H. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public.

Pursuant to 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. PHMSA expects this final rule to impact the information collections described below.

PHMSA will submit an information collection revision request to OMB for approval based on the requirements in this final rule. The information collections are contained in the PSR. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) current expiration date; (4) type of request; (5) abstract of the information collection activity; (6) description of affected public; (7) estimate of total annual reporting and recordkeeping burden; and (8) frequency of collection. The information collection burden for the following information collections are estimated to be revised as follows:

1. Title: Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0635.

Current Expiration Date: 01/31/2023.

Abstract: This information collection covers the collection of information from gas pipeline operators for incident reporting. PHMSA estimates that due to the revised monetary damage threshold for reporting incidents operators will submit 28 fewer gas distribution incident reports, and 14 fewer gas transmission reports. Operators currently spend 12 hours completing each incident report. Therefore, PHMSA expects to eliminate 42 responses and 504 hours from this information collection per year as a result of the provisions in the proposed rule. PHMSA is also revising PHMSA F 7100.1, the Gas Distribution Incident Report, to collect data on mechanical joint failures that arise to the level of an incident as stipulated in 49 CFR 191.3. PHMSA does not expect operators to incur additional burden due to this change.

Affected Public: All gas pipeline operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 259.

Total Annual Burden Hours: 3,108.

Frequency of Collection: On Occasion.

2. Title: Annual and Incident Reports for Gas Pipeline Operators.

OMB Control Number: 2137–0522.

Current Expiration Date: 01/31/2023.

Abstract: This information collection covers the collection of information from gas pipeline operators for immediate notice of incidents and Annual reports. Based on the proposals in this rule, PHMSA plans to eliminate the MFF report form under this OMB Control Number and have operators submit the annual total of mechanical joint failures on the Gas Distribution Annual Report under OMB Control Number 2137–0629. In the currently-approved information collection, it is estimated that PHMSA currently receives, on average, 8,300 MFF reports each year with each operator spending, on average, 1 hour to complete each report. By eliminating this report, PHMSA plans to reduce the burden for this information collection by 8,300 responses and 8,300 burden hours.

Affected Public: All gas pipeline operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 2,247.

Total Annual Burden Hours: 71,801.

Frequency of Collection: Regular.

3. Title: Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines.

OMB Control Number: 2137–0625.

Current Expiration Date: 06/30/2022.

Abstract: The PSR require operators of gas distribution pipelines to develop and implement IM programs.

PHMSA proposed to eliminate this requirement for master meter operators. Based on the currently approved information collection, PHMSA estimates that, on average, 5,461 master meter operators spend 26 hours, annually, developing new IM plans and/or updating their existing IM plans. Eliminating this requirement for master meter operators will eliminate recordkeeping burdens attributable to these 5,461 existing master meter operators, saving 141,986 hours of burden annually.

Affected Public: Natural Gas Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 3,882.

Total Annual Burden Hours: 723,192.

Frequency of Collection: On occasion.

4. Title: Gas Distribution Annual Report.

OMB Control Number: 2137–0629.

Current Expiration Date: 10/31/2021.

Abstract: The PSR require distribution operators to prepare and submit annual reports with summary information on their pipeline infrastructure. PHMSA proposed to shift the mechanical fitting failure form requirements to a count of hazardous leaks involving a failure of a mechanical joint on the distribution annual report form. PHMSA estimates that it will take gas distribution operators approximately 30 minutes (0.5 hours; calculated as 13,075 mechanical joint failures divided by 1,446 operators times 3 minutes per mechanical joint failure) to add this information to the annual report. As a result, the burden for this information collection will increase by approximately 723 hours. This addition will have no effect on the total number of reports submitted.

Affected Public: Natural Gas Distribution Pipeline Operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,446.

Total Annual Burden Hours: 25,305.

Frequency of Collection: Annually.

I. Unfunded Mandates Reform Act of 1995

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments in the aggregate of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

PHMSA prepared a final RIA and determined that this final rule does not impose enforceable duties on State, local, or Tribal governments or on the private sector of $164 million in 2019 dollars or more in any one year. A copy of the final RIA is available for review in the docket of this rulemaking.

[69] 68 FR 7990 (Feb. 19, 2003).

J. National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et. seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment.

PHMSA analyzed this rule in accordance with NEPA, NEPA implementing regulations (40 CFR parts 1500–1508), and DOT Order 5610.1C. PHMSA prepared a draft environmental assessment (EA) for the NPRM and posted it in the rulemaking docket; PHMSA received no comments on the draft EA. For this final rule, PHMSA has prepared a Final Environmental Assessment (EA) and has determined that this final rule will not significantly affect the quality of the human environment. The final EA for this final rule is available in the docket.

K. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN number contained in the heading of this document is a cross-reference for this action to the Unified Agenda.

List of Subjects

49 CFR Part 191

Pipeline reporting requirements, Integrity management, Pipeline safety, Gas gathering.

49 CFR Part 192

Incorporation by reference, Pipeline safety, Fire prevention, Security measures.

In consideration of the forgoing, PHMSA is amending 49 CFR parts 191 and 192 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

■ 1. The authority citation for 49 CFR part 191 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 et seq., and 49 CFR 1.97

■ 2. In § 191.3, in the definition of ''Incident'' revise paragraph (1)(ii) to read as follows:

§ 191.3 Definitions.

* * * * *

Incident means any of the following events:

(1) * * *

(ii) Estimated property damage of $122,000 or more, including loss to the operator and others, or both, but excluding the cost of gas lost. For adjustments for inflation observed in calendar year 2021 onwards, changes to the reporting threshold will be posted on PHMSA's website. These changes will be determined in accordance with the procedures in appendix A to part 191.

* * * * *

■ 3. In § 191.11, revise paragraph (b) to read as follows:

§ 191.11 Distribution system: Annual Report.

* * * * *

(b) *Not required.* The annual report requirement in this section does not apply to a master meter system, a petroleum gas system that serves fewer than 100 customers from a single source, or an individual service line directly connected to a production pipeline or a gathering line other than a regulated gathering line as determined in § 192.8.

§ 191.12 [Removed and Reserved]

■ 4. Remove and reserve § 191.12.

■ 5. Appendix A to part 191 is added to read as follows:

Appendix A to Part 191—Procedure for Determining Reporting Threshold

I. Property Damage Threshold Formula

Each year after calendar year 2021, the Administrator will publish a notice on PHMSA's website announcing the updates to the property damage threshold criterion that will take effect on July 1 of that year and will remain in effect until the June 30 of the next year. The property damage threshold used in the definition of an *Incident* at § 191.3 shall be determined in accordance with the following formula:

$$T_r = T_p \times \frac{CPI_r}{CPI_p}$$

Where:

T_r is the revised damage threshold,

T_p is the previous damage threshold,

CPI_r is the average Consumer Price Indices for all Urban Consumers (CPI–U) published by the Bureau of Labor Statistics each month during the most recent complete calendar year, and

CPI_p is the average CPI–U for the calendar year used to establish the previous property damage criteria.

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 5. The authority citation for 49 CFR part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 et seq., and 49 CFR 1.97.

■ 6. In § 192.7:

■ a. Revise paragraph (a), paragraph (b) introductory text, and paragraph (b)(9);

■ b. Remove and reserve paragraph (c)(7); and

■ c. Revise paragraph (e) introductory text and paragraphs (e)(11) and (20).

The revisions read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The materials listed in this section have the full force of law. All approved material is available for inspection at Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–4046 *https://www.phmsa.dot.gov/pipeline/regs,* and is available from the sources listed in the remaining paragraphs of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) American Petroleum Institute (API), 200 Massachusetts Ave. NW, Suite 1100, Washington, DC 20001, and phone: 202–682–8000, website: *https://www.api.org/.*

* * * * *

(9) API Standard 1104, ''Welding of Pipelines and Related Facilities,'' 20th edition, October 2005, including errata/addendum (July 2007) and errata 2 (2008), (API Std 1104), IBR approved for §§ 192.225(a); 192.227(a); 192.229(b) and (c); 192.241(c); and Item II, Appendix B.

* * * * *

(e) ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, phone: (610) 832–9585, website: *http://astm.org.*

* * * * *

(11) ASTM D2513–18a, ''Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings,'' approved August 1, 2018, (ASTM D2513), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(20) ASTM F2620–19, ''Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings,'' approved February 1, 2019, (ASTM

F2620), IBR approved for §§ 192.281(c) and 192.285(b).

* * * * *

■ 7. In § 192.121:

■ a. In the first sentence of paragraph (a), remove the words ''*Design formula.* Design formulas for plastic pipe are'' and add in their place the words ''*Design pressure.* The design pressure for plastic pipe is'';

■ b. In paragraph (c)(2) introductory text add the words ''on or'' after the word ''produced'';

■ c. Revise paragraphs (c)(2)(iii) and (iv), and (d)(2)(iv);

■ d. In paragraph (e) introductory text add the words ''on or'' after the word ''produced''; and

■ e. Revise paragraph (e)(4).

The revisions read as follows:

§ 192.121 Design of plastic pipe.

* * * * *

(c) * * *

(2) * * *

(iii) The pipe has a nominal size (IPS or CTS) of 24 inches or less; and

(iv) The wall thickness for a given outside diameter is not less than that listed in table 1 to this paragraph (c)(2)(iv).

TABLE 1 TO PARAGRAPH (c)(2)(iv)

PE pipe: minimum wall thickness and SDR values		
Pipe size (inches)	Minimum wall thickness (inches)	Corresponding SDR (values)
½″ CTS	0.090	7
½″ IPS	0.090	9.3
¾″ CTS	0.090	9.7
¾″ IPS	0.095	11
1″ CTS	0.099	11
1″ IPS	0.119	11
1¼″ IPS	0.151	11
1½″ IPS	0.173	11
2″	0.216	11
3″	0.259	13.5
4″	0.265	17
6″	0.315	21
8″	0.411	21
10″	0.512	21
12″	0.607	21
16″	0.762	21
18″	0.857	21
20″	0.952	21
22″	1.048	21
24″	1.143	21

(d) * * *

(2) * * *

(iv) The minimum wall thickness for a given outside diameter is not less than that listed in table 2 to paragraph (d)(2)(iv):

TABLE 2 TO PARAGRAPH (d)(2)(iv)

PA–11 pipe: minimum wall thickness and SDR values		
Pipe size (inches)	Minimum wall thickness (inches)	Corresponding SDR (values)
½″ CTS	0.090	7.0
½″ IPS	0.090	9.3
¾″ CTS	0.090	9.7
¾″ IPS	0.095	11
1″ CTS	0.099	11
1″ IPS	0.119	11
1¼ IPS	0.151	11
1½″ IPS	0.173	11
2″ IPS	0.216	11
3″ IPS	0.259	13.5
4″ IPS	0.333	13.5
6″ IPS	0.491	13.5

(e) * * *

(4) The minimum wall thickness for a given outside diameter is not less than that listed in table 3 to paragraph (e)(4).

TABLE 3 TO PARAGRAPH (e)(4)

PA–12 pipe: minimum wall thickness and SDR values

Pipe size (inches)	Minimum wall thickness (inches)	Corresponding SDR (values)
½″ CTS	0.090	7
½″ IPS	0.090	9.3
¾″ CTS	0.090	9.7
¾″ IPS	0.095	11
1″ CTS	0.099	11
1″ IPS	0.119	11
1¼″ IPS	0.151	11
1½″ IPS	0.173	11
2″ IPS	0.216	11
3″ IPS	0.259	13.5
4″ IPS	0.333	13.5
6″ IPS	0.491	13.5

* * * * *

■ 8. In § 192.153 revise paragraphs (b) and paragraph (e) to read as follows:

§ 192.153 Components fabricated by welding.

* * * * *

(b) Each prefabricated unit that uses plate and longitudinal seams must be designed, constructed, and tested in accordance with the ASME BPVC (*Rules for Construction of Pressure Vessels* as defined in either Section VIII, Division 1 or Section VIII, Division 2; incorporated by reference, *see* § 192.7), except for the following:

(1) Regularly manufactured butt-welding fittings.

(2) Pipe that has been produced and tested under a specification listed in appendix B to this part.

(3) Partial assemblies such as split rings or collars.

(4) Prefabricated units that the manufacturer certifies have been tested to at least twice the maximum pressure to which they will be subjected under the anticipated operating conditions.

* * * * *

(e) The test requirements for a prefabricated unit or pressure vessel, defined for this paragraph as components with a design pressure established in accordance with paragraph (a) or paragraph (b) of this section are as follows.

(1) A prefabricated unit or pressure vessel installed after July 14, 2004 is not subject to the strength testing requirements at § 192.505(b) provided the component has been tested in accordance with paragraph (a) or paragraph (b) of this section and with a test factor of at least 1.3 times MAOP.

(2) A prefabricated unit or pressure vessel must be tested for a duration specified as follows:

(i) A prefabricated unit or pressure vessel installed after July 14, 2004, but before October 1, 2021 is exempt from §§ 192.505(c) and (d) and 192.507(c) provided it has been tested for a duration consistent with the ASME BPVC requirements referenced in paragraph (a) or (b) of this section.

(ii) A prefabricated unit or pressure vessel installed on or after October 1, 2021 must be tested for the duration specified in either § 192.505(c) or (d), § 192.507(c), or § 192.509(a), whichever is applicable for the pipeline in which the component is being installed.

(3) For any prefabricated unit or pressure vessel permanently or temporarily installed on a pipeline facility, an operator must either:

(i) Test the prefabricated unit or pressure vessel in accordance with this section and Subpart J of this part after it has been placed on its support structure at its final installation location. The test may be performed before or after it has been tied-in to the pipeline. Test records that meet § 192.517(a) must be kept for the operational life of the prefabricated unit or pressure vessel; or

(ii) For a prefabricated unit or pressure vessel that is pressure tested prior to installation or where a manufacturer's pressure test is used in accordance with paragraph (e) of this section, inspect the prefabricated unit or pressure vessel after it has been placed on its support structure at its final installation location and confirm that the prefabricated unit or pressure vessel was not damaged during any prior operation, transportation, or installation into the pipeline. The inspection procedure and documented inspection must include visual inspection for vessel damage, including, at a minimum, inlets, outlets, and lifting locations. Injurious defects that are an integrity threat may include dents, gouges, bending, corrosion, and cracking. This inspection must be performed prior to operation but may be performed either before or after it has been tied-in to the pipeline. If injurious defects that are an integrity threat are found, the prefabricated unit or pressure vessel must be either non-destructively tested, re-pressure tested, or remediated in accordance with applicable part 192 requirements for a fabricated unit or with the applicable ASME BPVC requirements referenced in paragraphs (a) or (b) of this section. Test, inspection, and repair records for the fabricated unit or pressure vessel must be kept for the operational life of the component. Test records must meet the requirements in § 192.517(a).

(4) An initial pressure test from the prefabricated unit or pressure vessel manufacturer may be used to meet the requirements of this section with the following conditions:

(i) The prefabricated unit or pressure vessel is newly-manufactured and installed on or after October 1, 2021, except as provided in paragraph (e)(4)(ii) of this section.

(ii) An initial pressure test from the fabricated unit or pressure vessel manufacturer or other prior test of a new or existing prefabricated unit or pressure vessel may be used for a component that is temporarily installed in a pipeline facility in order to complete a testing, integrity assessment, repair, odorization, or emergency response-related task, including noise or pollution abatement. The temporary component must be promptly removed after that task is completed. If operational and environmental constraints require leaving a temporary prefabricated unit or pressure vessel under this paragraph in place for longer than 30 days, the operator must notify PHMSA and State or local pipeline

safety authorities, as applicable, in accordance with § 192.18.

(iii) The manufacturer's pressure test must meet the minimum requirements of this part; and

(iv) The operator inspects and remediates the prefabricated unit or pressure vessel after installation in accordance with paragraph (e)(3)(ii) of this section.

(5) An existing prefabricated unit or pressure vessel that is temporarily removed from a pipeline facility to complete a testing, integrity assessment, repair, odorization, or emergency response-related task, including noise or pollution abatement, and then re-installed at the same location must be inspected in accordance with paragraph (e)(3)(ii) of this section; however, a new pressure test is not required provided no damage or threats to the operational integrity of the prefabricated unit or pressure vessel were identified during the inspection and the MAOP of the pipeline is not increased.

(6) Except as provided in paragraphs (e)(4)(ii) and (5) of this section, on or after October 1, 2021, an existing prefabricated unit or pressure vessel relocated and operated at a different location must meet the requirements of this part and the following:

(i) The prefabricated unit or pressure vessel must be designed and constructed in accordance with the requirements of this part at the time the vessel is returned to operational service at the new location; and

(ii) The prefabricated unit or pressure vessel must be pressure tested by the operator in accordance with the testing and inspection requirements of this part applicable to newly installed prefabricated units and pressure vessels.

■ 9. In § 192.229, revise paragraph (b) to read as follows:

§ 192.229 Limitations on welders and welding operators.

* * * * *

(b) A welder or welding operator may not weld with a particular welding process unless, within the preceding 6 calendar months, the welder or welding operator was engaged in welding with that process. Alternatively, welders or welding operators may demonstrate they have engaged in a specific welding process if they have performed a weld with that process that was tested and found acceptable under section 6, 9, 12, or Appendix A of API Std 1104 (incorporated by reference, *see* § 192.7) within the preceding 7½ months.

* * * * *

■ 10. In § 192.281, revise paragraph (c) to read as follow:

§ 192.281 Plastic Pipe.

* * * * *

(c) *Heat-fusion joints.* Each heat fusion joint on a PE pipe or component, except for electrofusion joints, must comply with ASTM F2620 (incorporated by reference in § 192.7), or an alternative written procedure that has been demonstrated to provide an equivalent or superior level of safety and has been proven by test or experience to produce strong gastight joints, and the following:

* * * * *

■ 11. In § 192.283 revise paragraph (a)(3) to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) * * *

(3) For procedures intended for non-lateral pipe connections, perform tensile testing in accordance with a listed specification. If the test specimen elongates no less than 25% or failure initiates outside the joint area, the procedure qualifies for use.

* * * * *

■ 12. In § 192.285, revise paragraph (b) to read as follows

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

(b) The specimen joint must be:

(1) Visually examined during and after assembly or joining and found to have the same appearance as a joint or photographs of a joint that is acceptable under the procedure; and

(2) In the case of a heat fusion, solvent cement, or adhesive joint:

(i) Tested under any one of the test methods listed under § 192.283(a), and for PE heat fusion joints (except for electrofusion joints) visually inspected in accordance with ASTM F2620 (incorporated by reference, see § 192.7), or a written procedure that has been demonstrated to provide an equivalent or superior level of safety, applicable to the type of joint and material being tested;

(ii) Examined by ultrasonic inspection and found not to contain flaws that would cause failure; or

(iii) Cut into at least 3 longitudinal straps, each of which is:

(A) Visually examined and found not to contain voids or discontinuities on the cut surfaces of the joint area; and

(B) Deformed by bending, torque, or impact, and if failure occurs, it must not initiate in the joint area.

* * * * *

■ 13. In § 192.465, revise paragraph (b) to read as follows:

§ 192.465 External corrosion control: Monitoring.

* * * * *

(b) Cathodic protection rectifiers and impressed current power sources must be periodically inspected as follows:

(1) Each cathodic protection rectifier or impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2½ months between inspections, to ensure adequate amperage and voltage levels needed to provide cathodic protection are maintained. This may be done either through remote measurement or through an onsite inspection of the rectifier.

(2) After January 1, 2022, each remotely inspected rectifier must be physically inspected for continued safe and reliable operation at least once each calendar year, but with intervals not exceeding 15 months.

* * * * *

■ 14. In § 192.481, revise paragraph (a) and add paragraph (d) to read as follows:

§ 192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect and evaluate each pipeline or portion of the pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

Pipeline type:	Then the frequency of inspection is:
(1) Onshore other than a Service Line	At least once every 3 calendar years, but with intervals not exceeding 39 months.
(2) Onshore Service Line	At least once every 5 calendar years, but with intervals not exceeding 63 months, except as provided in paragraph (d) of this section.
(3) Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

* * * * *

(d) If atmospheric corrosion is found on a service line during the most recent inspection, then the next inspection of that pipeline or portion of pipeline must be within 3 calendar years, but with intervals not exceeding 39 months.

■ 15. In 192.491, revise paragraph (c) to read as follows:

§ 192.491 Corrosion control records.

* * * * *

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years with the following exceptions:

(1) Operators must retain records related to §§ 192.465(a) and (e) and 192.475(b) for as long as the pipeline remains in service.

(2) Operators must retain records of the two most recent atmospheric corrosion inspections for each distribution service line that is being inspected under the interval in § 192.481(a)(2).

■ 16. In § 192.505, revise paragraph (c) to read as follows

§ 192.505 Strength test requirements for steel pipelines to operate at a hoop stress of 30 percent or more of SMYS.

* * * * *

(c) Except as provided in paragraph (d) of this section, the strength test must be conducted by mai ntaining the pressure at or above the test pressure for at least 8 hours.

* * * * *

■ 17. In § 192.507, add paragraph (d) to read as follows:

§ 192.507 Test requirements for pipelines to operate at a hoop stress less than 30 percent of SMYS and at or above 100 p.s.i. (689 kPa) gage.

* * * * *

(d) For fabricated units and short sections of pipe, for which a post installation test is impractical, a pre-installation hydrostatic pressure test must be conducted in accordance with the requirements of this section.

■ 18. In § 192.619, revise Table 1 to paragraph (a)(2)(ii) to read as follows:

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

TABLE 1 TO PARAGRAPH (a)(2)(ii)

Class location	Installed before (Nov. 12, 1970)	Factors,[1] [2] segment—		
		Installed after (Nov. 11, 1970) and before July 1, 2020	Installed on or after July 1, 2020	Converted under § 192.14
1	1.1	1.1	1.25	1.25
2	1.25	1.25	1.25	1.25
3	1.4	1.5	1.5	1.5
4	1.4	1.5	1.5	1.5

[1] For offshore pipeline segments installed, uprated or converted after July 31, 1977, that are not located on an offshore platform, the factor is 1.25. For pipeline segments installed, uprated or converted after July 31, 1977, that are located on an offshore platform or on a platform in inland navigable waters, including a pipe riser, the factor is 1.5.

[2] For a component with a design pressure established in accordance with § 192.153(a) or (b) installed after July 14, 2004, the factor is 1.3.

■ 19. In § 192.740, revise the section heading, paragraph (a) and paragraph (c) to read as follows:

§ 192.740 Pressure regulating, limiting, and overpressure protection—Individual service lines directly connected to regulated gathering or transmission pipelines.

(a) This section applies, except as provided in paragraph (c) of this section, to any service line directly connected to a transmission pipeline or regulated gathering pipeline as determined in § 192.8 that is not operated as part of a distribution system.

* * * * *

(c) This section does not apply to equipment installed on:

(1) A service line that only serves engines that power irrigation pumps;

(2) A service line included in a distribution integrity management plan meeting the requirements of subpart P of this part; or

(3) A service line directly connected to either a production or gathering pipeline other than a regulated gathering line as determined in § 192.8 of this part.

■ 20. Revise § 192.1003 to read as follows:

§ 192.1003 What do the regulations in this subpart cover?

(a) *General.* Unless exempted in paragraph (b) of this section, this subpart prescribes minimum requirements for an IM program for any gas distribution pipeline covered under this part, including liquefied petroleum gas systems. A gas distribution operator must follow the requirements in this subpart.

(b) *Exceptions.* This subpart does not apply to:

(1) Individual service lines directly connected to a production line or a gathering line other than a regulated onshore gathering line as determined in § 192.8;

(2) Individual service lines directly connected to either a transmission or regulated gathering pipeline and maintained in accordance with § 192.740(a) and (b); and

(3) Master meter systems.

■ 21. In § 192.1005, revise the section heading to read as follows:

§ 192.1005 What must a gas distribution operator (other than a small LPG operator) do to implement this subpart?

* * * * *

■ 22. In § 192.1007, revise paragraph (b) to read as follows:

§ 192.1007 What are the required elements of an integrity management plan?

* * * * *

(b) *Identify threats.* The operator must consider the following categories of threats to each gas distribution pipeline: Corrosion (including atmospheric corrosion), natural forces, excavation damage, other outside force damage, material or welds, equipment failure, incorrect operations, and other issues that could threaten the integrity of its pipeline. An operator must consider reasonably available information to identify existing and potential threats.

Sources of data may include incident and leak history, corrosion control records (including atmospheric corrosion records), continuing surveillance records, patrolling records, maintenance history, and excavation damage experience.

* * * * *

§ 192.1009 [Removed and Reserved]

■ 23. Remove and reserve § 192.1009.

■ 24. In § 192.1015, revise the section heading, and paragraphs (a) and (b) to read as follows:

§ 192.1015 What must a small LPG operator do to implement this subpart?

(a) *General.* No later than August 2, 2011, a small LPG operator must develop and implement an IM program that includes a written IM plan as specified in paragraph (b) of this section. The IM program for these pipelines should reflect the relative simplicity of these types of pipelines.

(b) *Elements.* A written integrity management plan must address, at a minimum, the following elements:

(1) *Knowledge.* The operator must demonstrate knowledge of its pipeline, which, to the extent known, should include the approximate location and material of its pipeline. The operator must identify additional information needed and provide a plan for gaining knowledge over time through normal activities conducted on the pipeline (for example, design, construction, operations or maintenance activities).

(2) *Identify threats.* The operator must consider, at minimum, the following categories of threats (existing and potential): Corrosion (including atmospheric corrosion), natural forces, excavation damage, other outside force damage, material or weld failure, equipment failure, and incorrect operation.

(3) *Rank risks.* The operator must evaluate the risks to its pipeline and estimate the relative importance of each identified threat.

(4) *Identify and implement measures to mitigate risks.* The operator must determine and implement measures designed to reduce the risks from failure of its pipeline.

(5) *Measure performance, monitor results, and evaluate effectiveness.* The operator must monitor, as a performance measure, the number of leaks eliminated or repaired on its pipeline and their causes.

(6) *Periodic evaluation and improvement.* The operator must determine the appropriate period for conducting IM program evaluations based on the complexity of its pipeline and changes in factors affecting the risk of failure. An operator must re-evaluate its entire program at least every 5 years. The operator must consider the results of the performance monitoring in these evaluations.

* * * * *

Appendix B to Part 192 [Amended]

■ 25. Amend Appendix B to part 192 as follows:

■ a. In section I.A., remove the entry for ''ASTM D2513–12ae1'' and add in its place a new entry for ''ASTM D2513'', and

■ b. In Section I.B., remove the entry for ''ASTM D2513–12ae1'' and add in its place a new entry for ''ASTM D2513''.

Issued in Washington, DC, on January 1, 2021, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

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S. 3418/P.L. 116–284
Safeguarding Tomorrow through Ongoing Risk Mitigation Act (Jan. 1, 2021; 134 Stat. 4869)

H.R. 4356/P.L. 116–285
Protecting Families of Fallen Servicemembers Act (Jan. 5, 2021; 134 Stat. 4878)

H.R. 6192/P.L. 116–286

1921 Silver Dollar Coin Anniversary Act (Jan. 5, 2021; 134 Stat. 4879)

H.R. 6435/P.L. 116–287

Combating Pandemic Scams Act of 2020 (Jan. 5, 2021; 134 Stat. 4882)

H.R. 8354/P.L. 116–288

Servicemembers and Veterans Initiative Act of 2020 (Jan. 5, 2021; 134 Stat. 4884)

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